

HEALTH AND PERSONAL SOCIAL SERVICES ACT (NORTHERN IRELAND) 2002

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Health and Personal Social Services Act (Northern Ireland) 2002. They have been prepared by the Department of Health, Social Services and Public Safety in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Act covers two areas. Firstly, it provides for public payments for nursing care for people resident in nursing homes. Currently the cost of nursing care is included in the overall cost of a nursing home placement and may be borne by residents whose means are such that they fund, or part-fund, their own care. There has been an anomaly in relation to nursing care, in that it has been supplied free as a health service to a person in their own home (or indeed to a resident in a residential care home, if supplied externally by a Trust via the community nursing service). From 7 October 2002 the nursing care element of the total cost will be met from public funds reducing the overall cost to the individual. This is one of the responses to the Royal Commission on Long Term Care which reported its findings in the publication "With Respect to Age" in March 1999. The Royal Commission was set up to look at the system of funding for the care of elderly people, and the apportionment of costs between public funds and individuals.
4. Secondly, it is proposed to set up a new local body to support the development of nursing and midwifery in the key areas of best practice, ongoing education and

continuous professional development and performance. The Department of Health in England published its proposals for a new regulatory body governing the professions of nursing, midwifery and health visiting (“Establishing the new Nursing and Midwifery Council”, Department of Health, April 2001). The Nursing and Midwifery Order 2001 has been made under section 60 of the Health Act 1999, covering the establishment of the Nursing and Midwifery Council (NMC). The NMC came into operation on 1 April 2002.

5. The regulatory structure, prior to the establishment of the NMC, ie-the UK Central Council for Nursing, Midwifery and Health Visiting – the UKCC – and 4 National Boards, is contained in the Nurses, Midwives and Health Visiting Act 1997. The functions of the UKCC were to establish and improve standards of education and training and professional conduct for the nursing, midwifery and health visiting professions, and to maintain the professional register. There are some 20,000 registered nurses, midwives and health visitors working here.
6. The National Board for Nursing, Midwifery and Health Visiting for NI (NBNI) was responsible for monitoring and ensuring that the education provided meets the standards set by the UKCC. The UKCC and the 4 National Boards were stood down on 1 April 2002, with the establishment of the NMC. The functions of these 5 bodies transferred to the NMC on 1 April 2002.
7. It is the Department’s intention that, in addition to the NMC, there should be a local body (an NDPB) with the function of supporting the development of nursing and midwifery in the key areas of best practice, ongoing education and continuous professional development and performance. It will be able to provide advice and information to nurses and midwives, and to members of the public, in relation to careers in these professions and on general nursing and midwifery issues. It will be able to carry out work locally, on behalf of the new NMC in relation to the quality assurance of pre-registration and a defined range of post registration courses. The work of the new body will focus on enhancing the quality of nursing and midwifery care provided to service users in Northern Ireland. The new body is to be called the Northern Ireland Practice and Education Council for Nursing and Midwifery (NIPEC).

CONSULTATION

8. The first measure is in response to a recommendation by the Royal Commission, which consulted widely. Public meetings were held in many cities, including Belfast.
9. Changes to the regulatory arrangements for nursing, midwifery and health visiting at national level have provided an opportunity to take forward the establishment of a new local nursing and midwifery body which will, as noted in paragraph 7, primarily focus on important areas of professional development falling outside the

remit of the new NMC, and to carry out work on the NMC's behalf. These proposals were the subject of wide consultation with statutory and voluntary sector agencies, political groups, Health and Social Services Councils, the Royal College of Nursing and other trades unions, etc., and those bodies which responded gave support to the proposals.

OPTIONS CONSIDERED

10. There was no affordable option available in relation to the recommendation of the Royal Commission, other than to correct the unsatisfactory situation where nursing home residents must contribute towards the cost of their nursing care, subject to a means assessment. Doing nothing was not seen as a defensible option.
11. Three options were considered for the status of the new local nursing body:
 - as a Non-Departmental Public Body (NDPB);
 - as an Independent Statutory Body; or
 - as a Unit within DHSSPS.
12. It was considered that the establishment of a new NDPB was the best option, and this option received support from those consulted. Two other options fell because:

Independent Statutory Body (a Special Agency): A Special Agency can only be established if it is to exercise functions with respect to the administration of the health and personal social services, *and* it is to exercise those functions on behalf of DHSSPS. However, NIPEC must have the capacity to work on behalf of the NMC and other bodies; and

Unit within DHSSPS: There was strong feeling from the consultation process that, to be seen as independent, the body should operate at arms length from the Department.

OVERVIEW

13. The Act has 5 sections and a Schedule, and is to be interpreted as one with the Health and Personal Social Services (NI) Order 1972.

COMMENTARY ON SECTIONS

Section 1 – Charges for nursing care

Section 1 provides that the cost of nursing care for people in nursing homes will in future not be recoverable.

Article 36(4) of the Health and Personal Social Services (NI) Order 1972 (“the 1972 Order”) requires Trusts to recover the cost in full of providing a person with a place in a voluntary or private sector residential care or nursing home. Article 99(2) made the same provision in respect of statutory sector homes. However, this was subject to an assessment of a person’s ability to pay, and many people pay nothing or only a proportion.

Section 1(1) inserts a new Article 36(4) into the 1972 Order which removes from the recoverable cost of a nursing home place that element which relates to the cost of “nursing care by a registered nurse”. The addition of Article 36(4A) defines what is meant by this as “involving the provision of care, or the planning, supervision or delegation of the provision of care”. *Section 1(3)* provides for the same adjustment to the recoverable cost of accommodation within the statutory sector under Article 99(2) of the 1972 Order.

Section 2 and Schedule – the Northern Ireland Practice and Education Council for Nursing and Midwifery

Section 2 and the *Schedule* establish the Northern Ireland Practice and Education Council for Nursing and Midwifery (NIPEC), and set out its functions, constitution and procedures, subject to directions and guidance from the Department. The functions are centred mainly around the professional development of the nursing and midwifery professions in the areas of practice, education and performance. NIPEC will be able to undertake work in these areas on behalf of DHSSPS, the new NMC, and other organisations. It will be able to charge fees for such work, if appropriate.

The constitution of the Council is set out in the *Schedule*, and the following points in the schedule will be of interest. *Paragraph 2* gives the Council general powers, subject to the direction of the Department. *Paragraph 5* provides a regulation-making power in respect of membership. The power will be exercised to enable the Department to appoint the Chairman and the other non-executive members of the Council. It is intended that the Council will be only as big as is needed to secure the cost-effective discharge of its business, and is likely to be between 10 and 16 people, drawn from a wide range of key interests. Non-executive members will be appointed so that 60% will be professionals (nurses and midwives) on the live register, and 40% lay members. Appointments for non-executive members will be made after consultation with all relevant interests and by inviting applications from members of the public. *Paragraph 6* provides that remuneration and allowances will be matters for the Department. It is intended to remunerate the Chairman only. All members will be entitled to travel

expenses and other costs associated with membership of the Council. *Paragraph 7* provides that the Department will appoint the first chief executive, as this post will be filled ahead of the Council being fully established. This will allow the chief executive to assist his Chairman with preparatory work including appointment of key staff. The Council will make any subsequent appointments of chief executive. *Paragraph 9* gives the Council flexibility to discharge its functions in the most efficient way, through the Council itself, its staff or others brought in for the purpose. Examples of outside assistance the Council might use are contracting with suitable outside bodies, using consultants or temporary staff on fixed term contracts depending on the work to be done. *Paragraph 11* enables the Department to fund the Council from public money.