Draft Order in Council laid before Parliament under section 62(9) of the Health Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No. 000

HEALTH CARE AND ASSOCIATED PROFESSIONS

NURSES AND MIDWIVES

The Nursing and Midwifery (Amendment) Order 2008

Made - - - - 2008

Coming into force in accordance with article 1(2) to (5)

At the Court at Buckingham Palace, the day of 2008

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) 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 was laid before Parliament.

A draft of this Order in Council has been 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 has been amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17) ("the 2002 Act"), section 26(9), and by S.I. 2002/253 and 254; subsection (4) of 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 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, and the Health Act 2006 (c.28), section 33, and by S.I. 2002/254.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Nursing and Midwifery (Amendment) Order 2008.

(2) The following provisions shall come into force on the day after the day on which this Order is made—

(a) this article and articles 3 to 5; and

(b) in Schedule 1, paragraphs 1(a), 2, 3, 6(a), 7, 9, 10(1) in so far as it relates to paragraph 10(4)(b) and (c), 10(4)(b) and (c) and 12, and article 2(1) in so far as it relates to those paragraphs.

(3) Except as provided for by paragraph (2), the provisions of this Order which confer, amend or substitute powers enabling rules or orders to be made shall come into force on the making of this Order, but for the purpose only of the exercise of those powers.

(4) The following provisions shall come into force on the coming into force of section 44(1) of the Safeguarding Vulnerable Groups Act 2006(**2**) (registers: power to apply for vetting information)—

(a) paragraph 4 of Schedule 1, and article 2(1) in so far as it relates to that paragraph; and

(b) paragraph 1 of Schedule 2, and article 2(2) in so far as it relates to that paragraph.

(5) Except as provided for by paragraphs (2) to (4), the provisions of this Order shall come into force on such day as the Secretary of State may specify in writing.

(6) Different days may be specified under paragraph (5) for different purposes.

(7) The Secretary of State shall notify any day specified and, if different purposes are specified, the purposes for which it is specified, in the London, Edinburgh and Belfast Gazettes at least one week before that day.

(8) In this Order, "the principal Order" means the Nursing and Midwifery Order 2001(**3**).

Amendment and revocation of nursing and midwifery legislation

2.—(1) The amendments to the principal Order set out in Schedule 1 shall have effect.

(2) The amendment to and revocations of subordinate legislation under the principal Order set out in Schedule 2 shall have effect.

Cancellation of elections

3. Elections shall not be held in respect of the vacancies which, but for the amendments to the principal Order set out in paragraph 12(1)(c) of Schedule 1, would have arisen in respect of the registrant and alternate members who were due to vacate office at the end of 31st July 2008 and 31st July 2009.

Transitional, transitory or saving provisions orders

4.—(1) 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.

(2) The power to make an order under paragraph (1) 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;

(**2**) 2006 c.47.
(**3**) S.I. 2002/253.

(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.

(3) The power to make an order under paragraph (1) shall be exercisable by statutory instrument.

(4) For the purposes of section 1 of the Statutory Instruments Act 1946(**4**) (definition of "Statutory Instrument"), paragraph (3) shall have effect as if contained in an Act of Parliament.

Privy Council procedures etc.

5.—(1) The power of the Privy Council to make an order under article 4(1) may be exercised by any two or more members of the Privy Council.

(2) The making of an order under article 4(1) shall be sufficiently signified by an instrument signed by the Clerk of the Privy Council.

(3) 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

(**4**) 1946 c.36; section 1 has been amended by the Government of Wales Act 1998 (c.38), Schedule 12, paragraph 2.

SCHEDULE 1 Article 2(1)

Amendments to the Nursing and Midwifery Order 2001

Amendment of article 3

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

(a) for paragraph (5) substitute the following paragraphs—

"(5) In exercising its functions, the Council shall—

(a) have proper regard for—

(i) the interests of persons using or needing the services of registrants in the United Kingdom, and

(ii) any differing interests of different categories of registrants;

(b) co-operate, in so far as is appropriate and reasonably practicable, with public bodies or other persons concerned with—

(i) the employment (whether or not under a contract of service) of registrants,

(ii) the education or training of nurses, midwives or other health care professionals,

(iii) the regulation of, or the co-ordination of the regulation of, other health or social care professionals,

(iv) the regulation of health services, and

(v) the provision, supervision or management of health services.

(5A) In carrying out its duty to co-operate under paragraph (5)(b), the Council shall have regard to any differing considerations relating to practising as a nurse or midwife which apply in England, Scotland, Wales or Northern Ireland.

(5B) In paragraph (5), "health care professionals" means persons regulated by a body, other than the Council, mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(**5**) (which relates to the Council for the Regulation of Health Care Professionals).";

(b) omit paragraph (7);

(c) before paragraph (8) insert the following paragraph—

"(7A) The Council shall be constituted as provided for by order of the Privy Council, subject to Part 1 of Schedule 1."; and

(d) in paragraph (8), after "of the Council" insert "and orders of the Privy Council under paragraph (7A)".

New article 6A

2. After article 6, insert the following article—

(**5**) 2002 c.17.

"**Temporary annotations with regard to emergencies involving loss of human life or human illness etc.**

6A.—(1) If the Secretary of State advises the Registrar that an emergency has occurred, is occurring or is about to occur and that action should be considered under this article, the Registrar may make—

(a) an annotation in the register against the name of a registrant to indicate that the registrant is qualified to order drugs, medicines and appliances in a specified capacity, notwithstanding that the registrant is not so qualified, if the Registrar considers that the registrant is a fit, proper and suitably experienced person to order drugs, medicines and appliances in that capacity with regard to the emergency;

(b) annotations in the register against the names of registrants comprising a specified group of registrants to indicate that they are qualified to order drugs, medicines and appliances in a specified capacity, notwithstanding that they are not so qualified, if the Registrar considers that the group is comprised of registrants who are of a type who may reasonably be considered fit, proper and suitably experienced persons to order drugs, medicines and appliances in that capacity with regard to the emergency.

(2) The Registrar may make the annotation in such a way so as to distinguish registrants against whose names in the register annotations are made by virtue of paragraph (1) from registrants in respect of whom the annotation is made otherwise than by virtue of paragraph (1).

(3) Annotations made by virtue of paragraph (1)—

(a) must be removed by the Registrar if the Secretary of State advises the Registrar that the circumstances that led the Secretary of State to advise the Registrar as mentioned in paragraph (1) no longer exist;

(b) may be removed by the Registrar at any time, including where the Registrar has grounds for suspecting that the registrant's fitness to order drugs, medicines or appliances may be impaired.

(4) A registrant against whose name in the register an annotation is made by virtue of paragraph (1)(b) as one of a specified group may have that annotation removed without the Registrar removing the equivalent annotations against the names of the other members of the group or by virtue of a decision to remove the annotations made by virtue of paragraph (1)(b) against the names of all the members of the group.

(5) For the purposes of this article, "emergency" means an emergency of the type described in section 19(1)(a) of the Civil Contingencies Act 2004(**6**) (meaning of "emergency"), read with subsection (2) of that section."

Amendment of article 7

3. In article 7(**7**) (the register: supplemental provisions), after paragraph (4) insert the following paragraph—

"(5) Rules may not be made under this article in connection with annotations made under article 6A."

(**6**) 2004 c.36.
(**7**) Amended by S.I. 2007/3101.