

*Draft Order in Council laid before Parliament and the Scottish Parliament under section 62(10) of the Health Act 1999, for approval by resolution of each House of Parliament and the Scottish Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

**HEALTH CARE AND  
ASSOCIATED PROFESSIONS**

**The Health Care and Associated Professions  
(Indemnity Arrangements) Order 2014**

*Made - - - - 2014  
Coming into force in accordance with article 1(2) and  
(3)*

At the Court at Buckingham Palace, the xx day of xx 2014  
Present,  
The Queen's Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 60 and 62(4) and (4A) of, and Schedule 3 to, the Health Act 1999(1).

The Secretary of State and the Scottish Ministers published a draft Order and invited representations as required by paragraph 9(1) and (3) of Schedule 3 to that Act.

The period of three months mentioned in paragraph 9(4) of that Schedule expired before a draft of this Order was laid before Parliament and the Scottish Parliament.

A draft of this Order in Council has been approved by resolution of each House of Parliament and the Scottish Parliament, in accordance with section 62(10) of that Act.

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to make the following Order in Council.

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(1) 1999 c. 8. Section 60 has been amended by: the National Health Service Reform and Health Care Professions Act 2002 (c. 17) ("the 2002 Act"), section 26(9); the Health and Social Care Act 2008 (c. 14) ("the 2008 Act"), Schedule 8, paragraph 1, and Schedule 10, paragraph 10; sections 209 and 210 of the Health and Social Care Act 2012 (c. 7) ("the 2012 Act"); and S.I. 2002/253 and 254. Section 62 has been amended by: the National Health Service (Consequential Provisions) Act 2006 (c. 43), Schedule 1, paragraphs 194 and 197, and Schedule 4; and the 2008 Act, Schedule 8, paragraph 2, and Schedule 10, paragraph 11. Schedule 3 has been amended by: the 2002 Act, section 26(10); the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), Schedule 11, paragraph 67, and Schedule 14, Part 4; the Health Act 2006 (c. 28), section 33 and Schedule 9; the 2008 Act, Schedule 8, paragraphs 3 to 10 (although paragraph 10 is not yet in force); the 2012 Act, section 211 and S.I. 2002/254.

### **Citation and commencement**

1.—(1) This Order may be cited as the Health Care and Associated Professions (Indemnity Arrangements) Order 2014.

(2) This Order comes into force on the day after the day on which it is made.

(3) Where this Order amends other legislation and makes transitional provisions in relation to those amendments, those amendments and transitional provisions have the same extent as the legislation being amended.

### **Amendments**

2.—(1) Schedule 1 (amendments to legislation regulating health care and associated professions) has effect.

(2) Schedule 2 (other amendments of subordinate legislation) has effect.

### **Transitional, transitory or saving provisions**

3.—(1) The transitional and saving provisions set out in Schedule 3 have effect.

(2) In connection with the commencement of any provision of this Order, the Privy Council may by order make such transitional, transitory or saving provisions as it considers appropriate.

(3) The power to make an order under paragraph (2) may be exercised—

(a) so as to make different provision—

(i) with respect to different cases or different classes of cases, or

(ii) in respect of the same case or class of case for different purposes;

(b) in relation to all cases to which the power extends or in relation to all those cases subject to specified exceptions; or

(c) so as to make any supplementary, incidental or consequential provisions which the Privy Council considers necessary or expedient.

(4) The power of the Privy Council to make an order under paragraph (2) may be exercised by any two or more members of the Privy Council.

(5) The making of an order under paragraph (2) shall be sufficiently signified by an instrument signed by the Clerk of the Privy Council.

(6) The power to make an order under paragraph (2) shall be exercisable by statutory instrument.

(7) For the purposes of section 1 of the Statutory Instruments Act 1946 (definition of “statutory instrument”), the power in paragraph (2) is to be taken to be conferred by an Act of Parliament.

(8) Where an order of the Privy Council under this Order is signified by an instrument purporting to be signed by the Clerk of the Privy Council, that shall be evidence, and in Scotland sufficient evidence, of—

(a) the fact that the order was duly made; and

(b) the order’s terms.

*Name*  
Clerk of the Privy Council

## SCHEDULE 1

Article 2(1)

### Amendments relating to indemnity arrangements

## PART 1

### Amendments to the Medical Act 1983

1.—(1) For section 44C(2) of the Medical Act 1983(3) (indemnity arrangements) substitute—

#### “44C Indemnity arrangements

(1) A person who holds a licence to practise as a medical practitioner, and practises as such, must have in force in relation to him an indemnity arrangement which provides appropriate cover for practising as such.

(2) For the purposes of this section, an “indemnity arrangement” may comprise—

- (a) a policy of insurance;
- (b) an arrangement for the purposes of indemnifying a person;
- (c) a combination of the two.

(3) For the purposes of this section, “appropriate cover”, in relation to practice as a medical practitioner, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and extent of the risks of practising as such.

(4) The General Council may make regulations in connection with the information to be provided to the Registrar—

- (a) by or in respect of a person seeking a licence to practise for the purpose of determining whether, if he is granted such a licence, there will be in force in relation to him by the time he begins to practise an indemnity arrangement which provides appropriate cover; and
- (b) by or in respect of a person who holds a licence to practise for the purpose of determining whether there is in force in relation to him an indemnity arrangement which provides appropriate cover.

(5) Regulations made under subsection (4)(b) may require the information mentioned there to be provided—

- (a) at the request of the Registrar; or
- (b) on such dates or at such intervals as the Registrar may determine, either generally or in relation to individual practitioners or practitioners of a particular description.

(6) The General Council may also make regulations requiring a person who holds a licence to practise to inform the Registrar if there ceases to be in force in relation to him an indemnity arrangement which provides appropriate cover.

(7) The General Council may also make regulations requiring a person who holds a licence to practise to inform the Registrar if there is in force in relation to him appropriate cover provided under an indemnity arrangement by an employer.

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(2) Section 44C was inserted by [S.I. 2006/1914](#).

(3) [1983 c. 54](#).

(8) A licensing authority may refuse to grant a licence to practise to any person who fails to comply, or in respect of whom there is a failure to comply, with regulations made under subsection (4)(a).

(9) Where a person who holds a licence to practise is in breach of subsection (1) or there is a failure to comply with regulations made under subsection (4)(b) in relation to him—

- (a) a licensing authority may withdraw that person’s licence to practise; or
- (b) the breach or failure may be treated as misconduct for the purposes of section 35C(2)(a)(4), and the Registrar may accordingly refer the matter to the Investigation Committee under section 35C(4).

(10) Regulations made under subsection (4), (6) or (7) shall not have effect until approved by the Privy Council.

(11) This section does not apply to a person who holds a licence to practise as a result of registration under Schedule 2A(5) (visiting medical practitioners from relevant European States).”.

(2) In section 29F(1A)(6) (appeals), in paragraph (a), for “section 44C(7)” substitute “section 44C(8)” and in paragraph (b), for “section 44C(8)(a)” substitute “section 44C(9)(a)”.

## PART 2

### Amendments to the Dentists Act 1984

2. The Dentists Act 1984(7) is amended in accordance with this Part.

#### Amendment of section 18

3. In subsection (2) of section 18(8) (procedure for registration), after paragraph (b), insert—

- “(ba) the documents conferring, or evidencing that there is in force in relation to him or there will be as necessary for the purpose of complying with section 26A, appropriate cover under an indemnity arrangement.”.

#### Amendment of section 26A

4. For section 26A(9)(insurance for dental practitioners), substitute—

##### “26A Indemnity arrangements

(1) A registered dentist who is practising as a dental practitioner must have in force in relation to him an indemnity arrangement which provides appropriate cover for practising as such.

(2) For the purposes of this section, an “indemnity arrangement” may comprise—

- (a) a policy of insurance;
- (b) an arrangement made for the purposes of indemnifying a person;
- (c) a combination of the two.

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(4) Section 35C was substituted by S.I. 2002/3135.

(5) Inserted by S.I. 2007/3101.

(6) Inserted by S.I. 2006/1914.

(7) 1984 c. 24.

(8) Amended by S.I. 1996/1496; S.I. 2005/2011 and S.I. 2007/3101.

(9) Inserted by S.I. 2005/2011.

(3) For the purposes of this section, “appropriate cover”, in relation to practice as a dental practitioner, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and extent of the risks of practising as such.

(4) Rules may make provision in connection with the information to be provided to the registrar—

- (a) by or in respect of a person seeking registration in the register for the purpose of determining whether, if his name is entered in the register, there will be in force in relation to him by the time he begins to practise an indemnity arrangement which provides appropriate cover;
- (b) by or in respect of a person seeking restoration of his name in the register for the purpose of determining whether, if his name is restored in the register, there will be in force in relation to him by the time he resumes practice an indemnity arrangement which provides appropriate cover; and
- (c) by or in respect of a registered dentist seeking retention of his name in the register for the purpose of determining whether, if his name is retained in the register, there will continue to be in force in relation to him an indemnity arrangement which provides appropriate cover.

(5) Rules may make provision requiring a registered dentist to inform the registrar if there ceases to be in force in relation to that dentist an indemnity arrangement which provides appropriate cover.

(6) Rules may make provision requiring a registered dentist to inform the registrar if there is in force in relation to that registered dentist appropriate cover provided under an indemnity arrangement by an employer.

(7) Rules made under subsection (4) may require the information mentioned there to be provided—

- (a) at the request of the registrar; or
- (b) on such dates or at such intervals as the registrar may determine, either generally or in relation to individual dental practitioners or dental practitioners of a particular description.

(8) Where a person fails to comply with rules made under subsection (4), or there is a failure to comply with rules made under subsection (4) in relation to him, the registrar may—

- (a) refuse to register his name in the register;
- (b) refuse to restore his name to the register; or
- (c) erase his name from the register.

(9) Where a registered dentist is in breach of subsection (1) or fails to comply with rules made under this section—

- (a) the registrar may erase that person’s name from the register; or
- (b) the breach or failure may be treated as misconduct for the purposes of section 27(2)(a)(**10**), and the registrar may accordingly refer the matter to the Investigating Committee under section 27(5)(a)(**11**).

(10) Where a person’s name has been erased from the register under subsection (8)(c) or (9)(a), that name shall be restored to the register on that person’s application, if he satisfies the registrar that he meets the requirements of—

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(10) Substituted by [S.I. 2005/2011](#).

(11) Substituted by [S.I. 2005/2011](#).

- (a) section 15(3)(a) to (c);
- (b) this section; and
- (c) any rules made under section 34B(12) which apply to that person's case.

(11) This section does not apply to a person who is registered by virtue of section 36(13) and Schedule 4(14) (visiting dentists from relevant European States).”.

#### **Amendment of section 36L**

5. For section 36L(15) (insurance for members of professions complementary to dentistry), substitute—

##### **“36L Indemnity arrangements**

(1) A registered dental care professional who practises as a member of a profession complementary to dentistry must have in force, in relation to each title under which he is registered in the dental care professionals register, an indemnity arrangement which provides appropriate cover for practising as such.

(2) For the purposes of this section, an “indemnity arrangement” may comprise—

- (a) a policy of insurance;
- (b) an arrangement made for the purposes of indemnifying a person;
- (c) a combination of the two.

(3) For the purposes of this section, “appropriate cover”, in relation to practice as a member of a profession complementary to dentistry, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and extent of the risks of practising as such.

(4) Rules may make provision in connection with the information to be provided to the registrar—

- (a) by or in respect of a person seeking registration in the dental care professionals register under a particular title (whether or not that person is already registered in that register under any other title or titles) for the purpose of determining whether, if his name is entered in the register under that title, there will be in force in relation to him by the time he begins to practise an indemnity arrangement which provides appropriate cover;
- (b) by or in respect of a person seeking restoration of his name in the dental care professionals register under a particular title (whether or not that person is already registered in that register under any other title or titles) for the purpose of determining whether, if his name is restored in the register under a particular title, there will be in force in relation to him by the time he resumes practice an indemnity arrangement which provides appropriate cover; and
- (c) by or in respect of a registered dental care professional seeking retention of his name in the dental care professionals register under a particular title for the purpose of determining whether, if his name is retained in the register, there will continue to be in force in relation to him an indemnity arrangement which provides appropriate cover.

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(12) Substituted by S.I. 2007/3101.

(13) Substituted by S.I. 2007/3101.

(14) Substituted by S.I. 2007/3101.

(15) Inserted by S.I. 2005/2011.

(5) Rules may make provision requiring a registered dental care professional to inform the registrar if there ceases to be in force in relation to him an indemnity arrangement which provides appropriate cover.

(6) Rules may make provision requiring a registered dental care professional to inform the registrar if there is in force in relation to him appropriate cover under an indemnity arrangement provided by an employer.

(7) Rules made under subsection (4) above may require the information mentioned there to be provided—

- (a) at the request of the registrar; or
- (b) on such dates or at such intervals as the registrar may determine, either generally or in relation to individual dental care professionals or dental care professionals of a particular description.

(8) Where in relation to any title in the dental care professionals register, a person fails to comply with rules made under subsection (4), or there is a failure to comply with rules made under subsection (4) in relation to him, the registrar may—

- (a) refuse to register his name in that register under that title;
- (b) refuse to restore his name to that register under that title; or
- (c) erase his name from that register under that title.

(9) Where a registered dental care professional is in breach of subsection (1) or fails to comply with rules made under this section—

- (a) the registrar may erase that person's name from the register: or
- (b) the breach or failure may be treated as misconduct for the purposes of section 36N(2)(a)(16), and the registrar may accordingly refer the matter to the Investigating Committee under section 36N(5)(a)(17).

(10) Where, under subsection (8)(c) or (9)(a), a person's name has been erased from the register under a particular title, that name shall be restored to the dental care professionals register under that title on that person's application, if he satisfies the registrar—

- (a) of Matter D within the meaning of section 36C(18); and
- (b) that he meets the requirements of—
  - (i) this section, and
  - (ii) any rules made under section 36Z2(19) which apply to that person's case.

(11) This section does not apply to a person who is registered by virtue of section 36Z3(20) (visiting dental care professionals from relevant European States) .”.

#### **Amendment of Schedule 4A**

**6.** In Schedule 4A(21) (registration appeals: dental care professionals register) in paragraph 2(1) (e), for “section 36L(9)(a), (b) or (c)” substitute “section 36L(8) or (9)(a).”.

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(16) Inserted by [S.I. 2005/2011](#).

(17) Inserted by [S.I. 2005/2011](#).

(18) Inserted by [S.I. 2005/2011](#).

(19) Inserted by [S.I. 2005/2011](#).

(20) Inserted by [S.I. 2007/3101](#).

(21) Inserted by [S.I. 2005/2011](#).

## PART 3

### Amendments to the Opticians Act 1989 and related matters

#### Amendment of section 10A

7. For section 10A(22) of the Opticians Act 1989(23) (insurance for individual registrants and persons applying for their name to be registered), substitute—

#### **“10A Indemnity arrangements for individual registrants and persons applying for their name to be registered**

(1) A registered optometrist or registered dispensing optician who practises as such must have in force in relation to him an indemnity arrangement which provides appropriate cover for practising as such.

(2) For the purposes of this section, an “indemnity arrangement” may comprise—

- (a) a policy of insurance;
- (b) an arrangement made for the purposes of indemnifying a person;
- (c) a combination of the two.

(3) For the purposes of this section, “appropriate cover”, in relation to practice as a registered optometrist or registered dispensing optician, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and extent of the risks of practising as such.

(4) The Council may make rules in connection with the information provided to the registrar—

- (a) by or in respect of a person seeking registration in the register of optometrists or dispensing opticians for the purpose of determining whether, if his name is entered in the appropriate register, there will be in force in relation to him by the time he begins to practise an indemnity arrangement which provides appropriate cover;
- (b) by or in respect of a person seeking restoration of his name in the register of optometrists or dispensing opticians for the purpose of determining whether, if his name is restored in the appropriate register, there will be in force in relation to him by the time he resumes practice an indemnity arrangement which provides appropriate cover; and
- (c) by or in respect of a registered optometrist or registered dispensing optician seeking retention of his name in the register of optometrists or dispensing opticians for the purpose of determining whether, if his name is retained in the appropriate register, there will continue to be in force in relation to him an indemnity arrangement which provides appropriate cover.

(5) Rules made under subsection (4)(c) may require the information mentioned there to be provided—

- (a) at the request of the registrar; or
- (b) on such dates or at such intervals as the registrar may determine, either generally or in relation to individual registrants or registrants of a particular description.

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(22) Inserted by S.I. 2005/848.

(23) 1989 c. 44.



(6) The Council may also make rules requiring a registered optometrist or registered dispensing optician to inform the registrar if there ceases to be in force in relation to him an indemnity arrangement which provides appropriate cover.

(7) The Council may also make rules requiring a registered optometrist or registered dispensing optician to inform the registrar if there is in force in relation to him, appropriate cover provided under an indemnity arrangement provided by an employer.

(8) Where a person fails to comply with rules made under subsection (4), or there is a failure to comply with rules made under subsection (4) in relation to him, the registrar may—

- (a) refuse to register his name in the appropriate register;
- (b) refuse to restore his name to the appropriate register; or
- (c) remove his name from the appropriate register.

(9) Where a registered optometrist or registered dispensing optician is in breach of subsection (1) or fails to comply with rules made under this section—

- (a) the registrar may remove that person's name from the appropriate register; or
- (b) the breach or failure may be treated as misconduct for the purposes of section 13D(2)(a), and the registrar may refer the matter to the Investigation Committee under section 13D(5).

(10) Where a person's name has been removed from the appropriate register under subsection (8)(c) or (9)(a), that name shall be restored to the appropriate register on that person's application, if the registrar is satisfied that the person meets the requirements of—

- (a) section 8(1) or (2);
- (b) this section; and
- (c) any rules made under section 7, 11A or 11B(6) which apply to that person's case.

(11) This section does not apply to a person who is registered by virtue of section 8B (visiting opticians from relevant European States).”.

#### **Amendment of rule 7**

**8.** In the Schedule to the General Optical Council (Registration Rules) Order of Council 2005(24), in rule 7 (additional information required from individual applicants for registration or restoration as an optometrist or a dispensing optician), for paragraphs (e) and (f) substitute—

- “(e) evidence that, if the applicant's name were to be entered in the register, that applicant would have in place appropriate cover under an indemnity arrangement for the purposes of complying with section 10A (indemnity arrangements for individual registrants and persons applying for their name to be registered);
- (f) a copy of that indemnity arrangement or a means of identifying the terms of that indemnity arrangement.”.

## PART 4

### Amendments to the Osteopaths Act 1993

#### Amendment of section 37

9. For section 37 of the Osteopaths Act 1993(25) (professional indemnity insurance), substitute—

#### “37 Indemnity arrangements

(1) A registered osteopath who practises as such must have in force in relation to him an indemnity arrangement which provides appropriate cover for practising as such.

(2) In this section, references to “registered osteopath” do not include a reference to a temporarily registered osteopath.

(3) For the purposes of this section, an “indemnity arrangement” may comprise—

- (a) a policy of insurance;
- (b) an arrangement made for the purposes of indemnifying a person;
- (c) a combination of the two.

(4) For the purposes of this section, “appropriate cover”, in relation to practice as a registered osteopath, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and extent of the risks of practising as such.

(5) The General Council may by rules make provision in connection with the types of indemnity arrangement required and the information to be provided to the Registrar—

- (a) by or in respect of any person seeking to be entered in the register as a registered osteopath (including on an application for restoration) for the purposes of determining whether, if that person is so entered, there will be in force in relation to him by the time he begins to practise an indemnity arrangement which provides appropriate cover;
  - (b) by or in respect of a registered osteopath for the purposes of determining whether at any time, there is in force in relation to him an indemnity arrangement which provides appropriate cover.
- (6) Rules under subsection (5)(b) may require information to be provided—
- (a) at the request of the Registrar; or
  - (b) on such dates or at such intervals as the Registrar may determine, either generally or in relation to individual registered osteopaths or registered osteopaths of a particular description.

(7) The General Council may also make rules requiring a registered osteopath to inform the Registrar if there ceases to be in force in relation to him an indemnity arrangement which provides appropriate cover.

(8) The General Council may also make rules requiring a registered osteopath to inform the Registrar if there is in force in relation to him appropriate cover provided under an indemnity arrangement by an employer.

(9) Where there is a failure to comply with the rules under subsection (5) by or in respect of a person who is entered or is seeking to be entered in the register, the Registrar may refuse to enter the person in, or to restore the person's entry to, the register.

(10) If a registered osteopath is in breach of subsection (1), or fails to comply with rules under subsection (5)(b), (7) or (8), or there is a failure to comply with rules under subsection (5)(b) in respect of a registered osteopath—

- (a) the Registrar may remove that person's entry from the register; or
- (b) the breach or failure may be treated as unacceptable professional conduct and the Registrar may notify the Council .”.

## PART 5

### Amendments to the Chiropractors Act 1994

#### Amendment of section 37

**10.** For section 37 of the Chiropractors Act 1994(26) (professional indemnity insurance), substitute—

#### “37 Indemnity arrangements

(1) A registered chiropractor who practises as such must have in force in relation to him an indemnity arrangement which provides appropriate cover for practising as such.

(2) In this section, references to “registered chiropractor” do not include a reference to a temporarily registered chiropractor.

(3) For the purposes of this section, an “indemnity arrangement” may comprise—

- (a) a policy of insurance;
- (b) an arrangement made for the purposes of indemnifying a person;
- (c) a combination of the two.

(4) For the purposes of this section, “appropriate cover”, in relation to practice as a registered chiropractor, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and risks of practising as such.

(5) The General Council may by rules make provision in connection with the types of indemnity arrangement required and the information to be provided to the Registrar—

- (a) by or in respect of any person seeking to be entered in the register as a registered chiropractor (including on an application for restoration) for the purposes of determining whether, if that person is so entered, there will be in force in relation to him by the time he begins to practise an indemnity arrangement which provides appropriate cover; and
  - (b) by or in respect of a registered chiropractor for the purposes of determining whether at any time, there is in force in relation to him an indemnity arrangement which provides appropriate cover.
- (6) Rules under subsection (5)(b) may require information to be provided—
- (a) at the request of the Registrar; or

(b) on such dates or at such intervals as the Registrar may determine, either generally or in relation to individual registered chiropractors or registered chiropractors of a particular description.

(7) The General Council may also make rules requiring a registered chiropractor to inform the Registrar if there ceases to be in force in relation to him an indemnity arrangement which provides appropriate cover.

(8) The General Council may also make rules requiring a registered chiropractor to inform the Registrar if there is in force in relation to him appropriate cover provided under an indemnity arrangement by an employer.

(9) Where there is a failure to comply with the rules under subsection (5) by or in respect of a person who is entered or is seeking to be entered in the register, the Registrar may refuse to enter the person in, or to restore the person's entry to, the register.

(10) If a registered chiropractor is in breach of subsection (1), or fails to comply with rules under subsection (5)(b), (7) or (8), or there is a failure to comply with rules under (5) (b) in respect of a registered chiropractor—

- (a) the Registrar may remove that person's entry from the register; or
- (b) the breach or failure may be treated as unacceptable professional conduct and the Registrar may notify the General Council.”.

## PART 6

### Amendments to the Health and Social Work Professions Order 2001 and related matters

**11.** The Health and Social Work Professions Order 2001<sup>(27)</sup> is amended in accordance with paragraphs 12 to 17.

#### **Amendment of article 9**

**12.** In article 9<sup>(28)</sup>(registration)—

- (a) in paragraph (1), for “if he satisfies the conditions mentioned in paragraph (2) he shall be entitled to be registered in that part” substitute “he shall be entitled to be registered in that part provided that the conditions mentioned in paragraph (2) are satisfied”;
- (b) in paragraph (2), for “Subject to paragraph (3)” substitute “Subject to paragraphs (3) and (3A)” and omit “the applicant”;
- (c) at the beginning of each of sub-paragraphs (a), (b) and (c) of paragraph (2), insert “the applicant”;
- (d) after paragraph (2)(b) (but before the following “and”) insert—
  - “(ba) the Registrar informs the Education and Training Committee that the applicant has satisfied him that there is in force in relation to the applicant, or there will be as necessary for the purpose of complying with article 11A, appropriate cover under an indemnity arrangement;”;
- (e) after paragraph (3) insert—

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<sup>(27)</sup> [S.I. 2002/254](#). The title to this statutory instrument was amended by section 213(6) of the Health and Social Care Act 2012 (c. 7).

<sup>(28)</sup> Amended by [S.I. 2007/3101](#).

“(3A) Paragraph (2)(ba) does not apply in the case of an applicant seeking admission to that part of the register which relates to the social work profession in England.”.

### **Amendment of article 10**

**13.** In article 10(29) (renewal of registration and readmission)—

- (a) in paragraph (2), omit “the applicant”;
- (b) at the beginning of each of sub-paragraphs (a) and (b) of paragraph (2), insert “the applicant”;
- (c) in paragraph (2)(c), before “has met” insert “the applicant”;
- (d) after paragraph (2)(a) insert—

“(aa) the Registrar informs the Education and Training Committee that the applicant has satisfied him that there is in force in relation to the applicant, or there will be as necessary for the purpose of complying with article 11A, appropriate cover under an indemnity arrangement;”;

- (e) in paragraph (4), after sub-paragraph (a) (but before the following “and”), insert—

“(aa) the Registrar informs the Education and Training Committee that the applicant has satisfied him that there is in force in relation to the applicant, or there will be as necessary for the purpose of complying with article 11A, appropriate cover under an indemnity arrangement;”;

- (f) after paragraph (6) insert—

“(7) Paragraphs (2)(aa) and (4)(aa) do not apply in the case of an applicant wishing to renew his registration in that part of the register which relates to the social work profession in England.”.

### **New article 11A**

**14.** After article 11 insert—

#### **“Indemnity arrangements**

**11A.**—(1) Each practising registrant must have in force in relation to that registrant an indemnity arrangement which provides appropriate cover for practising as a member of the relevant profession in question.

(2) For the purposes of this article, an “indemnity arrangement” may comprise—

- (a) a policy of insurance;
- (b) an arrangement made for the purposes of indemnifying a person;
- (c) a combination of the two.

(3) For the purposes of this article, “appropriate cover”, in relation to practice as a registered member of a relevant professions, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and extent of the risks of practising as such.

(4) The Council may make rules in connection with the information to be provided to the Registrar—

- (a) by or in respect of a person applying for registration (including an application for restoration or readmission) for the purpose of determining whether or not the Registrar is satisfied that if the person is registered, there will be in force in relation to that person by the time that person begins to practise, an indemnity arrangement which provides appropriate cover for practising as a member of the relevant profession in question;
  - (b) by or in respect of a person applying for renewal of their registration for the purpose of determining whether or not the Registrar is satisfied that if the person's registration is renewed, there will be in force in relation to that person, by the time that person resumes practice an indemnity arrangement which provides appropriate cover for practising as a member of the relevant profession in question; and
  - (c) by or in respect of a registrant for the purposes of determining whether, at any time, there is in force in relation to the registrant an indemnity arrangement which provides appropriate cover for practising as a member of the relevant profession in question.
- (5) Rules made under paragraph (4) may require the information to be provided—
- (a) at the request of the Registrar; or
  - (b) on such dates or at such intervals as the Registrar may determine, either generally or in relation to individual registrants or registrants of a particular description.
- (6) The Council may also make rules requiring a registrant to inform the Registrar if there ceases to be in force in relation to the registrant an indemnity arrangement which provides appropriate cover for practising as a member of the relevant profession in question.
- (7) The Council may also make rules requiring a registrant to inform the Registrar if there is in force in relation to the registrant appropriate cover for practising as a member of the relevant profession in question provided under an indemnity arrangement by an employer.
- (8) If a registrant is in breach of paragraph (1)—
- (a) the Education and Training Committee may remove that person from the register; or
  - (b) the person's fitness to practise may be treated for the purposes of article 22(1)(a)(i) as being impaired by reason of misconduct, and the Council may accordingly refer the matter to, persons appointed by it under article 22(5)(b)(i) (where rules under article 23 provide) or to a Practice Committee under article 22(5)(b)(ii).
- (9) If an applicant breaches rules under paragraph (4)(a), or there is a breach in respect of the applicant of rules under paragraph (4)(a)—
- (a) the Education and Training Committee may refuse the applicant's application for admission (or readmission) to the register; or
  - (b) in the case of restoration to the register, the Registrar may refuse to register the applicant in the register in accordance with article 33(7).
- (10) If a registrant breaches rules under paragraph (4)(b) or (c), that person's fitness to practise may be treated for the purposes of article 22(1)(a)(i) as being impaired by reason of misconduct, and the Council may accordingly refer the matter to persons appointed by it under article 22(5)(b)(i) (where rules under article 23 provide) or to a Practice Committee under article 22(5)(b)(ii).
- (11) For the purposes of this article, "relevant profession" does not include the social work profession in England.

(12) This article does not apply to a person who has an entitlement to be registered under article 13A (visiting health professionals from relevant European States).”.

### **Amendment of article 33**

**15.** In article 33 (restoration to the register of persons who have been struck off), in paragraph (7) (a), after “the relevant part of the register” insert “on his satisfying the Registrar as mentioned in article 10(4)(aa).”.

### **Amendment of article 37**

**16.** In article 37(**30**) (appeals against decisions of the Education and Training Committee)—

(a) in paragraph (1), after sub-paragraph (aa) insert—

“(ab) removes the name of a registrant from the register on the grounds that the registrant has failed to satisfy the Registrar that there is in force in relation to the registrant appropriate cover under an indemnity arrangement.”;

(b) after paragraph (1), insert—

“(1A) Paragraph (1)(ab) does not apply where the removal is in consequence of a refusal of an application for renewal (including an application for readmission or restoration where registration has lapsed).

(1B) Paragraph (1)(ab) does not apply in the case of a person who has been admitted to that part of the register which relates to the social work profession in England.”; and

(c) after paragraph (2), insert—

“(2A) No appeal lies to the Council if the complaint of the person aggrieved is, in effect, that a provision of rules under article 7, 9, 10 or 11A is invalid.”.

### **Amendment of article 38**

**17.** In article 38 (appeals) in paragraph (1)(b), after “ article 26(7) or (12)” insert “or of the Registrar under article 33(7)(a) as to whether he is satisfied as mentioned in article 10(4)(aa)”.

### **Amendment of Schedule 3**

**18.** In Schedule 3(**31**) (interpretation), in paragraph 1 insert the following definitions at the appropriate place—

““appropriate cover” is to be construed in accordance with article 11A(3);”;

““indemnity arrangement” is to be construed in accordance with article 11A(2);”.

**19.** The Schedule to the Health Professions Council (Registration and Fees) Rules Order of Council 2003(**32**) is amended in accordance with paragraphs 20 to 22.

### **Amendment of rule 4**

**20.** In rule 4(**33**) (applications for registration), in paragraph (2), after sub-paragraph (c) (but before the following “and”) insert—

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(30) Amended by [S.I. 2004/2033](#), [2007/3101](#) and [2009/1182](#); and section 216 of the Health and Social Care Act 2012 (c. 7).

(31) Schedule 3 has been amended by [S.I. 2003/3148](#), [2004/1947](#) and [2033](#), [2009/1182](#) and [2010/233](#) and by the Health and Social Care Act 2012, section 213(1).

(32) [S.I. 2003/1572](#).

(33) Amended by [S.I. 2004/2524](#), [2005/1625](#), [2007/1280](#) and [2011/210](#).

“(ca) evidence that there is in force in relation to the applicant, or will be as necessary for the purpose of complying with article 11A of the Order, appropriate cover under an indemnity arrangement;”.

#### **Amendment of Schedule 1**

**21.** In Schedule 1 (application for admission to a part of the register), in the unnumbered paragraph, after sub-paragraph (d) insert—

“(da) confirmation that there is in force in relation to the applicant, or will be as necessary for the purpose of complying with article 11A of the Order, appropriate cover under an indemnity arrangement;”.

#### **Amendment of Schedule 2**

**22.** In paragraph 1 of Schedule 2 (application for renewal of registration), in paragraph (1), after sub-paragraph (d) insert—

“(da) confirmation that there is in force in relation to the registrant, or will be as necessary for the purpose of complying with article 11A of the Order, appropriate cover under an indemnity arrangement;”.

## **PART 7**

### **Amendments to the Nursing and Midwifery Order 2001 and related matters**

**23.** The Nursing and Midwifery Order 2001<sup>(34)</sup> is amended in accordance with paragraphs 24 to 29.

#### **Amendment of article 9**

**24.** In article 9<sup>(35)</sup> (registration), in paragraph (2), after sub-paragraph (a) insert—

“(aa) satisfies the Registrar that there is in force in relation to the applicant, or there will be as necessary for the purpose of complying with article 12A, appropriate cover under an indemnity arrangement;”.

#### **Amendment of article 10**

**25.** In article 10<sup>(36)</sup> (renewal of registration and readmission)—

(a) in paragraph (2), after sub-paragraph (a) insert—

“(aa) satisfies the Registrar that there is in force in relation to the applicant or there will be as necessary for the purpose of complying with article 12A, appropriate cover under an indemnity arrangement;”;

(b) in paragraph (4), after sub-paragraph (a) (but before the following “and”) insert—

“(aa) the applicant satisfies the Registrar that there is in force in relation to the applicant or there will be as necessary for the purpose of complying with article 12A, appropriate cover under an indemnity arrangement;”.

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<sup>(34)</sup> [S.I. 2002/253](#).

<sup>(35)</sup> Amended by [S.I. 2007/3101](#).

<sup>(36)</sup> Amended by [S.I. 2007/3101](#).



## New article 12A

26. After article 12 insert—

### “Indemnity arrangements

**12A.**—(1) Each practising registrant must have in force in relation to that registrant an indemnity arrangement which provides appropriate cover for practising as such.

(2) For the purposes of this article, an “indemnity arrangement” may comprise—

- (a) a policy of insurance;
- (b) an arrangement made for the purposes of indemnifying a person;
- (c) a combination of the two.

(3) For the purposes of this article, “appropriate cover”, in relation to practice as a registered nurse or midwife, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and extent of the risks of practising as such.

(4) The Council may make rules in connection with the information to be provided to the Registrar—

- (a) by or in respect of a person applying for registration (including an application for restoration or readmission) for the purpose of determining whether or not the Registrar is satisfied that if the person is registered, there will be in force in relation to that person by the time that person begins to practise, an indemnity arrangement which provides appropriate cover;
- (b) by or in respect of a person applying for renewal of their registration for the purpose of determining whether or not the Registrar is satisfied that if the person’s registration is renewed, there will be in force in relation to that person by the time that person resumes practice, an indemnity arrangement which provides appropriate cover; and
- (c) by or in respect of a registrant for the purposes of determining whether at any time there is in force in relation to the registrant an indemnity arrangement which provides appropriate cover.

(5) Rules made under paragraph (4) may require information to be provided—

- (a) at the request of the Registrar; or
- (b) on such dates or at such intervals as the Registrar may determine, either generally or in relation to individual registrants or registrants of a particular description.

(6) The Council may also make rules requiring a registrant to inform the Registrar if there ceases to be in force in relation to that registrant appropriate cover under an indemnity arrangement.

(7) The Council may also make rules requiring a registrant to provide the Registrar with such information as is necessary for the purpose of satisfying the Registrar that there is or will be in force in relation to that registrant appropriate cover provided under an indemnity arrangement by an employer.

(8) If a registrant is in breach of paragraph (1)—

- (a) the Registrar may remove that person from the register; or
- (b) the person’s fitness to practise may be treated for the purposes of article 22(1)(a)
  - (i) as being impaired by reason of misconduct, and the Registrar may accordingly refer the matter to persons appointed by it under article 22(5)(b)(i) (where rules under article 23 provide) or to a Practice Committee under article 22(5)(b)(ii).

(9) If an applicant breaches rules under paragraph (4), or there is a breach of rules under that paragraph in respect of the applicant the Registrar may refuse the applicant's application for—

- (a) admission (or readmission) to the register;
- (b) restoration to the register; or
- (c) renewal.

(10) If a registrant breaches rules under paragraph (4)(b) or (c), that person's fitness to practise may be treated for the purposes of article 22(1)(a)(i) as being impaired by reason of misconduct, and the Registrar may accordingly refer the matter to persons appointed by it under article 22(5)(b)(i) (where rules under article 23 provide) or to a Practice Committee under article 22(5)(b)(ii).

(11) This article does not apply to a person who has an entitlement to be registered under article 39 and Schedule 2A (visiting midwives, and certain nurses from relevant European States), or article 39A (visiting general system nurses from relevant European States)."

#### **Amendment of article 33**

**27.** In article 33 (restoration to the register of persons who have been struck off) in paragraph (7) (a), after "the relevant part of the register" insert "on his satisfying the Registrar as mentioned in article 10(4)(aa),".

#### **Amendment of article 37**

**28.** In article 37(37) (appeals against Registrar's decisions)—

- (a) in paragraph (1), after sub-paragraph (aa) insert—

“(ab) removes the name of a registrant from the register on the grounds that the registrant has failed to satisfy the Registrar that there is in force in relation to the registrant appropriate cover under an indemnity arrangement;”;

- (b) after paragraph (1), insert—

“(1A) Paragraph (1)(ab) does not apply where the removal is in consequence of a refusal of an application for renewal (including an application for readmission or restoration where registration has lapsed).”; and

- (c) after paragraph (2A), insert—

“(2B) No appeal lies to the Council if the complaint of the person aggrieved is, in effect, that a provision of rules under article 7, 9, 10 or 12A is invalid.”.

#### **Amendment of Schedule 4**

**29.** In Schedule 4(38) (interpretation), insert the following definitions at the appropriate place—

““appropriate cover” is to be construed in accordance with article 12A(3);”; and

““indemnity arrangement” is to be construed in accordance with article 12A(2);”.

**30.** The Schedule to the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004(39) is amended in accordance with paragraphs 31 to 33.

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(37) Amended by [S.I. 2007/3101](#).

(38) Schedule 4 has been amended by [S.I. 2007/3101](#) and [2008/1485](#).

(39) [S.I. 2004/1767](#).

### **Amendment of rule 5**

**31.** In rule 5(40) (application for admission to a part of the register), in paragraph (2), omit the “and” at the end of sub-paragraph (a)(iv) and after paragraph (a) insert—

“(aa) evidence that there is in force in relation to the applicant, or will be as necessary for the purpose of complying with article 12A of the Order, appropriate cover under an indemnity arrangement;”.

### **Amendment of rule 13**

**32.** In rule 13(41) (renewal of registration), in paragraph (1), after sub-paragraph (a) insert—

“(aa) evidence that there is in force in relation to the applicant, or there will be as necessary for the purpose of complying with article 12A of the Order, appropriate cover under an indemnity arrangement;”.

### **Amendment of rule 15**

**33.** In rule 15(42) (readmission to the register), in paragraph (2), after “Rules 5(1)” insert “, (2)(aa) and (b)”.

## **PART 8**

### **Amendments to the Pharmacy Order 2010 and related matters**

**34.** The Pharmacy Order 2010(43) is amended in accordance with paragraphs 35 to 37.

### **Amendment of article 32**

**35.** For article 32 (indemnity arrangements), substitute—

#### **“Indemnity arrangements**

**32.—**(1) A registrant who practises as a pharmacist or pharmacy technician must have in force an indemnity arrangement which provides appropriate cover in relation to that registrant in respect of liabilities which may be incurred in practising as such.

(2) For the purposes of this article, an “indemnity arrangement” may comprise—

- (a) a policy of insurance;
- (b) an arrangement made for the purposes of indemnifying a person;
- (c) a combination of the two.

(3) For the purposes of this article, “appropriate cover”, in relation to practice as a pharmacist or pharmacy technician, means cover against liabilities that may be incurred in practising as such which is appropriate, having regard to the nature and extent of the risks of practising as such.

(4) The Council may make rules in connection with the information to be provided to the Registrar—

(40) Amended by [S.I. 2007/3101](#).

(41) Amended by [S.I. 2005/3354](#).

(42) Amended by [S.I. 2007/3101](#).

(43) [S.I. 2010/231](#).

- (a) by or in respect of any person seeking to be entered in any part of the Register as a pharmacist or pharmacy technician (including an application for restoration) for the purposes of determining whether if that person is so entered, there will be in force in relation to that person by the time that person begins to practise an indemnity arrangement which provides appropriate cover; and
  - (b) by or in respect of a registrant for the purposes of determining whether, at any time, there is in force an indemnity arrangement which provides appropriate cover in relation to that registrant.
- (5) Rules under paragraph (4)(b) may require information to be provided—
- (a) at the request of the Registrar; or
  - (b) on such dates or at such intervals as the Registrar may determine, either generally or in relation to individual registrants or registrants of a particular description.
- (6) The Council may also make rules requiring a registrant to inform the Registrar if there ceases to be in force in relation to that registrant an indemnity arrangement which provides appropriate cover.
- (7) The Council may also make rules requiring a registrant to inform the Registrar if there is in force in relation to that registrant appropriate cover provided under an indemnity arrangement by an employer.
- (8) Where there is a failure to comply with the rules under paragraph (4) by or in respect of a person who is entered, or who is seeking to be entered, in any part of the Register, the Registrar may refuse to enter the person in, or to restore the person’s entry to, or to renew the person’s entry for, that part of the Register.
- (9) If a registrant is in breach of paragraph (1), or fails to comply with rules under paragraph (4)(b), (6) or (7), or there is a failure to comply with rules under paragraph (4) (b) in respect of a registrant—
- (a) the Registrar may remove that person’s entry from Part 1 or 2 of the Register (as the case may be); or
  - (b) the breach or failure may be treated as misconduct for the purposes of article 51(1) (a) and the Registrar must consider, in accordance with article 52(1), whether or not to refer the matter to the Investigating Committee or (where rules under article 52(1) so provide) to the Fitness to Practise Committee.
- (10) Where the Registrar—
- (a) refuses to enter a person in any part of the Register, or to restore a person’s entry to any part of the Register pursuant to paragraph (8); or
  - (b) removes a person’s entry from any part of the Register, pursuant to paragraph (9) (a),
- the Registrar must send to the person at the person’s last known address a statement in writing giving the person notice of the decision and the reasons for it and the right of appeal to the Appeals Committee under article 40.
- (11) This article does not apply to a person who is registered by virtue of Schedule 2 (visiting pharmacists from relevant European States).”

### **Amendment of article 37**

**36.** In article 37 (restoration to the register of persons or premises removed from the Register), in paragraph (1)(f), for “article 32(8)(a)” substitute “article 32(9)(a)”.

### **Amendment of article 39**

**37.** In article 39 (appealable decisions), in paragraph (1)(k), for “article 32(8)(a)” substitute “article 32(9)(a)”.

**38.** The Schedule to the General Pharmaceutical Council (Registration Rules) Order of Council 2010(**44**) is amended in accordance with paragraphs 39 to 41.

### **Amendment of rule 10**

**39.** In rule 10 (entry in the register)—

(a) after paragraph (2)(a)(ii)(bb) insert—

“(cc) whether there is in force in relation to that applicant, or will be as necessary for the purpose of complying with article 32 of the Order, appropriate cover under an indemnity arrangement,”;

(b) after paragraph (3)(g) insert—

“(ga) evidence (including where appropriate a self-declaration in the form determined by the Council which is signed and dated by the applicant) that there is in force in relation to the applicant, or will be as necessary for the purpose of complying with article 32 of the Order, appropriate cover under an indemnity arrangement,”.

### **Amendment of rule 11**

**40.** In rule 11 (renewal of an entry in the Register), after paragraph (4)(a)(ii) insert—

“(ia) provide evidence that there is in force in relation to the registrant, or will be as necessary for the purpose of complying with article 32 of the Order, appropriate cover under an indemnity arrangement,”.

### **Amendment of rule 16**

**41.** In rule 16 (restoration of an entry in the Register) after paragraph (3)(a)(i)(aa) insert—

“(ab) whether there is in force in relation to that applicant, or will be as necessary for the purpose of complying with article 32 of the Order, appropriate cover under an indemnity arrangement,”.

## **SCHEDULE 2**

Article 2(2)

### **Amendments to and revocations of other subordinate legislation**

#### **Amendment of the National Health Service (General Medical Services Contracts) Regulations 2004**

**1.** In Schedule 6 (other contractual terms) to the National Health Service (General Medical Services Contracts) Regulations 2004(**45**)—

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(44) S.I. 2010/1617.

(45) S.I. 2004/291.

- (a) in paragraph 122(1), for “hold adequate insurance against liability arising from negligent performance of clinical services under the contract”, substitute “have in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (b) in paragraph 122(2), for “holds adequate insurance against liability arising from negligent performance of such services”, substitute “has in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (c) in paragraph 122(3)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (d) in paragraph 122(3), after paragraph (a) (but before the following “and”) insert—
  - “(aa) “appropriate cover” means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the contract, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;”;
- (e) in paragraph 122(3)(b), for “holding insurance if it is held by”, substitute “having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to ”; and
- (f) in paragraph 123, for “the insurance” substitute “an indemnity arrangement”.

#### **Amendment of the National Health Service (Personal Medical Services Agreements) Regulations 2004**

2. In Schedule 5 (other contractual terms) to the National Health Service (Personal Medical Services Agreements) Regulations 2004(46)—

- (a) in paragraph 113(1), for “hold adequate insurance against liability arising from negligent performance of clinical services under the agreement”, substitute “have in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (b) in paragraph 113(2), for “holds adequate insurance arising from negligent performance of such services”, substitute “has in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (c) in paragraph 113(3)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (d) in paragraph 113(3)(a), after paragraph (a) (but before the following “and”) insert—
  - “(aa) “appropriate cover” means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the contract, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;”;
- (e) in paragraph 113(3)(b), for “holding insurance if it is held by”, substitute “having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to ”; and
- (f) in paragraph 114(1) for “the insurance”, substitute “an indemnity arrangement”
- (g) in paragraph 114(2) for “insurance”, substitute “indemnity arrangement”.

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(46) S.I. 2004/627.

### **Amendment of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004**

3. In Schedule 5 (other contractual terms) to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(47)—

- (a) in paragraph 112(1), for “hold adequate insurance against liability arising from the negligent performance of clinical services under the contract”, substitute “have in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (b) in paragraph 112(2), for “holds adequate insurance against liability arising from negligent performance of such services”, substitute “has in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (c) in paragraph 112(3)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (d) in paragraph 112(3)(a), after paragraph (a) (but before the following “and”) insert—
  - “(aa) “appropriate cover” means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the contract, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;”;
- (e) in paragraph 112(3)(b), for “holding insurance if the insurance is held by”, substitute “having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to”; and
- (f) in paragraph 113, for “the insurance”, substitute “an indemnity arrangement”.

### **Amendment of the National Health Service (Primary Medical Service Section 17C Agreements)(Scotland) Regulations 2004**

4. In Schedule 1 (content of agreements) to the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(48)—

- (a) in paragraph 76(1), for “hold adequate insurance against liability arising from negligent performance of clinical services”, substitute “have in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (b) in paragraph 76(2), for “holds adequate insurance against liability arising from the negligent performance of such services”, substitute “has in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (c) in paragraph 76(3)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (d) in paragraph 76(3)(a), after paragraph (a) (but before the following “and”) insert—
  - “(aa) “appropriate cover” means cover against liabilities that may be incurred by the provider in the performance of clinical services under the agreement, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;”;
- (e) in paragraph 76(3)(b), for “holding insurance if the insurance is held by”, substitute “having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to”; and

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(47) S.S. I. 2004/115.

(48) S. S. I. 2004/116.

- (f) in paragraph 77, for “the insurance”, substitute “an indemnity arrangement”.

#### **Amendment of the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004**

5. In Schedule 6 (other contractual terms) to the National Health Service (General Medical Contracts) (Wales) Regulations 2004<sup>(49)</sup>—

- (a) in paragraph 120(1), for “hold adequate insurance against liability arising from the negligent performance of clinical services”, substitute “have in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (b) in paragraph 120(2), for “holds adequate insurance against liability arising from the negligent performance of such services”, substitute “has in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (c) in paragraph 120(3)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (d) in paragraph 120(3)(a), after paragraph (a) (but before the following “and”) insert—
  - “(aa) “appropriate cover” means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the contract, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;”;
- (e) in paragraph 120(3)(b), for “holding insurance if it is held by”, substitute “having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to”;
- (f) in paragraph 121, for “the insurance”, substitute “an indemnity arrangement”.

#### **Amendment of the Health and Personal Services (General Dental Services) Regulations (Northern Ireland) 1993**

6. In Schedule 2 (terms of service for dentists) to the Health and Personal Services (General Dental Services) Regulations (Northern Ireland) 1993<sup>(50)</sup>, for paragraph 31D<sup>(51)</sup> substitute—

##### **“Professional indemnity**

**31D.—(1)** A dentist shall, if asked to do so by a Board provide evidence that there is in relation to him, and in relation to any assistant, deputy and dental auxiliary he directs, appropriate cover provided under an indemnity arrangement.

(2) In this paragraph—

- (a) “appropriate cover” means cover against liabilities that may be incurred by a dentist, and any assistant, deputy and dental auxiliary under his direction in the performance of clinical services which is appropriate, having regard to the nature and extent of the risks in the performance of such services; and
- (b) “an indemnity arrangement” may comprise—
  - (i) a policy of insurance,
  - (ii) an arrangement made for the purposes of indemnifying a person, or

<sup>(49)</sup> S.I. 2004/478.

<sup>(50)</sup> S.R. 1993 No.326.

<sup>(51)</sup> Paragraph 31D was inserted by regulation 5(4) of the Health and Personal Services (General Dental Services) (Amendment) Regulations (Northern Ireland) 1998 S.R. 245.



(iii) a combination of the two.”.

### **Amendment of the Health and Personal Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004**

7. In Schedule 5 (other contractual terms) to the Health and Personal Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004<sup>(52)</sup>—

- (a) in paragraph 114(1), for “hold adequate insurance against liability arising from negligent performance of clinical services under the contract”, substitute “have in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (b) in paragraph 114(2), for “holds adequate insurance against liability arising from negligent performance of such services”, substitute “has in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (c) in paragraph 114(3)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (d) in paragraph 114(3)(a), after paragraph (a) (but before the following “and”) insert—
  - “(aa) “appropriate cover” means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the contract, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;”;
- (e) in paragraph 114(3)(b), for “holding insurance if it is held by”, substitute “having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to”;
- (f) in paragraph 115, for “the insurance”, substitute “an indemnity arrangement”.

### **Amendment of the National Health Service (General Dental Services Contracts) Regulations 2005**

8. In Schedule 3 (other contractual terms) to the National Health Service (General Dental Services Contracts) 2005<sup>(53)</sup>—

- (a) in paragraph 81(1), for “hold adequate insurance against liability arising from negligent performance of clinical services under the contract”, substitute “have in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (b) in paragraph 81(2), for “holds adequate insurance against liability arising from negligent performance of such services”, substitute “has in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (c) in paragraph 81(3)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (d) in paragraph 81(3), after paragraph (a) (but before the following “and”) insert—
  - “(aa) “appropriate cover” means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the contract, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;”;

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<sup>(52)</sup> S.R. 2004 No.140.

<sup>(53)</sup> S.I. 2005/3361.

- (e) in paragraph 81(3)(b), for “holding insurance if it is held by”, substitute “having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to”; and
- (f) in paragraph 82(1), for “the insurance”, substitute “an indemnity arrangement”;
- (g) in paragraph 82(2), for “insurance”, substitute “indemnity arrangement”.

### **Amendment of the National Health Service (Personal Dental Services Agreements) Regulations 2005**

**9.** In Schedule 3 (other contractual terms) to the National Health Service (Personal Dental Services Agreements) Regulations 2005(**54**)—

- (a) in paragraph 79(1), for “hold adequate insurance against liability arising from negligent performance of clinical services under the agreement”, substitute “have in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (b) in paragraph 79(2), for “holds adequate insurance against liability arising from the negligent performance of such services”, substitute “has in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (c) in paragraph 79(3)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (d) in paragraph 79(3), after paragraph (a) (but before the following “and”) insert—
  - “(aa) “appropriate cover” means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the agreement, which is appropriate, having regard to the nature and extent of the risks in the performance of such services.”;
- (e) in paragraph 79(3)(b), for “holding insurance if it is held by”, substitute “having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to”; and
- (f) in paragraph 80(1), for “the insurance”, substitute “an indemnity arrangement”;
- (g) in paragraph 80(2), for “insurance”, substitute “indemnity arrangement”.

### **Amendment of the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006**

**10.** In Schedule 3 (other contractual terms) to the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006(**55**)—

- (a) in paragraph 81(1), for “hold adequate insurance against liability arising from negligent performance of clinical services under the contract”, substitute “have in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (b) in paragraph 81(2), for “holds adequate insurance against liability arising from negligent performance of such services”, substitute “has in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (c) in paragraph 81(3)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (d) in paragraph 81(3), after paragraph (a) insert—

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(54) S.I. 2005/3373.

(55) S.I. 2006/490.

- “(aa) “appropriate cover” means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the contract, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;”;
- (e) in paragraph 81(3)(b), for “holding insurance if it held by”, substitute “having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to”; and
- (f) in paragraph 82(1), for “the insurance”, substitute “an indemnity arrangement”;
- (g) in paragraph 82(2), for “insurance” substitute “indemnity arrangement”.

### **Amendment of the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006**

**11.** In Schedule 3 (other contractual terms) to the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006(**56**)—

- (a) in paragraph 79(1), for “hold adequate insurance against liability for negligent performance of clinical services under the agreement”, substitute “have in force in relation to it an indemnity arrangement which provides appropriate cover”;
- (b) in paragraph 79(2), for “holds adequate insurance against liability arising from negligent performance of such services”, substitute “has in force in relation to the sub-contractor an indemnity arrangement which provides appropriate cover”;
- (c) in paragraph 79(3)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (d) in paragraph 79(3), after paragraph (a) (but before the following “and”) insert—
  - “(aa) “appropriate cover” means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the agreement, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;”;
- (e) in paragraph 79(3)(b), for “holding insurance if it is held by”, substitute “having in force in relation to it an indemnity arrangement if there is an indemnity arrangement in force in relation to”; and
- (f) in paragraph 80(1), for “the insurance”, substitute “an indemnity arrangement”;
- (g) in paragraph 80(2), for “insurance” substitute “indemnity arrangement”.

### **Amendment of the General Ophthalmic Services Contracts Regulations 2008**

**12.** In Schedule 1 (other contractual terms) to the General Ophthalmic Services Contracts Regulations 2008(**57**)—

- (a) in paragraph 51(1)—
  - (i) for “hold adequate” substitute “have in force in relation to it”;
  - (ii) for paragraph (a) substitute—
    - “(a) an indemnity arrangement which provides appropriate cover; and”
  - (iii) in paragraph (b), for “the insurance” substitute “the indemnity arrangement”;

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(56) S.I. 2006/489.

(57) S.I. 2008/1185.

- (b) in paragraph 51(2)(a), for ““insurance” means”, substitute ““indemnity arrangement” means”;
- (c) in paragraph 51(2), after paragraph (a) (but before the following “and”) insert—
  - “(aa) “appropriate cover” means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the contract, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;”; and
- (d) in paragraph 51(2)(b), for “holding insurance in relation to any of its employees if it is held by that employee”, substitute “having in force in relation to any of its employees an indemnity arrangement if there is in force in relation to that employee an indemnity arrangement”.

### SCHEDULE 3

Article 3

#### Transitional and saving provisions

#### **Interpretation**

1. In this Schedule—
  - (a) “appointed day” means the day on which this Order comes into force;
  - (b) a reference to an old section or old article is to that section or article as it had effect immediately before its amendment or substitution by this Order; and
  - (c) “the transitional period” means the period of twelve months beginning with the appointed day.

#### **Medical Act 1983**

2. The obligation imposed on a person who holds a licence to practise by subsection (1) of the section 44C of the Medical Act 1983 as substituted by paragraph 1 of Schedule 1 does not apply during the transitional period for so long as there is in force in relation to that person a policy, arrangement or combination of the two which—

- (a) was in force in relation to him immediately before the appointed day; and
- (b) would have been an indemnity arrangement within the meaning of subsection (2) of section 44C of that Act if that section had been fully in force at that time.

3. Where paragraph 2 applies, the Registrar shall request in writing that a person provides evidence of the policy, arrangement or combination of the two referred to in that paragraph to the General Medical Council within such period as the Registrar may specify.

4. Where there is a failure to comply with a request for information made under paragraph 3—
  - (a) the Registrar may withdraw that medical practitioner’s licence to practice; or
  - (b) the failure may be treated as misconduct for the purposes of section 35C(2)(a) and the Registrar may accordingly refer the matter to the Investigation Committee under section 35C(4).

5. For the purposes of paragraphs 3 and 4, “Registrar” means the Registrar of the General Medical Council.

### **Opticians Act 1989**

6. The obligation imposed on a registered optometrist or registered dispensing optician by subsection (1) of the section 10A of the Opticians Act 1989 as substituted by paragraph 7 of Schedule 1 does not apply during the transitional period for so long as there is in force in relation to that registered optometrist or registered dispensing optician a policy or arrangement which—

- (a) was in force in relation to him immediately before the appointed day; and
- (b) was at that time adequate and appropriate for the purposes of the old section 10A of that Act.

7. Where paragraph 6 applies, the registrar shall request in writing that the registered optometrist or registered dispensing optician provides evidence of the policy or arrangement referred to in that paragraph to the General Optical Council within such period as the registrar may specify.

8. Where there is a failure to comply with a request for information made under paragraph 6—

- (a) the registrar may remove that person's name from the appropriate register; or
- (b) the failure may be treated as misconduct for the purposes of section 13D(2)(a), and the registrar may accordingly refer the matter to the Investigation Committee under section 13D(5).

9. For the purposes of paragraphs 7 and 8, “registrar” means the registrar of the General Optical Council.

### **Osteopaths Act 1993**

10. The obligation imposed on a registered osteopath (but not including a temporarily registered osteopath) by subsection (1) of section 37 of the Osteopaths Act 1993 as substituted by paragraph 9 of Schedule 1 does not apply during the transitional period for so long as there is in force in relation to that registered osteopath insurance which—

- (a) was in force immediately before the appointed day; and
- (b) was at that time proper insurance for the purposes of section 37 of that Act.

11. Where paragraph 10 applies, the Registrar shall request in writing that the registered osteopath provides evidence of the insurance referred to in that paragraph to the General Osteopathic Council within such period as the Registrar may specify.

12. Where there is a failure to comply with a request for information made under paragraph 21—

- (a) the Registrar may remove that person's entry from the register; or
- (b) the failure may be treated as unacceptable professional conduct and the Registrar may accordingly notify the General Osteopathic Council.

13. For the purposes of paragraphs 11 and 12, “Registrar” means the Registrar of the General Osteopathic Council.

14. The old section 37(1) and any rules made under it, shall continue to apply to a registered osteopath who, by virtue of paragraph 10, is exempt from the obligation imposed by subsection (1) of section 37 as substituted by paragraph 9 of Schedule 1 for so long as that registered osteopath is exempt from that obligation.

### **Chiropractors Act 1994**

15. The obligation imposed on a registered chiropractor (but not including a temporarily registered chiropractor) by subsection (1) of section 37 as substituted by paragraph 10 of Schedule 1

does not apply during the transitional period for so long as there is in force in relation to that registered chiropractor insurance which—

- (a) was in force immediately before the appointed day; and
- (b) was at that time proper insurance for the purposes of section 37 of that Act.

**16.** Where paragraph 15 applies, the Registrar shall request in writing that the registered chiropractor provides evidence of the insurance referred to in that paragraph to the General Chiropractic Council within such period as the Registrar may specify.

**17.** Where there is a failure to comply with a request made under paragraph 16—

- (a) the Registrar may remove that person’s entry from the register; or
- (b) the failure may be treated as unacceptable professional conduct and the Registrar may notify the General Chiropractic Council.

**18.** For the purposes of paragraphs 16 and 17, “Registrar” means the Registrar of the General Chiropractic Council.

**19.** The old section 37(1) and any rules made under it, shall continue to apply to a registered chiropractor who, by virtue of paragraph 15, is exempt from the obligation imposed by subsection (1) of section 37 as substituted by paragraph 10 of Schedule 1 for so long as that registered osteopath is exempt from that obligation.

#### **Pharmacy Order 2010**

**20.** The obligation imposed on a registrant by paragraph (1) of article 32 of the Pharmacy Order 2010 provided for by paragraph 35 of Schedule 1 does not apply during the transitional period for so long as there is in force in relation to that registrant a policy, arrangement or combination of the two which—

- (a) was in force in relation to the registrant immediately before the appointed day; and
- (b) was at that time an adequate and appropriate indemnity arrangement for the purposes of old article 32.

**21.** Where paragraph 20 applies, the Registrar shall request in writing that a registrant provides evidence of the policy, arrangement or combination of the two referred to in that paragraph to the General Pharmaceutical Council within such period as the Registrar may specify.

**22.** Where there is a failure to comply with a request for information made under paragraph 44—

- (a) the Registrar may remove that person’s entry from the register; or
- (b) the failure may be treated as misconduct for the purposes of article 51(1)(a) and the Registrar must consider, in accordance with article 52(1), whether or not to refer the matter to the Investigating Committee or (where rules under article 52(1) so provide) to the Fitness to Practise Committee.

**23.** For the purposes of paragraphs 21 and 22, “Registrar” means the Registrar of the General Pharmaceutical Council.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes amendments to the framework legislation for the regulation of doctors, dentists and dental care practitioners, optometrists and dispensing opticians, osteopaths, chiropractors, pharmacists and pharmacy technicians, nurses and midwives, and the professions regulated by the Health and Care Professions Council. It makes amendments for doctors, dentists and dental care practitioners, optometrists and dispensing opticians, osteopaths, chiropractors and pharmacists and pharmacy technicians in relation to indemnity arrangements and professional liability insurance and introduces similar arrangements in legislation for nurses and midwives, and professions regulated by the Health and Care Professions Council. The amendments in this Order implement the main recommendations made by the Finlay Scott review which include the requirement for practising regulated healthcare professionals to have insurance or indemnity as a condition of registration (or in the case of a medical practitioner, a condition of obtaining a licence to practise)<sup>(58)</sup>. The Order also implements Article 4(2)(d) of [Directive 2011/24/EC](#) (“the Directive”) on the application of patients’ rights in cross-border healthcare. Article 4(2)(d) of the Directive requires Member States to have in place systems of professional liability cover or similar in respect of cross-border healthcare for patients receiving treatment in the Member State in question.

Schedule 1 contains amendments to the legislation regulating health care and associated professions. Part 1 amends the Medical Act 1983 by substituting a new section 44C (indemnity arrangements) which requires medical practitioners to have appropriate cover under an indemnity arrangement in respect of liabilities which may be incurred in carrying out work as a medical practitioner. The amendment also makes it clear that a medical practitioner cannot carry out work as medical practitioner unless there is an indemnity arrangement in force in relation to that medical practitioner. The amendments also introduce enabling powers for the General Council to make regulations requiring a medical practitioner to inform the Registrar if their cover provided under an indemnity arrangement ceases to be in force, and to inform the Registrar if appropriate cover under an indemnity arrangement is provided by an employer. Failure to comply with the provisions can be dealt with as a ground on which a licence to practise may be withdrawn by the Registrar, or under section 35C(2) and (4) as fitness to practise matter. Consequential amendments are also made to section 29F (appeals). The provisions do not apply to visiting medical practitioners from relevant European States who are entitled to be registered under Schedule 2A and are entitled to provide medical services on a temporary and occasional basis in the United Kingdom.

Part 2 makes similar changes to sections 26A and 36L of the Dentists Act 1984 in relation to indemnity arrangements for dentists and dental care practitioners, respectively. In addition, section 18 (registration) is also amended so that it contains a requirement for a dentist to provide documents which satisfy the Registrar that there is, or will be appropriate cover under an indemnity arrangement. Section 28 (restoration of names to the register following erasure under section 27B) and section 36R (restoration of names to the dental care professionals register following erasure under section 36P) also require that the dentist and dental care practitioner, satisfy the Registrar that they meet the requirements under sections 26A and 36L, respectively. The provisions do not apply to visiting dentists from relevant European States who are entitled to be registered under section 36 and Schedule 4; and visiting dental care professionals from relevant European States who are entitled

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<sup>(58)</sup> <https://www.gov.uk/government/publications/independent-review-of-the-requirement-to-have-insurance-or-indemnity-as-a-condition-of-registration-as-a-healthcare-professional>. A copy may also be obtained by writing to Professional Standards, Room 2N09, Quarry House, Quarry Hill, Leeds, LS2 7UE.

to be registered under section 36Z3, and in both cases to provide their services on a temporary and occasional basis in the United Kingdom.

Parts 3 makes similar amendments to section 10A (indemnity arrangements for individual registrants and persons applying for their name to be registered) of the Opticians Act 1989 in relation to indemnity arrangements for optometrists and opticians. It also makes consequential amendments to the General Optical (Registration Rules) Order of Council 2005. The provisions do not apply to visiting opticians from relevant European States who are entitled to be registered under section 8B and to provide optical services on a temporary and occasional basis in the United Kingdom.

Parts 4 and 5 make similar amendments to section 37 in both the Osteopaths Act 1993 and Chiropractors Act 1994 in relation to indemnity arrangements for osteopaths and chiropractors, respectively. In particular, it substitutes the requirement to have professional liability insurance, with a requirement to have an indemnity arrangement. There is also a power for the General Council in relation to osteopaths and chiropractors, to make rules in connection with the types of indemnity arrangement required. In both cases, the provisions do not apply to visiting practitioners who are entitled to be registered with temporary registration and provide their services on a temporary and occasional basis in the United Kingdom.

Part 6 amends the Health and Social Work Professions Order 2001, so that it contains new requirements in article 11A, for professions regulated by the Health and Care Professions Council (other than social workers in England) to have an indemnity arrangement in respect of liabilities which may be incurred in carrying out work as a member of a profession regulated by the Health and Care Professions Council. It also makes consequential amendments to the Health Professions Council (Registration and Fees) Rules Order of Council 2003. The provisions do not apply to visiting health professionals from relevant European States who are entitled to be registered under article 13A and to provide services on a temporary and occasional basis in the United Kingdom.

Part 7 amends the Nursing and Midwifery Order 2001, so that it contains new requirements in article 12A for nurses and midwives to have an indemnity arrangement in respect of liabilities which may be incurred in carrying out work as a nurse or midwife. It also makes consequential amendments to the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004. The provisions do not apply to visiting midwives, and certain nurses relevant European States who are entitled to be registered under article 39 and Schedule 2A; or visiting general system nurses from relevant European States who are entitled to register under article 39A, where their services are provided on a temporary and occasional basis in the United Kingdom.

Part 8 amends the Pharmacy Order 2010, so that it contains enabling powers for the Council to make rules requiring a pharmacists and pharmacy technicians to inform the Registrar if their cover provided under an indemnity arrangement ceases to be in force, and to inform the Registrar if appropriate cover under an indemnity arrangement is provided by an employer. It also makes consequential amendments to the General Pharmaceutical Council (Registration Rules) Order of Council 2010. The provisions do not apply to visiting pharmacists from relevant European States who are entitled to be registered under Schedule 2 and to provide their services on a temporary and occasional basis in the United Kingdom.

Schedule 2 contains consequential amendments made in respect of other subordinate legislation.

Schedule 3 makes transitional arrangements and savings in relation to medical practitioners, opticians, osteopaths, chiropractors and pharmacists to allow in certain circumstances, a policy of insurance or indemnity arrangement to remain in force during the transitional period.