

SCHEDULE 2

Article 54

TRANSITIONAL PROVISIONS

The initial membership of the Council

1. When first constituted, the membership of the Council shall be determined in accordance with the provisions of this Schedule.

The transitional periods

2. In this Schedule—

“the first transitional period” means the period beginning with the coming into force of article 3 and ending on the date of coming into force of the first order made by the Privy Council under article 6(1);

“the second transitional period” means the period beginning with the day after the coming into force of the first order made by the Privy Council under article 6(1) and ending on the second anniversary of that date, unless ended earlier by the Privy Council on a proposal received by it from the Council.

The Members

3.—(1) During the transitional periods, the Council shall consist of—

- (a) 12 members appointed by the Privy Council (referred to in this Order as “practitioner members”);
- (b) 11 members who are appointed by the Privy Council (referred to in this Order as “lay members”); and
- (c) 12 members appointed by the Privy Council (referred to in this Order as “alternate members”).

(2) The Privy Council shall appoint an alternate member for each practitioner member.

(3) An alternate member shall have the same functions as a practitioner member but he may attend a Council meeting in his capacity as an alternate member and vote only if his corresponding practitioner member is unable to do so.

(4) Following consultation of persons who appear to it to be representative of the professions to which this Order relates, the Privy Council shall appoint practitioner and alternate members from among persons who are registered under the 1997 Act, or, if section 7 has been repealed, who were so registered immediately before that provision was repealed.

(5) It shall select four practitioner members from each of the following categories—

- (a) persons registered in Part 10 of the register maintained under section 7 of the 1997 Act;
- (b) persons registered in Part 11 of the register maintained under section 7 of the 1997 Act;
- (c) persons registered in any other Part of that register of whom the members may all be selected from the same Part or from different Parts.

(6) No person may be appointed as a practitioner member while he is the subject of fitness to practise investigations or proceedings whether under this Order or under the 1997 Act.

(7) Having consulted such persons as it considers appropriate, the Privy Council shall appoint lay members from among persons who are not and never have been on the register or the register kept under the 1997 Act and who have such qualifications, interests and experience as, in the opinion of the Privy Council, will be of value to the Council in the performance of its functions.

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(8) The members shall live or work wholly or mainly in the United Kingdom.

(9) There shall be at least one practitioner member and one alternate member from each part of the register, and the number of practitioner and alternate members from each part shall be equal.

(10) The practitioner and alternate members appointed in respect of each part of the register shall include at least one member from each of the countries of the United Kingdom and that member shall live or work wholly or mainly in the country concerned.

(11) The members who are not registered professionals shall include at least one member from each of the countries of the United Kingdom and that member shall live or work wholly or mainly in the country concerned.

Tenure of members

4. Unless he resigns or is removed in such circumstances as are set out in paragraph 8(2) of Schedule 1, each member shall hold office until the end of the second transitional period.

5. Where a member ceases to be a member, the Privy Council may replace him and the successor's term of office shall begin with the day after that on which the member ceases to be a member and end at the end of the second transitional period.

6. The Privy Council shall determine the duration, which may not exceed four years, of the first term of office for members whose appointments take effect on the ending of the second transitional period and shall ensure that—

- (a) the terms of office of equal proportions of registrant and lay members, being one quarter (or the nearest whole even number above one quarter) of the Council membership, expire at the end of one, two and three years respectively beginning with the day after the end of the second transitional period;
- (b) the terms of office of the remaining members expire at the end of four years beginning with the day after the end of the second transitional period; and
- (c) the terms of office of the registrant members appointed to any one national constituency expire at the same time.

Election Scheme

7. The Council shall provide in rules for an election scheme in accordance with the provisions of paragraph 2 of Part I of Schedule 1 to this Order no later than six months before the end of the second transitional period.

Appointment of first President

8. The first President of the Council shall be appointed by the Privy Council from among the members of the Council.

The register

9. During the first transitional period, the Council shall make—

- (a) proposals to the Privy Council for an order to be made under article 6(1);
- (b) rules under articles 5 and 7 and such other rules as are necessary for the proper operation of the register.

10. Until such date as the first order under article 6(1) is and the rules mentioned in paragraph 9 are in force (“the appointed day”) the Council shall—

- (a) perform the functions of maintaining the register under section 7 of the 1997 Act, and

(b) determine applications under section 8 of the 1997 Act, and if those provisions have been repealed, shall act under sub-paragraphs (a) and (b) as if they remained in force and as if references in that Act and subordinate legislation made under it to the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (“UKCC”) or to a National Board for Nursing, Midwifery and Health Visiting (a “National Board”) were to the Council.

11. Where on the appointed day there are outstanding applications for—

- (a) registration;
- (b) renewal of registration;
- (c) the recording of additional qualifications;
- (d) any entry in the register to be made, altered or restored,

the Council shall dispose of the application in accordance with the provisions of the 1997 Act, as if those provisions were still in force, or in such other manner as it considers just.

12. The entries in the register kept under the 1997 Act may be transferred to the register in accordance with articles 5 and 6 but, where the home address of a person registered under the 1997 Act appears in the register kept under that Act and the entry for that person is transferred to the register, his home address shall not be published in the register without the consent of that person.

The Registrar

13. The first Registrar may be appointed by the Secretary of State, and shall otherwise be appointed by the Council, on such terms and conditions as the body appointing him sees fit.

14. If the first Registrar ceases to hold office before a Registrar is appointed under article 4, the Secretary of State or the Council, as the case may be, may appoint a replacement.

Functions of the Council during the transitional period

15.—(1) During the transitional periods, and subject to any contrary provision in this Order, the Council shall, until the relevant provisions of this Order and subordinate legislation made under it come into force, exercise the functions of the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (“UKCC”) and of the National Boards for Nursing, Midwifery and Health Visiting (“the National Boards”) under sections 2, 3, 4, 5, 6, 14, 15, 20 and 21 of the 1997 Act and subordinate legislation made under that Act with such modifications as necessary and as if references to the UKCC and National Boards were to the Council.

(2) If the relevant provision has been repealed, it shall be treated for the purposes of sub-paragraph (1) as if it remained in force.

Fitness to practise proceedings

16.—(1) Until relevant rules under Part V come into force—

- (a) where disciplinary proceedings—
 - (i) are pending before the UKCC or any of its committees; or
 - (ii) have begun but the body or committee dealing with the case has not communicated its decision to the person who is the subject of the proceedings,

that body or committee shall refer the proceedings to the Council and the Council shall dispose of the matter in accordance with the 1997 Act or, if the relevant provisions have been repealed, as if those provisions remained in force;

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- (b) where an allegation is received by the Council it shall dispose of the matter as if the 1997 Act remained in force; and in both cases
- (c) references in the 1997 Act to the UKCC are to be treated as references to the Council.

17. An appeal—

- (a) under section 12 of the 1997 Act which is pending or proceeding before any court on the date on which that section is repealed; or
- (b) which is received by the Council before the relevant appeal provisions in the rules referred to in paragraph 16 are in force,

shall be dealt with as if section 12 remained in force.

Transitional provisions for local supervising authorities

18.—(1) Until rules made under article 42 come into force Local Supervising Authorities (“LSAs”) shall exercise their functions under section 15 of the 1997 Act and subordinate legislation made under it and, if that section or that subordinate legislation have been repealed, shall exercise those functions as if those provisions were still in force and as if references in that Act to the UKCC or to a National Board were to the Council.

(2) If at the date such rules come into force,

- (a) disciplinary proceedings—
 - (i) are pending under the rules mentioned in section 15(2)(c) of the 1997 Act; or
 - (ii) have begun but the decision has not been communicated to the person who is the subject of the proceedings,

the matter shall be disposed of in accordance with the rules mentioned in head (i) or, if the relevant provisions have been repealed, as if those provisions remained in force or in such other manner as appears to the LSA to be just.

Transfer of staff and property

19. The Privy Council may by order make provision—

- (a) enabling persons who, when paragraph 3(1) of this Order (creation of Council) comes into force, hold office as members or staff of the UKCC and the National Boards to continue to hold office until those bodies are dissolved;
- (b) authorising the UKCC to make grants or loans to any person in connection with the implementation or preparations for the implementation of the Order.

20.—(1) The Privy Council may by order provide for the transfer from the old to the new employer of any—

- (a) eligible employee; and
- (b) property, rights and liabilities.

(2) In this paragraph—

- (a) “the new employer” means the Council; and
- (b) “the old employer” means the UKCC.

(3) In this paragraph and in paragraph 21—

“an eligible employee” means a person who is employed under a contract of employment with the old employer; and

“property” includes rights and interests of any description.

21.—(1) The Privy Council may by order provide for the transfer from the old to the new employer of any—

- (a) eligible employee; and
- (b) property, rights and liabilities.

(2) In this paragraph and in paragraph 25—

(a) “the new employer” means, in relation to—

- (i) England, the Secretary of State,
- (ii) Wales, the National Assembly for Wales,
- (iii) Scotland, the Scottish Ministers, and
- (iv) Northern Ireland, the Northern Ireland Department of Health, Social Services and Public Safety,

or any person or body established or authorised by any of them; and

(b) “the old employer” means a National Board.

22. An order made under paragraph 20(1)(a) or 21(1)(a) may be made by the Privy Council only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred under the scheme.

23. An order made under paragraph 20(1)(a) or 21(1)(a) may apply to all, or any description of, employees or to any individual employee.

24.—(1) The contract of employment of an employee transferred under an order made under paragraph 20(1)(a) or 21(1)(a)—

- (a) is not terminated by the transfer; and
- (b) has effect from the date of the transfer as if originally made between the employee and the transferee.

(2) Without prejudice to the generality of sub-paragraph (1), where an employee is transferred under an order mentioned in that sub-paragraph—

- (a) all the rights, powers, duties and liabilities of the old employer under or in connection with the contract of employment are, by virtue of this paragraph, transferred to the transferee on the date of the transfer; and
- (b) anything done before that date by or in relation to the old employer in respect of that contract or the employee is to be treated from that date as having been done by or in relation to the transferee.

(3) Sub-paragraphs (2)(a) and (b) do not transfer an employee’s contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the old employer or the transferee that he objects to the transfer.

(4) Where an employee objects as mentioned in sub-paragraph (3), his contract of employment with the old employer is terminated immediately before the date of the transfer, but he is not to be treated for any purpose as having been dismissed by that employer.

(5) This paragraph does not prejudice any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions but no such right arises by reason only that, by virtue of this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

(6) In this paragraph—

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“the date of the transfer” means the date of the transfer determined under an order made under paragraph 20(1)(a) or 21(1)(a) in relation to the employee; and

“the transferee” means the new employer to whom the employee is or would be transferred under that order.

25.—(1) An order made under paragraph 20(1)(b) or 21(1)(b) may provide for the new employer to—

- (a) prepare a statement of accounts in respect of the financial year to 31st March 2002;
- (b) submit a report on the performance of the old employer for the period since the last report under section 18(6) of the 1997 Act to 31st March 2002; or
- (c) carry out any other functions necessary or expedient consequent on the dissolution of the old employer.

(2) Section 18(3), (4), (5) and (7) of the 1997 Act shall apply as if they remained in force except that they shall apply as if the accounts or report, as the case may be, mentioned in paragraph (1) had been prepared by the old employer.