STATUTORY INSTRUMENTS

2017 No. 321

HEALTH CARE AND ASSOCIATED PROFESSIONS

NURSES AND MIDWIVES

The Nursing and Midwifery (Amendment) Order 2017

Made - - - - 8th March 2017

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 8th day of March 2017

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 published a draft Order and invited representations as required by paragraph 9(1) of Schedule 3 to that Act.

The period of three months mentioned in paragraph 9(2) of that Schedule expired before a draft of this Order in Council, together with a report about consultation, was laid before Parliament.

A draft of this Order in Council has been laid before, and approved by resolution of, each House of Parliament in accordance with section 62(9) of that Act.

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

(**1**) 1999 c.8. Section 60 was amended by paragraph 16 of Schedule 5 to the Nursing and Midwifery Order 2001 (S.I. 2002/253); section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c.17); paragraph 1 of Schedule 8 to the Health and Social Care Act 2008 (c.14); sections 209, 210 and 213 of, and paragraphs 60 and 72 of, Schedule 15 to the Health and Social Care Act 2012 (c.7); paragraph 7 of Schedule 4 to the Pharmacy Order 2010 (S.I. 2010/231); paragraph 43 of Schedule 34 to the Human Medicines Regulations 2012 (S.I. 2012/1916). Section 62 was amended by paragraph 1 of Schedule 4 to the National Health Service (Consequential Provisions) Act 2006 (c.43); and paragraph 2 of Schedule 8 to the Health and Social Care Act 2008. Subsections (4) and (4A) were substituted in section 62 by paragraph 11 of Schedule 10 to the Health and Social Care Act 2008. Schedule 3 was amended by section 26(10) of the National Health Service Reform and Health Care Professions Act 2002 (c.17); paragraph 8(b) of Schedule 4 to the Health and Social Work Professions Order 2002 (S.I. 2002/254); paragraph 67 of Schedule 11, and paragraph 1 of Schedule 14, to the Health and Social Care (Community Health and Standards) Act 2003 (c.43); sections 33 and 80 of, and Schedule 9 to, the Health Act 2006 (c.28); paragraphs 4 to 10 of Schedule 8, and paragraph 1 of Schedule 15, to the Health and Social Care Act 2008; section 211 of, and paragraphs 61 and 72 of Schedule 15 to, the Health and Social Care Act 2012.

Citation and commencement

1.—(1) This Order may be cited as the Nursing and Midwifery (Amendment) Order 2017.

(2) The following provisions come into force on 31st March 2017—

(a) this article;

(b) article 2 in so far as it relates to the provisions of Schedules 1 and 2 mentioned in sub-paragraphs (c) and (d);

(c) paragraphs 1, 2(b), 13(d)(ii), (f), (g) and (h), 16(b), 18, 19(a), (d) and (e), 20 and 21(b) of Schedule 1;

(d) Schedule 2 (except for paragraph 7(b)).

(3) Paragraphs 4(b) and 6 of Schedule 1 and article 2, in so far as it relates to those provisions, come into force on 31st March 2017 for the purposes of making rules.

(4) The remaining provisions, and article 2 for all remaining purposes, come into force on 28th July 2017.

Amendments

2.—(1) Schedule 1 (amendments to the Nursing and Midwifery Order 2001)(**2**) has effect.

(2) Schedule 2 (amendments to and revocation of subordinate legislation) has effect.

Transitional Provision

3.—(1) A reference in Part V and Part VI of the Nursing and Midwifery Order 2001 ("the 2001 Order") to a decision or order of the Fitness to Practise Committee or a Practice Committee includes where appropriate a reference to a decision or order of the Health Committee or Conduct and Competence Committee made before 28th July 2017.

(2) A reference in Part V of the 2001 Order to the referral of a matter to the Fitness to Practise Committee includes a referral before 28th July 2017 of a matter to the Health Committee or to the Conduct and Competence Committee.

(3) A decision by the Health Committee or the Conduct and Competence Committee made before 28th July 2017 continues to have effect on and after that date as if made by the Fitness to Practise Committee.

(4) A person who immediately before 28th July 2017 is a member of the Health Committee or the Conduct and Competence Committee will on and after that date become a member of the Fitness to Practise Committee for the remainder of the term for which that person was appointed to the Health Committee or to the Conduct and Competence Committee or until that person's membership of the Fitness to Practise Committee is terminated by the Nursing and Midwifery Council ("the Council"), whichever is the earlier.

(5) Where before 28th July 2017, an allegation has been referred to the Health Committee or to the Conduct and Competence Committee and no decision has been reached on that allegation before that date, that Committee will continue to exist for the purposes of considering the allegation and until the Committee makes a decision in respect of that allegation under article 29(1), (4) or (5) of the 2001 Order.

(**2**) S.I. 2002/253.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

Amendments to the Nursing and Midwifery Order 2001

Amendments to article 3

1.—(1) In article 3 (the Nursing and Midwifery Council and its Committees)(**3**)—

(a) for paragraph (9) substitute—

"(9) There shall be two committees of the Council, to be known as—

(a) the Investigating Committee; and

(b) the Fitness to Practise Committee.".

(b) for paragraph (10) substitute—

"(10) The two committees mentioned in paragraph (9) are referred to in this Order as "the Practice Committees".";

(c) in paragraphs (11) and (17) for "statutory committees" substitute "Practice Committees".

(2) Before 28th July 2017 paragraphs (9) and (10) of article 3 are to have effect without the amendments made by paragraph 1(1) and—

(a) in paragraph (9) as if the reference to—

(i) "four committees" was to "three committees",

(ii) "the Midwifery Committee" was omitted; and

(b) in paragraph (10), as if the reference to "four committees" was to "three committees".

Amendments to article 22

2. In article 22 (allegations)(**4**)—

(a) in paragraph (4) for "a Practice Committee" substitute "the Fitness to Practise Committee";

(b) omit paragraph (7);

(c) in paragraph (9)—

(i) for "26(7) or (11)" substitute "26(5A), (7) or (12)",

(ii) after "33" insert "and of any warning issued under article 26(7A)(a)";

(d) after paragraph (11) insert—

"(12) The Council may withhold from publication under paragraph (9), information concerning the physical or mental health of a person which the Council considers to be confidential.".

Amendments to article 24

3. In article 24 (Screeners: supplementary provisions) in paragraph (3)(d)—

(a) for "any Practice Committee" substitute "a Practice Committee";

(b) for "Health Committee or Conduct and Competence Committee, as the case may be," substitute "Fitness to Practise Committee".

(**3**) Article 3 was amended by S.I. 2008/1485, article 2(1), Schedule 1, paragraph 1.
(**4**) Article 22 was amended by S.I. 2015/806, articles 32 and 37.

Amendments to article 26

4. In article 26 (the Investigating Committee)(**5**)—

(a) in paragraph (2)(a), (b), (c) and (d) before "Committee", wherever it appears, insert "Investigating";

(b) after paragraph (5) insert—

"(5A) Where the Investigating Committee has concluded under paragraph (2)(d)(i) that there is a case to answer, it may, at any time until the allegation is considered by the Fitness to Practise Committee, agree with the person concerned that that person is to comply with such undertakings as the Investigating Committee considers appropriate.

(5B) Rules may make provision in connection with undertakings agreed under paragraph (5A) (including provision as to the actions which may be taken as a consequence of an undertaking being breached).";

(c) for paragraph (6) substitute—

"(6) Where the Investigating Committee concludes under paragraph (2)(d)(i) that there is a case to answer but it does not agree undertakings under paragraph (5A), it must—

(a) undertake mediation; or

(b) refer the case—

(i) to Screeners for them to undertake mediation, or

(ii) to the Fitness to Practise Committee.";

(d) in paragraph (6A) for "paragraph (6)(a) or (b)(i)" substitute "paragraph (5A), (6)(a) or (b)(i)";

(e) after paragraph (7) insert—

"(7A) If the Investigating Committee concludes under paragraph (2)(d)(i) that there is no case to answer, it may—

(a) issue a warning to the person concerned; or

(b) give advice to that person in connection with any matter arising during the investigation of the allegation.

(7B) If the Investigating Committee issues a warning or gives advice under paragraph (7A), it must include in the notification referred to in paragraph (5)—

(a) details of that warning or advice;

(b) its reasons for issuing the warning or giving the advice;

(c) the period for which any warning will be published by the Council under article 22(9).";

(f) in paragraph (11) for "Health Committee or Conduct and Competence Committee", wherever it appears, substitute "Fitness to Practise Committee".

Amendments to article 26A

5. In article 26A (exercise of Investigating Committee functions by the Registrar or officers of the Council)(**6**)—

(a) in paragraph (1) for "paragraphs (1), (2)(b) to (d), (5), (6) and (8)" substitute "paragraphs (1), (2)(b) to (d), (5), (5A), (6), (7A) and (8)";

(**5**) Article 26 was amended by S.I. 2014/3272, articles 2 and 5.
(**6**) Article 26A was inserted by S.I. 2014/3272, articles 2 and 6.