

EXPLANATORY MEMORANDUM

European Nursing and Midwifery Qualifications Designation Order 2004 No. 1766

1. In accordance with article 14 of the Nursing and Midwifery Order 2001 (NM Order) and Directives 77/452/EEC (“the Nursing Directive”) and 80/154/EEC (“the Midwifery Directive”) this Order of Council designates nursing and midwifery qualifications awarded in other EU States as being approved qualifications for the purposes of registration in the register maintained by the Nursing and Midwifery Council (NMC). By virtue of the Agreement on the European Economic Area, the provisions of these Directives apply to qualifications awarded in Iceland, Norway and Lichtenstein, which are also designated. In accordance with the Agreement between the European Community, and its Member States, and the Swiss Confederation, qualifications awarded in Switzerland are also designated.
2. This Order of Council is made by the Privy Council under the NM Order and replaces the European Nursing and Midwifery Qualifications Designation Order 1996 as amended which was made by the Secretary of State under the Nurses, Midwives and Health Visitors Act 1979.
3. The NMC was established in April 2002 by the NM Order made under section 60 of the Health Act 1999.
4. This Order is one of a number of Orders of Council made by the Privy Council which, together with rules made by the NMC and approved by the Privy Council, implement requirements of the NM Order.
5. The policy background to the NM Order and to these related Instruments is to strengthen public protection by establishing a statutory regulatory framework which provides the regulator with a comprehensive range of powers, sanctions and procedures.
6. In setting up a modern, comprehensive regulatory framework the Government determined that reformed regulatory bodies should:
 - Have as their main objective the need to safeguard the health and well-being of persons using the services of registrants.
 - Be open and transparent in their procedures and requirements.
 - Have fair, fast decision-making processes.
7. Before establishing the NMC the Government undertook two public consultations. The first, in August 2000, covered the Government’s legislative proposals. It attracted over 550 responses. The proposed legislation was modified in the light of that consultation, and a draft section 60 Order under the Health Act 1999 was published for consultation in April

2001. This attracted 2300 responses, the majority of which supported the broad thrust of the legislation. The two consultations are summarised in the Department of Health's document "Establishing the new Nursing and Midwifery Council: Report on the consultation", published in February 2002. Copies are available in the Libraries of both Houses of Parliament.

8. There are no identified costs either to the public or to the Exchequer arising from this Instrument. The cost of regulation is met from registrants' fees which the NMC is authorised to charge for this purpose. The NMC (Fees) Rules Order of Council 2004 was made on 9 June. That Order provided for a scale of fees to be charged which are designed to cover the cost of the regulatory system laid down in the set of Statutory Instruments made under the NM Order.
9. This Order applies to all countries of the United Kingdom, as does the NM Order.

**TRANSPPOSITION NOTE FOR DIRECTIVES 77/452/EEC and 77/453/EEC (nurses) and
80/154/EEC and 80/155/EEC (midwives)**

1. The Directives have been implemented by the Nurses, Midwives and Health Visitors Acts 1979 and 1997, S.I. 1983/873 as amended by S.I.1986/786, 1989/1456, 1996/3103, 1997/1723, 2000/2554 and 2003/3148; and 1983/921 as amended by S.I. 1985/1852 and replaced by 1996/3102.

The Nurses, Midwives and Health Visitors Act 1997 is being replaced by the Nursing and Midwifery Order 2001 (S.I. 2002/253). It provides in article 14 for the Privy Council to make an Order of Council designating qualifications awarded in other EEA States as approved qualifications for the purpose of registration under the Nursing and Midwifery Order. Qualifications awarded in other EEA States have been recognised in accordance with the European Nursing and Midwifery Qualifications Designation Order 1996 (S.I.1996/3102 as amended by S.I. 2003/3148). That Order made by the Secretary of State under the 1979 Act is being replaced therefore by the European Nursing and Midwifery Qualifications Designation Order of Council 2004.

2. Directive 77/452/EEC (“the Nursing Directive”) concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of nurses responsible for general care, has been 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, the Accession of Austria, Finland and Sweden Act, the Swiss Agreement and the Act of Accession 2003.

Directive No 80/154/EEC (“the Midwifery Directive”) concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications in midwifery, has been 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, the Accession of Austria, Finland and Sweden Act, the Swiss Agreement and the Act of Accession 2003.

Directive 77/453/EEC (“the second Nursing Directive”) concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of nurses responsible for general care, has been 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, the Accession of Austria, Finland and Sweden Act.

Directive 80/155/EEC (the “second Midwifery Directive”) 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, has been 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, the Accession of Austria, Finland and Sweden Act.

NURSES

Directive 77/452/EEC	Effect of Directive provision	Implementing provisions
Article 2 and Annex	Recognition of qualifications awarded by an EU State which satisfy the training requirements and which are listed in the Annex to the Directive.	Article 3 and Schedule 2, Part 1.
Article 4(1) as amended by Directive 81/1057/EEC	Article 4(1) relates to the recognition of a qualification which was awarded before, or in respect of nursing training begun before, the relevant date and which does not satisfy the training requirements of the relevant Directive but is accompanied by a certificate confirming that the holder has practised effectively and lawfully for the period stated in it.	Articles 4 and 5. The Order includes provision for the recognition of qualifications which do satisfy the training requirements
Article 4(2) and 18b	Articles 4(2) and 18b relate to the recognition of a qualification which is not listed in the Annex to Directive 77/452/EEC but which satisfies the training requirements of the relevant Directive and which is treated by the State which awarded it as if it were a listed qualification.	Article 6
Article 4a added by Directive 90/658/EEC	Articles 4a relates to the recognition of qualifications arising out of training received in the former German Democratic Republic which do not satisfy the training requirements of the relevant Directive but which entitle the holder to practise on the same conditions as a holder of a listed qualification and which are accompanied by a certificate confirming that he has practised effectively and lawfully for the time stated in it.	Articles 8 and 9. The Order includes provision for the recognition of qualifications which do satisfy the training requirements

Directive 77/452/EEC	Effect of Directive provision	Implementing provisions
Article 4b and 4c inserted by section C, Part III, paragraph 2b of the Annex to the Act of Accession	<p>Inserts article 4b into Directive 77/452/EEC relating to the designation of a qualification awarded in Poland before 1 May 2004, or in respect of training begun before that date, which does not satisfy the training requirements of the relevant Directive provided it is accompanied by a certificate confirming that the holder has practised effectively and lawfully for a specified period.</p> <p>Inserts article 4c into Directive 77/452/EEC which relates to the recognition of a qualification awarded by, or following training in, the former Czechoslovakia, the former Soviet Union or Yugoslavia which is accompanied by a certificate confirming that the holder has practised effectively and lawfully for at least three consecutive years out of the five years preceding the award of the qualification and an attestation that the qualification has the same legal validity in respect of access to and practice of the profession concerned as a qualification listed in the Directive.</p>	Article 7 (Poland) Article 10 (former Czechoslovakia, former Soviet Union or Yugoslavia)
Article 5	Use of academic title if it differs from the professional title.	This is allowed for under articles 6 and 7 of S.I. 2002/253; the NMC (Education, Registration and Registration Appeals) Rules 2004, rule 4; and the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004
Articles 6(1), (2) and 8	Receiving evidence of good character and health from persons wishing to take up or pursue the profession of nurse responsible for general care.	Rule 6 of the NMC (Education, Registration and Registration Appeals) Rules 2004
Articles 6(3) & (4) and 7	Giving and obtaining information by competent authority in respect of misconduct or a conviction	Article 40 of and Schedule 3 to S.I.2002/253
Article 10	Procedure for recognition to be completed within specified time	Article 9 of S.I.2002/253
Article 11	Recognition of nurse providing services	Articles 11, 39 and 40 of and Schedule 3 to S.I.2002/253
Article 12	Does not apply in the UK (registration for settlement of accounts with insurance companies)	

Directive 77/452/EEC	Effect of Directive provision	Implementing provisions
Article 13	Titles to be used	Articles 6 and 44 of S.I. 2002/253 and article 3 of and Schedule 1 to the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004
Article 14 was deleted by Directive 89/595/EEC		
Article 15	Information to be given on professional ethics and health laws	Articles 3 and 21 of S.I.2002/253. The professional organisations, regulatory body and employers also provide information.
Article 16	Enquiries in respect of justified doubts about qualifications	Article 40 of and Schedule 3 to S.I.2002/253.
Articles 18c and 18d inserted by Directive 2001/19/EC	Examination of and decisions on diplomas awarded outside the EEA, reasons to be given for decisions and appeals from decisions	Articles 9, 13 and 37 of S.I.2002/253 and the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004, rule 5.

Directive 77/453/EEC	Effect of Directive provision	Implementing provisions
Articles 1 and 2	A qualification which is subject to automatic recognition by other EEA States may be awarded only where minimum training requirements are satisfied	Article 15(2) of S.I.2002/253 and the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004, rule 3(1) and (2)

MIDWIVES

Directive 80/154/EEC	Effect of Directive provision	Implementing provisions
Article 2 and Annex	Recognition of qualifications awarded by an EU State which satisfy the training requirements and which are listed in the Annex to the Directive.	Article 3 and Schedule 2, Part 2.

Directive 80/154/EEC	Effect of Directive provision	Implementing provisions
Articles 2 and 4	Require that some midwifery qualifications awarded after shorter training which nevertheless satisfy the Directive requirements must be accompanied by a certificate issued in accordance with Articles 2 and 4 of Directive 80/154/EEC confirming that the midwife has practised satisfactorily. This is provided for in articles 3(2); 4(3)(b)(i) and (4)(a); 6(3)(a) and (4)(a); 11(3)(b) and (4)(a).	
Article 5(1)	Article 5(1) relates to the recognition of a qualification which was awarded before, or in respect of midwifery training begun before, the relevant date and which does not satisfy the training requirements of the relevant Directive but is accompanied by a certificate confirming that the holder has practised effectively and lawfully for the period stated in it	Articles 4 and 5 The Order includes provision for the recognition of qualifications which do satisfy the training requirements
Articles 5(3) and 19b added by Directive 89/594/EEC and Directive 2000/19/EC	Articles 5(3) and 19b relate to the recognition of a qualification which is not listed in the Annex to Directive 80/154/EEC but which satisfies the training requirements of the relevant Directive and which is treated by the State which awarded it as if it were a listed qualification.	Article 6
Article 5a added by Directive 90/658/EEC	Articles 5a relates to the recognition of qualifications arising out of training received in the former German Democratic Republic which do not satisfy the training requirements of the relevant Directive but which entitle the holder to practise on the same conditions as a holder of a listed qualification and which are accompanied by a certificate confirming that he has practised effectively and lawfully for the time stated in it.	Articles 8 and 9. The Order includes provision for the recognition of qualifications which do satisfy the training requirements.

Directive 80/154/EEC	Effect of Directive provision	Implementing provisions
Articles 5b and 5c inserted by section C, Part III, paragraph 5 of the Annex, to the Act of Accession	<p>Inserts article 5b into Directive 80/154/EEC relating to the designation of a qualification awarded in Poland before 1 May 2004 or in respect of training begun before that date, which does not satisfy the training requirements of the relevant Directive provided it is accompanied by a certificate confirming that the holder has practised effectively and lawfully for a specified period.</p> <p>Inserts article 5c into Directive 80/154/EEC which relates to the recognition of a qualification awarded by, or following training in, the former Czechoslovakia, the former Soviet Union or Yugoslavia which is accompanied by a certificate confirming that the holder has practised effectively and lawfully for at least three consecutive years out of the five years preceding the award of the qualification and an attestation that the qualification has the same legal validity in respect of access to and practice of the profession concerned as a qualification listed in the Directive.</p>	Article 7 Article 10 Article 11
Article 6	Use of academic title	This is allowed for under articles 6 and 7 of S.I. 2002/253; the NMC (Education, Registration and Registration Appeals) Rules 2004, rule 4; and the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004
Articles 7(1) and (2) and (9)	Receiving evidence of good character and health from persons wishing to take up or pursue the profession of midwife.	Rule 6 of the NMC (Education, Registration and Registration Appeals) Rules 2004
Articles 7(3) and 8	Giving and obtaining information by competent authority in respect of misconduct or a conviction	Article 40 of and Schedule 3 to S.I.2002/253
Article 11	Procedure for recognition to be completed within specified time	Article 9 of S.I.2002/253
Article 12	Does not apply in the United Kingdom	
Article 13	Recognition of midwife providing services	Articles 11, 39 and 40 of and Schedule 3 to S.I.2002/253

Directive 80/154/EEC	Effect of Directive provision	Implementing provisions
Article 14	Does not apply in the UK (registration for settlement of accounts with insurance companies)	
Article 15	Titles to be used	Articles 6 and 44 of S.I. 2002/253 and article 3 of and Schedule 1 to the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004
Article 16	Information to be given on professional ethics and health laws	Articles 3 and 21 of S.I.2002/253. The professional organisations, regulatory body and employers also provide information.
Article 17	Enquiries in respect of justified doubts about qualifications	Article 40 of and Schedule 3 to S.I.2002/253.
Article 19c and 19d inserted by Directive 2001/19/EC	Examination of and decisions on diplomas awarded outside the EEA, reasons to be given for decisions and appeals from decisions	Articles 9, 13 and 37 of S.I.2002/253 and the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004

Directive 80/155/EEC	Effect of Directive provision	Implementing provisions
Article 1(6)	This contains a transitional provision in relation to midwifery qualifications awarded in Spain following training which began before 1st January 1986 which are accompanied by a certificate confirming that the qualification satisfies Directive training requirements or, if it does not, that the holder has practised effectively and lawfully for the period stated in it.	Article 11
Articles 1 and 3 and Annex	A qualification which is subject to automatic recognition by other EEA States may be awarded only where minimum training requirements are satisfied	Article 15(2) of S.I.2002/253 and the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004, rule 3(1) and (2)