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STATUTORY INSTRUMENTS

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**2002 No. 253**

The Nursing and Midwifery Order 2001

**PART V**

**FITNESS TO PRACTISE**

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**Modifications etc. (not altering text)**

- C1** Pt. V applied (with modifications) (1.8.2004) by [The Nursing and Midwifery Order 2001 \(Transitional Provisions\) Order of Council 2004 \(S.I. 2004/1762\)](#), arts. 1(1), **7(4)(b)**
- C2** Pt. V applied (with modifications) (1.8.2004) by [The Nursing and Midwifery Order 2001 \(Transitional Provisions\) Order of Council 2004 \(S.I. 2004/1762\)](#), arts. 1(1), **6(b)**

**Council's functions in respect of fitness to practise, ethics and other matters**

**21.—(1)** The Council shall—

- (a) establish and keep under review the standards of conduct, performance and ethics expected of registrants and prospective registrants and give them such guidance on these matters as it sees fit; and
- (b) establish and keep under review effective arrangements to protect the public from persons whose fitness to practise is impaired.

(2) The Council may also from time to time give guidance to registrants, employers and such other persons as it thinks appropriate in respect of standards for the education and training, supervision and performance of persons who provide services in connection with those provided by registrants.

(3) Before establishing any standards or arrangements mentioned in paragraph (1), the Council shall consult the Conduct and Competence Committee in addition to the persons mentioned in article 3(14).

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**Commencement Information**

- I1** [Art. 21\(3\)](#) in force at 7.7.2003 for specified purposes as notified in the London Gazette (Issue 56984, published 27.6.2003), see [art. 1\(2\)\(3\)](#)
- I2** [Art. 21](#) in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

**Allegations**

**22.—(1)** This article applies where any allegation is made against a registrant to the effect that—

- (a) his fitness to practise is impaired by reason of—
- (i) misconduct,
- (ii) lack of competence,

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- (iii) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence,
- (iv) his physical or mental health, or
- (v) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise is impaired, or a determination by a licensing body elsewhere to the same effect;

(b) an entry in the register relating to him has been fraudulently procured or incorrectly made.

(2) For the purposes of this article references to a conviction include a conviction by a Court Martial.

(3) This article is not prevented from applying because the allegation is based on a matter alleged to have occurred outside the United Kingdom or at a time when the person against whom the allegation is made was not registered.

(4) Rules may provide that where a Practice Committee finds that a person has failed to comply with the standards mentioned in article 21(1), such failure shall not be taken of itself to establish that his fitness to practise is impaired, but may be taken into account in any proceedings under this Order.

(5) When an allegation is made to the Council or any of its committees, as soon as reasonably practicable after receipt of the allegation in the form required by the Council, the Council shall refer it—

- (a) where it is an allegation of the kind mentioned in paragraph (1)(b), to the Investigating Committee; and
- (b) in any other case—
  - (i) to persons appointed by the Council in accordance with any rules made under article 23, or
  - (ii) to a Practice Committee.

(6) If an allegation is not made under paragraph (1) but it appears to the Council that there should be an investigation into the fitness to practise of a registrant or into his entry in the register it may refer the matter in accordance with paragraph (5) and this Order shall apply as if it were an allegation made under paragraph (1).

(7) Hearings and preliminary meetings of Practice Committees at which the person concerned is entitled to be present or to be represented are to be held in—

- (a) the United Kingdom country in which the registered address of the person concerned is situated; or
- (b) if he is not registered and resides in the United Kingdom, in the country in which he resides; and
- (c) in any other case, in England.

(8) While the registration of a registrant is suspended by virtue of a suspension order or an interim suspension order he shall be treated as not being registered notwithstanding that his name still appears in the register but this does not prevent action being taken in respect of such a person as appropriate under articles 22 to 32 of this Order.

(9) The Council shall publish as soon as reasonably practicable particulars of any orders and decisions made by a Practice Committee under article 26(7) or (11), 29(5), 30(1), (2), (4), (6), (7) or (8) or 33 and of its reasons for them and of any decision given on appeal.

(10) The Council may disclose to any person any information relating to a person's fitness to practise which it considers it to be in the public interest to disclose.

(11) In this Part “the person concerned” means the person against whom an allegation has been made.

#### Commencement Information

- I3** Art. 22(4) in force at 5.3.2004 for specified purposes as notified in the London Gazette (Issue 57218, published 27.2.2004), see art. 1(2)(3)
- I4** Art. 22 in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see art. 1(2)(3)

#### Screeners

**23.**—(1) The Council may by rules provide for the appointment of persons, to be known as Screeners, to whom allegations may be referred in accordance with this Order or rules made under it.

- (2) A person shall not be prevented from being a Screener merely because he is—
- (a) a member of the Council or any of its committees, other than a Practice Committee; or
  - (b) a visitor.
- (3) No person may be a Screener if he is—
- (a) a member of a Practice Committee;
  - (b) a legal, medical or registrant assessor; or
  - (c) employed by the Council.

(4) No person may act as a Screener in respect of a particular case if he has been involved in that case in any other capacity.

#### Commencement Information

- I5** Art. 23(1) in force at 5.3.2004 for specified purposes as notified in the London Gazette (Issue 57218, published 27.2.2004), see art. 1(2)(3)
- I6** Art. 23 in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see art. 1(2)(3)

#### Screeners: supplementary provisions

**24.**—(1) Any rules made under article 23 shall contain the provisions mentioned in paragraphs (2) and (3).

- (2) The rules made under article 23(1) shall provide that—
- (a) any matter referred to the Screeners shall be considered by a panel of at least two Screeners;
  - (b) the panel shall include at least one lay person and one registrant selected with due regard to the professional field of the person concerned and to the matter under consideration;
  - (c) the number of registrants on any panel may not exceed the number of lay persons.
- (3) Any such rules shall give Screeners the functions—
- (a) of considering the allegation and establishing whether, in their opinion, power is given by this Order to deal with it if it proves to be well founded;
  - (b) if in their opinion such power is given, of referring the matter together with a report of the result of their consideration to such Practice Committee as they see fit;
  - (c) if in their opinion such power is not given, of closing the case, provided that—

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- (i) if there are two Screeners, the lay person agrees, or
  - (ii) if there are more than two Screeners, it is the decision of the majority,
- and if head (i) or (ii), as the case may be, is not satisfied, of referring the matter in accordance with sub-paragraph (b);
- (d) where requested to do so by any Practice Committee, of mediating in any case with the aim of dealing with the allegation without it being necessary for the case to reach the stage at which the Health Committee or Conduct and Competence Committee, as the case may be, would arrange a hearing in accordance with article 32(2)(f);
  - (e) in the event that mediation fails, of referring the matter back to the Practice Committee which referred it to the Screeners.
- (4) The Council may make such provision in respect of Screeners as it may determine—
- (a) for the payment of fees and allowances, including the payment of allowances to employers of Screeners for the purpose of enabling Screeners to perform their functions under this Order; and
  - (b) for the reimbursement of such expenses as the Screeners may reasonably have incurred in the course of carrying out their functions under this Order.
- (5) If the Screeners decide that power is not given by this Order to deal with the allegation the Registrar shall inform the person making the allegation giving reasons.

#### Commencement Information

- I7** [Art. 24\(1\)\(3\)](#) in force at 5.3.2004 for specified purposes as notified in the London Gazette (Issue 57218, published 27.2.2004), see [art. 1\(2\)\(3\)](#)
- I8** [Art. 24](#) in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

#### Council's power to require disclosure of information

**25.**—(1) For the purpose of assisting them in carrying out functions in respect of fitness to practise, a person authorised by a Practice Committee may require any person (other than the person concerned) who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document.

(2) As soon as is reasonably practicable after a decision has been made under article 22(5) or (6) to refer an allegation or other matter to a Practice Committee, the Council shall require, from the person concerned, details of—

- (a) any person—
  - (i) by whom he is employed to provide services in, or in relation to, nursing or midwifery; or
  - (ii) with whom he has an arrangement to provide such services; and
- (b) any body by which he is authorised to practise, in the United Kingdom or elsewhere, a health or social care profession which is regulated under any enactment.

(3) Nothing in this article shall require or permit any disclosure of information which is prohibited by or under any other enactment.

(4) But where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the person referred to in paragraph (1) may, in

exercising his functions under that paragraph, require that the information be put into a form which is not capable of identifying that individual.

(5) Paragraph (1) shall not apply in relation to the supplying of information or the production of any document which a person could not be compelled to supply or produce in civil proceedings in any court to which an appeal would lie from a decision of the Practice Committee in respect of the allegation with which it is dealing.

(6) For the purposes of paragraph (5), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.

#### **Commencement Information**

**I9** [Art. 25](#) in force at 1.8.2004 as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

#### **The Investigating Committee**

**26.**—(1) The Investigating Committee shall investigate any allegation which is referred to it in accordance with article 22 or 24.

(2) Where an allegation is referred to the Investigating Committee, it shall—

- (a) notify without delay the person concerned of the allegation and invite him to submit written representations within a prescribed period;
- (b) where it sees fit, notify the person making the allegation of the representations mentioned in sub-paragraph (a) and invite him to deal within a specified period with any points raised by the Committee in respect of those representations;
- (c) take such other steps as are reasonably practicable to obtain as much information as possible about the case;
- (d) consider, in the light of the information which it has been able to obtain and any representations or other observations made to it under sub-paragraph (a) or (b), whether in its opinion—
  - (i) in respect of an allegation of the kind mentioned in article 22(1)(a), there is a case to answer, and
  - (ii) in respect of an allegation of the kind mentioned in article 22(1)(b), whether the entry concerned has been fraudulently procured or incorrectly made.

(3) The Council shall by rules make provision as to the procedure to be followed by the Investigating Committee in any investigation carried out by it under this article.

(4) In the case of an allegation of the kind mentioned in article 22(1)(b) the rules shall, in particular, make similar provision to that made by virtue of article 32(2)(b), (f), (g), (h), (i), (j), (m), (n), (o) and (p) and may provide for the Registrar to be made a party to the proceedings.

(5) When the Investigating Committee reaches a decision under paragraph (2) as to whether—

- (a) there is a case to answer; or
- (b) an entry in the register has been fraudulently procured or incorrectly made,

it shall notify in writing both the person concerned and the person making the allegation, if any, of its decision, giving its reasons.

(6) Where the Investigating Committee concludes that there is a case to answer under paragraph (2)(d)(i), it shall—

- (a) undertake mediation; or

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(b) refer the case—

- (i) to Screeners for them to undertake mediation,
- (ii) to the Health Committee in the case of an allegation of a kind mentioned in article 22(1)(a)(iv), or
- (iii) to the Conduct and Competence Committee, in the case of any other allegation.

(7) In the case of an allegation of a kind mentioned in article 22(1)(b), if the Investigating Committee is satisfied that an entry in the register has been fraudulently procured or incorrectly made, it may make an order that the Registrar remove or amend the entry and shall notify the person concerned of his right of appeal under article 38.

(8) If the Investigating Committee concludes that there is no case to answer or that the relevant entry was not fraudulently procured or incorrectly made—

- (a) where requested to do so by the person concerned, it shall make a declaration to that effect, giving its reasons; and
- (b) in any other case and with the consent of the person concerned, may make such a declaration.

(9) For the purposes of paragraph (8), the publication of the decision mentioned in paragraph (5) together with the reasons for it may constitute such a declaration.

(10) No order made under paragraph (7) shall have effect—

- (a) before the expiry of the period within which an appeal against the order may be made; or
- (b) where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of.

(11) The Investigating Committee may make an interim order in accordance with article 31 at the same time as making an order under paragraph (7) or at any time before referring a case to the Health Committee or Conduct and Competence Committee under paragraph (6).

(12) The Investigating Committee may review an order made under paragraph (7) if new evidence relevant to the order becomes available after the order has been made and may revoke that order if it considers that it should not have been made.

(13) Where the Investigating Committee makes an order under paragraph (7) or decides not to review such an order under paragraph (12) the person concerned may appeal to the appropriate Court and the provisions of article 38 shall apply to the appeal.

(14) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned.

(15) On an appeal under this article, the Council shall be the respondent.

(16) An entry which has been restored to the register on an application for readmission or restoration being granted may be treated for the purposes of this article as having been fraudulently procured or incorrectly made if any previous entry from which the restored entry is derived was fraudulently procured or incorrectly made.

#### **Commencement Information**

- I10** Art. 26(2)(a)(3)(4) in force at 5.3.2004 for specified purposes as notified in the London Gazette (Issue 57218, published 27.2.2004), see **art. 1(2)(3)**
- I11** Art. 26 in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see **art. 1(2)(3)**

## The Conduct and Competence Committee

27. The Conduct and Competence Committee shall—

- (a) having consulted the other Practice Committees as it thinks appropriate, advise the Council (whether on the Council's request or otherwise) on—
  - (i) the performance of the Council's functions in relation to standards of conduct, performance and ethics expected of registrants and prospective registrants,
  - (ii) requirements as to good character and good health to be met by registrants and prospective registrants, and
  - (iii) the protection of the public from people whose fitness to practise is impaired; and
- (b) consider—
  - (i) any allegation referred to it by the Council, Screeners, the Investigating Committee or the Health Committee, and
  - (ii) any application for restoration referred to it by the Registrar.

### Commencement Information

- I12** [Art. 27\(a\)](#) in force at 22.1.2003 as notified in the London Gazette (Issue 56816, published 10.1.2003), see [art. 1\(2\)\(3\)](#)
- I13** [Art. 27](#) in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

## The Health Committee

28. The Health Committee shall consider—

- (a) any allegation referred to it by the Council, Screeners, the Investigating Committee or the Conduct and Competence Committee; and
- (b) any application for restoration referred to it by the Registrar.

### Commencement Information

- I14** [Art. 28](#) in force at 1.8.2004 as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

## Orders of the Health Committee and the Conduct and Competence Committee

29.—(1) If, having considered an allegation, the Health Committee or the Conduct and Competence Committee, as the case may be, concludes that it is not well founded—

- (a) where requested to do so by the person concerned, it shall make a declaration to that effect giving its reasons; and
  - (b) in any other case and with the consent of the person concerned, may make such a declaration.
- (2) For the purposes of paragraph (1) the publication of the decision mentioned in article 32(2) (k) and the reasons for it may constitute such a declaration.
- (3) If, having considered an allegation, the Health Committee or the Conduct and Competence Committee, as the case may be, concludes that it is well founded, it shall proceed in accordance with the remaining provisions of this article.

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- (4) The Committee may—
- (a) refer the matter to Screeners for mediation or itself undertake mediation, or
  - (b) decide that it is not appropriate to take any further action.
- (5) Where a case does not fall within paragraph (4), the Committee shall—
- (a) make an order directing the Registrar to strike the person concerned off the register (a “striking-off order”);
  - (b) make an order directing the Registrar to suspend the registration of the person concerned for a specified period which shall not exceed one year (a “suspension order”);
  - (c) make an order imposing conditions with which the person concerned must comply for a specified period which shall not exceed three years (a “conditions of practice order”); or
  - (d) caution the person concerned and make an order directing the Registrar to annotate the register accordingly for a specified period which shall be not less than one year and not more than five years (a “caution order”).
- (6) A striking-off order may not be made in respect of an allegation of the kind mentioned in article 22(1)(a)(ii) or (iv) unless the person concerned has been continuously suspended, or subject to a conditions of practice order, for a period of no less than two years immediately preceding the date of the decision of the Committee to make such an order.
- (7) The Committee may specify in an order made under paragraph (5) a period within which an application to vary, replace or revoke the order may not be made, which—
- (a) in the case of a striking-off order, except where new evidence relevant to the order becomes available, shall be expressed in terms of article 33(2);
  - (b) in the case of a suspension order shall not exceed 10 months; and
  - (c) in the case of a conditions of practice order shall not exceed two years.
- (8) The Committee shall, when it makes, varies, replaces or revokes an order under this article or article 30 or when an order it has made ceases to have effect, give the Registrar such directions as are appropriate as to annotation of the register to record the decision made or, as the case may be, the expiry of the order;
- (9) The person concerned may appeal to the appropriate court against an order made under paragraph (5) and article 38 shall apply to the appeal.
- (10) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned.
- (11) No order mentioned in paragraph (9) shall have effect—
- (a) before the expiry of the period within which an appeal against the order may be made; or
  - (b) where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of.

**Modifications etc. (not altering text)**

- C3** Art. 29 applied (1.8.2004) by [The Nursing and Midwifery Order 2001 \(Transitional Provisions\) Order of Council 2004 \(S.I. 2004/1762\)](#), arts. 1(1), **9(5)**, 11(3)(b)
- C4** Art. 29(4)(5) applied (1.8.2004) by [The Nursing and Midwifery Order 2001 \(Transitional Provisions\) Order of Council 2004 \(S.I. 2004/1762\)](#), arts. 1(1), **6(b)**
- C5** Art. 29(4)(5) applied (1.8.2004) by [The Nursing and Midwifery Order 2001 \(Transitional Provisions\) Order of Council 2004 \(S.I. 2004/1762\)](#), arts. 1(1), **7(4)(b)**



### Commencement Information

**I15** Art. 29 in force at 1.8.2004 as notified in the London Gazette (Issue 57361, published 21.7.2004), see art. 1(2)(3)

### Review of orders by the Health Committee and the Conduct and Competence Committee

**30.**—(1) Before the expiry of an order made under article 29(5)(b) or (c) by the Conduct and Competence Committee or the Health Committee, the Committee which made the order or, if the matter has been referred to the other Committee, that Committee, shall review the order and may, subject to paragraph (5)—

- (a) with effect from the date on which the order would, but for this provision, have expired, extend, or further extend the period for which the order has effect;
- (b) with effect from the expiry of the order, make an order which it could have made at the time it made the order being reviewed;
- (c) with effect from the expiry of a suspension order, make a conditions of practice order with which the practitioner must comply if he resumes the practice of his registered profession after the end of his period of suspension.

(2) Subject to paragraph (1), on the application of the person concerned or otherwise, at any time an order made by the Conduct and Competence Committee or the Health Committee under article 29(5)(b) to (d) is in force, the Committee which made the order or, if the matter has been referred to the other Committee, that Committee, may review the order and may take any of the steps referred to in paragraph (4).

(3) Paragraphs (1) and (2) apply to an order made on a review under paragraph (1) or (2) as they do to an order made under article 29(5)(b) to (d).

(4) The steps mentioned in paragraph (2) are for the Committee to—

- (a) confirm the order;
- (b) extend, or further extend, the period for which the order has effect;
- (c) reduce the period for which the order has effect, but in the case of a caution order not so that it has effect for less than one year beginning with the date on which the order was made under article 29(5)(d);
- (d) replace the order with any order which it could have made at the time it made the order being reviewed and the replacement order shall have effect for the remainder of the term of the order it replaces;
- (e) subject to paragraph (6), revoke the order or revoke any condition imposed by the order;
- (f) vary any condition imposed by the order.

(5) The Committee may not extend a conditions of practice order by more than three years at a time or a suspension order by more than one year at a time.

(6) The Committee may make the revocation of a suspension order subject to the applicant's satisfying such requirements as to additional education or training and experience as the Council has established under article 19(3) and which apply to him.

(7) Where new evidence relevant to a striking-off order becomes available after the making of the order, the Committee which made the order or, where appropriate, the Committee mentioned in article 33(3)(b) may review it and article 33(4) to (8) shall apply as if it were an application for restoration made under that article.

(8) A striking-off order, conditions of practice order, suspension order or caution order which is in force by virtue of a decision made on appeal to the appropriate court may be reviewed in accordance

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with paragraph (2) or (7), as the case may be, by the Committee which made the order appealed from and any of the steps mentioned in paragraph (4) may be taken.

(9) Before exercising its powers under paragraph (1), (2), (4), (6), (7) or (8) a Practice Committee shall give the person concerned the opportunity to appear before it and to argue his case in accordance with rules made by the Council which shall include the matters referred to in article 32(2)(b), (g), (i), (j), (k), (m), (n) and (o).

(10) The person concerned may appeal to the appropriate court against an order or decision made under paragraph (1), (2), (4), (6), (7) or (8).

(11) Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned.

(12) On an appeal under this article the Council shall be the respondent.

#### **Modifications etc. (not altering text)**

**C6** [Art. 30](#) applied (1.8.2004) by [The Nursing and Midwifery Order 2001 \(Transitional Provisions\) Order of Council 2004 \(S.I. 2004/1762\)](#), arts. 1(1), **9(5)**, 10(2), 11(3)(b)

#### **Commencement Information**

**I16** [Art. 30\(9\)](#) in force at 5.3.2004 for specified purposes as notified in the London Gazette (Issue 57218, published 27.2.2004), see [art. 1\(2\)\(3\)](#)

**I17** [Art. 30](#) in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

### **Interim Orders by a Practice Committee**

**31.**—(1) This article applies where—

- (a) an allegation against a registered professional has been referred to the Investigating Committee, Conduct and Competence Committee or to the Health Committee but—
  - (i) that Committee has not reached a decision on the matter; or
  - (ii) in a case to which article 26(6) applies, where the Investigating Committee refers the matter to another Practice Committee;
- (b) the Investigating Committee makes an order under article 26(7), or
- (c) the Conduct and Competence Committee or the Health Committee makes an order under article 29(5)(a) to (c).

(2) Subject to paragraph (4), if the Committee is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, for the registration of that person to be suspended or to be made subject to conditions, it may—

- (a) make an order directing the Registrar to suspend the person’s registration (an “interim suspension order”), or
- (b) make an order imposing conditions with which the person must comply (an “interim conditions of practice order”),

during such period not exceeding eighteen months as may be specified in the order.

(3) In a case coming within paragraph (1)(b) or (c), such an order may be made at the same time as an order made under article 26(7) or 29(5)(a) to (c).

(4) The Investigating Committee shall not make an order in any case after it has referred the allegation in question to another Practice Committee.

(5) Subject to paragraphs (6), (7), (9) and (12) the order mentioned in paragraph (2) shall cease to have effect—

- (a) in a case falling within paragraph (1)(a) when the Committee reaches a decision in respect of the allegation in question; and
- (b) in a case falling within paragraph (1)(b) or (c)—
  - (i) if there is no appeal against the order mentioned in that paragraph, when the period for appealing expires, or
  - (ii) if there is an appeal against that order, when the appeal is withdrawn or otherwise finally disposed of.

(6) The Committee which made the order or, if the matter has been referred to another Practice Committee, that Committee, shall, in a case coming within paragraph (1)(a), review an order made under paragraph (2)—

- (a) within the period of six months beginning on the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it before the end of the period of three months beginning on the date of the decision of the immediately preceding review;
- (b) where new evidence relevant to the order has become available after the making of the order.

(7) Where an interim suspension order or an interim conditions of practice order has been made under this article (including this paragraph) the Practice Committee which made the order or, where the case has been referred to another Practice Committee, that Committee, may, subject to paragraph (15)—

- (a) revoke the order or revoke any condition imposed by the order;
- (b) confirm the order;
- (c) vary any condition imposed by the order;
- (d) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim conditions of practice order with an interim suspension order having effect for the remainder of the term of the former;
- (e) if satisfied that the public interest, including the protection of members of the public, or the interests of the person concerned would be adequately served by an interim conditions of practice order, replace an interim suspension order with an interim conditions of practice order having effect for the remainder of the term of the former.

(8) The Council may apply to the court for an order made by a Practice Committee under paragraph (2) or (7) to be extended, and may apply again for further extensions.

(9) On such an application the court may extend (or further extend) for up to 12 months the period for which the order has effect.

(10) In this article, references to an interim suspension order or interim conditions of practice order include such an order as so extended.

(11) For the purposes of paragraph (6) the first review after the court's extension of an order made by a Practice Committee or after a replacement order made by a Practice Committee under paragraph (7)(d) or (e) shall take place—

- (a) if the order (or the order which has been replaced) had not been reviewed at all under paragraph (6), within the period of six months beginning on the date on which the court ordered the extension or on which a replacement order under paragraph (7)(d) or (e) was made; and

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*Changes to legislation: There are currently no known outstanding effects for the The Nursing and Midwifery Order 2001, PART V. (See end of Document for details)*

(b) if it had been reviewed under the provision, within the period of three months beginning on that date.

(12) Where an order has effect under paragraph (2), (7) or (9), the court may, on an application being made by the person concerned—

- (a) in the case of an interim suspension order, terminate the suspension;
- (b) in the case of an interim conditions of practice order, revoke or vary any condition imposed by the order;
- (c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when it was made (or in the order extending it),

and the decision of the court under any application under this paragraph shall be final.

(13) In this article “the court” has the same meaning as “the appropriate court” in article 38.

(14) The Committee shall notify the person concerned giving its reasons where it makes an order under paragraph (2) or any decision under paragraph (7) and shall notify him of his right to apply to the court.

(15) No order under paragraph (2) or (7)(c) to (e), or, in a case where paragraph (5)(b) applies, under paragraph (7)(b), shall be made by any Practice Committee in respect of any person unless he has been afforded an opportunity of appearing before the Committee and being heard on the question whether such an order should be made in his case.

(16) At any such hearing, the person concerned shall be entitled to be represented whether by a legally qualified person or otherwise.

(17) The Committee shall when it makes, varies, replaces or revokes an order under this article or when an order it has made ceases to have effect, give the Registrar such directions as are appropriate as to annotation of the register to record the decision made or, as the case may be, the expiry of the order.

#### **Commencement Information**

**118** [Art. 31](#) in force at 1.8.2004 as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

#### **Investigation of allegations: procedural rules**

**32.**—(1) The Council shall make rules as to the procedure to be followed by the Health Committee and the Conduct and Competence Committee in considering any allegation and before making an order under article 29(5).

(2) The rules shall, in particular, make provision—

- (a) empowering each Committee to refer to the other any allegation which it considers would be better dealt with by that other Committee;
- (b) empowering each Committee, before it holds any hearing to which sub-paragraph (f) applies, where it considers that it would assist it in performing its functions, to hold a preliminary meeting in private attended by the parties and their representatives and any other person it thinks appropriate;
- (c) requiring the person concerned to be given notice of the allegation without delay;
- (d) giving the person concerned an opportunity to submit written representations within a prescribed period;

- (e) for the Committee, where it sees fit, to notify the person making the allegation of the representations provided under sub-paragraph (d) and to invite him to deal within a prescribed period with any points raised by the Committee in respect of those representations;
- (f) giving the person concerned an opportunity to put his case at a hearing if—
  - (i) before the end of the prescribed period, he asks for a hearing; or
  - (ii) the Committee considers that a hearing is desirable;
- (g) entitling the person concerned to be represented whether by a legally qualified person or otherwise at any such hearing;
- (h) where an allegation is referred by the Council, Screeners or the Investigating Committee to the Health Committee or the Conduct and Competence Committee, for the Council to give notice of that referral to specified persons who shall include the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland, and, where they are known, to any person referred to in article 25 paragraph (2)(a) or (b);
- (i) giving any person, other than the person concerned, who, in the opinion of the relevant Committee, taking account of any criteria included in the rules, has an interest in proceedings before it, the opportunity to submit written representations;
- (j) requiring a hearing before a Committee to be held in public except in so far as may be provided by the rules;
- (k) requiring the Committee to notify the person concerned of its decision, its reasons for reaching that decision and of his right of appeal;
- (l) requiring the person by whom the allegation was made to be notified by the Committee of its decision and of its reasons for reaching that decision;
- (m) empowering the Committee to require persons (other than the person concerned) to attend and give evidence or to produce documents;
- (n) about the admissibility of evidence;
- (o) enabling the Committee to administer oaths;
- (p) where the person concerned has been convicted of a criminal offence, for the conviction to be proved by the production of a certified copy of the certificate of conviction, or, in Scotland, an extract conviction, relating to the offence and for the findings of fact upon which the conviction is based to be admissible as proof of those facts.

(3) Each stage in proceedings under Part V and article 37 shall be dealt with expeditiously and the Committee concerned may give directions as to the conduct of the case and for the consequences of failure to comply with such directions (which may include the making of an order or refusal of an application if the failure to comply was without reasonable excuse).

(4) The Council may provide in the rules for the Chairman of the Committee to hold the meeting referred to in paragraph (2)(b) or to give the directions mentioned in paragraph (3) and, subject to the agreement of the parties to his acting on behalf of the Committee, to take such action as the Committee would be competent to take at such a meeting.

(5) In this article “parties” means the Council and the person concerned.

#### **Commencement Information**

**I19** [Art. 32](#) in force at 5.3.2004 for specified purposes as notified in the London Gazette (Issue 57218, published 27.2.2004), see [art. 1\(2\)\(3\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the The Nursing and Midwifery Order 2001, PART V. (See end of Document for details)*

**120** Art. 32 in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see art. 1(2)(3)

### **Restoration to the register of persons who have been struck off**

**33.**—(1) Where a person who has been struck off the register by virtue of an order made by a Practice Committee or the court wishes to be restored to the register, he shall make an application for restoration to the Registrar.

(2) Subject to article 30(7), no such application may be made—

- (a) before the end of the period of five years beginning with the date on which the order under article 29, 30 or 38 took effect; or
- (b) in any period of twelve months in which an application for restoration to the register has already been made by the person who has been struck off.

(3) Any application for restoration shall be referred by the Registrar for determination to—

- (a) the Committee which made the striking-off order; or
- (b) where any previous applications have been made in connection with the same striking-off order, the Committee which last gave a decision on such an application.

(4) Before making any decision on the application the Committee shall give the applicant an opportunity to appear before it and to argue his case in accordance with rules made by the Council which shall include the matters referred to in article 32(2)(b), (g), (i), (j), (k), (m), (n) and (o).

(5) The Committee shall not grant an application for restoration unless it is satisfied, on such evidence as it may require, that the applicant not only satisfies the requirements of article 9(2)(a) and (b) but, having regard in particular to the circumstances which led to the making of the order under article 29, 30 or 38, is also a fit and proper person to practise the relevant profession.

(6) The Committee may make the granting of an application subject to the applicant satisfying such requirements as to additional education or training and experience as the Council has specified under article 19(3) and which apply to him.

(7) On granting an application for restoration, the Committee—

- (a) shall direct the Registrar to register the applicant in the relevant part of the register on his satisfying any requirements imposed under paragraph (6) and on payment of the prescribed fee; and
- (b) may make a conditions of practice order with respect to him.

(8) The provisions of article 29 shall have effect in relation to a conditions of practice order made under paragraph (7) as they have effect in relation to a conditions of practice order made under that article and article 30 shall apply as if the order made under paragraph (7) were an order made under article 29.

(9) If, while a striking-off order is in force, a second or subsequent application for restoration to the register, made by the person who has been struck off, is unsuccessful, the Committee which determined that application may direct that that person's right to make any further such applications shall be suspended indefinitely.

(10) A person in respect of whom a direction is made under paragraph (9) may, after the expiration of three years from the date on which the direction was made, apply to the Registrar for that direction to be reviewed and, thereafter, may make further applications for review but no such application may be made before the expiration of three years from the date of the most recent review decision.

(11) The Registrar shall refer an application made under paragraph (10) to the Committee which made the direction under paragraph (9).

(12) A person whose application under paragraph (10) or whose application for restoration is refused or made subject to his satisfying requirements under paragraph (6) may appeal to the appropriate Court and article 38 shall apply to that appeal.

(13) The appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the decision rejecting the application, or granting it but imposing conditions under paragraph (6), is served on the applicant.

#### **Modifications etc. (not altering text)**

- C7** Art. 33 applied (with modifications) (1.8.2004) by [The Nursing and Midwifery Order 2001 \(Transitional Provisions\) Order of Council 2004 \(S.I. 2004/1762\)](#), arts. 1(1), [8\(2\)\(c\)\(3\)](#)
- C8** Art. 33(9)-(11) applied (with modifications) (1.8.2004) by [The Nursing and Midwifery Order 2001 \(Transitional Provisions\) Order of Council 2004 \(S.I. 2004/1762\)](#), arts. 1(1), [9\(6\)](#)

#### **Commencement Information**

- I21** Art. 33(4)(7)(a) in force at 5.3.2004 for specified purposes as notified in the London Gazette (Issue 57218, published 27.2.2004), see [art. 1\(2\)\(3\)](#)
- I22** Art. 33 in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

### **Legal assessors**

**34.—(1)** The Council shall appoint legal assessors.

(2) Legal assessors shall have the general function of giving advice to—

- (a) Screeners;
- (b) the Practice Committees;
- (c) the Registrar; or
- (d) the Council,

on questions of law arising in connection with any matter which any of those persons is considering under article 9 or 10, Part V or VI.

(3) They may at the request of the person mentioned in paragraph (2) assist in the drafting of any decision required by this Order to be issued under any of the provisions mentioned in that paragraph.

(4) They shall have such other functions as may be conferred on them by rules made by the Council.

(5) To be qualified for appointment as a legal assessor, a person must—

- (a) have a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990); or
- (b) be an advocate or solicitor in Scotland of at least 10 years' standing; or
- (c) be a member of the Bar of Northern Ireland of at least 10 years' standing.

(6) No person shall be a legal assessor if he is—

- (a) a member of the Council;
- (b) a member of a Practice Committee;
- (c) a Screener, visitor or medical or registrant assessor; or
- (d) employed by the Council.

(7) The Council may make such provision in respect of legal assessors as it may determine—

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*Changes to legislation: There are currently no known outstanding effects for the The Nursing and Midwifery Order 2001, PART V. (See end of Document for details)*

- (a) for the payment of fees and allowances, including the payment of allowances to employers of legal assessors for the purposes of enabling legal assessors to perform functions under this article;
- (b) for the reimbursement of such expenses as the legal assessors may reasonably have incurred in the course of carrying out their functions under this Order.

#### Commencement Information

- I23** [Art. 34\(4\)](#) in force at 5.3.2004 for specified purposes as notified in the London Gazette (Issue 57218, published 27.2.2004), see [art. 1\(2\)\(3\)](#)
- I24** [Art. 34](#) in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

#### Medical assessors

- 35.**—(1) The Council may appoint registered medical practitioners to be medical assessors.
- (2) They shall have the general function of giving advice to—
- (a) Screeners;
  - (b) the Practice Committees;
  - (c) the Registrar; or
  - (d) the Council,

on matters within their professional competence in connection with any matter which any of those persons is considering.

- (3) They shall also have such other functions as may be conferred on them by rules made by the Council.
- (4) No person shall be a medical assessor if he is—
- (a) a member of the Council;
  - (b) a member of a Practice Committee;
  - (c) a Screener, visitor or legal or registrant assessor; or
  - (d) employed by the Council.
- (5) The Council may make such provision in respect of medical assessors as it may determine—
- (a) for the payment of fees and allowances, including the payment of allowances to employers of medical assessors for the purposes of enabling medical assessors to perform functions under this article;
  - (b) for the reimbursement of such expenses as the medical assessors may reasonably have incurred in the course of carrying out their functions under this Order.

#### Commencement Information

- I25** [Art. 35\(3\)](#) in force at 5.3.2004 for specified purposes as notified in the London Gazette (Issue 57218, published 27.2.2004), see [art. 1\(2\)\(3\)](#)
- I26** [Art. 35](#) in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)



## **Registrant assessors**

**36.**—(1) The Council may appoint registered professionals as registrant assessors.

(2) They shall have the general function of giving advice to—

- (a) the Council;
- (b) the committees of the Council;
- (c) Screeners; or
- (d) the Registrar,

on matters of professional practice arising in connection with any matter which any of those persons is considering.

(3) The assessors shall also have such other functions as may be conferred on them by rules made by the Council.

(4) No person shall be a registrant assessor if he is—

- (a) a member of the Council;
- (b) a member of a Practice Committee;
- (c) a Screener, visitor or legal or medical assessor; or
- (d) employed by the Council.

(5) The Council may make such provision in respect of registrant assessors as it may determine—

- (a) for the payment of fees and allowances, including the payment of allowances to employers of registrant assessors for the purposes of enabling registrant assessors to perform functions under this article;
- (b) for the reimbursement of such expenses as the registrant assessors may reasonably have incurred in the course of carrying out their functions under this Order.

### **Commencement Information**

**I27** [Art. 36\(3\)](#) in force at 5.3.2004 for specified purposes as notified in the London Gazette (Issue 57218, published 27.2.2004), see [art. 1\(2\)\(3\)](#)

**I28** [Art. 36](#) in force at 1.8.2004 in so far as not already in force as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

**Status:**

Point in time view as at 01/08/2004.

**Changes to legislation:**

There are currently no known outstanding effects for the The Nursing and Midwifery Order 2001, PART V.