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STATUTORY INSTRUMENTS

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**2002 No. 253**

**The Nursing and Midwifery Order 2001**

**PART VI**

**APPEALS**

**Appeals against Registrar's decisions**

**37.**—(1) Where the Registrar under this Order—

- (a) refuses an application for registration, readmission or renewal or for the inclusion of an additional entry;
- [<sup>F1</sup>(aa) refuses to register a person under article 39A (visiting general systems nurses from relevant European States) or Schedule 2A (visiting midwives, and certain visiting nurses, from relevant European States);]
- [<sup>F2</sup>(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) in determining an application under article 9 or 10, imposes additional conditions which must be satisfied before the applicant may be admitted to, readmitted to or retained on the register;
- (c) removes the name of a registrant from the register on the ground that he has breached a condition in respect of continuing professional development or such additional education, training or experience as is mentioned in article 19(3) subject to which his registration has effect; or
- (d) fails, within the terms of article 9(6), to issue a decision,

the person aggrieved may appeal to the Council within the prescribed period.

[<sup>F3</sup>(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).]

(2) No appeal lies to the Council where the person aggrieved has been refused registration solely because he has failed to pay the prescribed fee for registration or has failed to apply in the prescribed form and manner in accordance with article 9 or 10.

[<sup>F4</sup>(2A) No appeal lies to the Council where the Registrar has refused to make, or has removed, an annotation under article 6A.]

[<sup>F5</sup>(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.]

(3) No decision removing a registrant from the register against which an appeal to the Council may be made under paragraph (1) shall have effect before—

- (a) the expiry of the period within which such an appeal may be made; or
- (b) if an appeal is made, the appeal is withdrawn or otherwise finally disposed of.

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(4) Any appeal shall be subject to such rules as the Council shall make for the purpose of regulating appeals under this article.

(5) The rules shall in particular provide—

- (a) for the quorum of the Council considering such an appeal;
- (b) that the members considering the appeal are to include registrants and lay members and that the number of members who are registrants may exceed the number of lay members but may not exceed them by more than one;
- (c) for a panel considering an appeal to consist of no fewer than three members who are to be selected with due regard to the matter under consideration and to include—
  - (i) one registrant registered in the same part of the register as the one in which the person concerned is, or is applying to be, registered;
  - [<sup>F6</sup>(ii) a person who—
    - (aa) is not and never has been a registered nurse or midwife (and article 5(5) does not apply for these purposes),
    - (bb) is not and never has been a registered medical practitioner, and
    - (cc) does not hold qualifications which would entitle them to apply for registration as a registered nurse, a registered midwife or a registered medical practitioner; and]
  - (iii) where the health of the person concerned is in issue, one registered medical practitioner;
- (d) for the person presiding to be a Council member;
- (e) that no one who has been involved in any other capacity in the case to be considered is to be a member of the panel;
- (f) for the decision to be made by a majority vote of the persons present;
- (g) in the event of a tie, for the [<sup>F7</sup>chair] to have an additional casting vote which he shall exercise in the favour of the person concerned;
- (h) for the Registrar to be made a party to the proceedings;
- (i) for similar provision to be made to that in article 32(2)(b), (f), (g), (i), (j), (k), (m), (n) and (o).

(6) Article 32(3) shall apply to appeals under this article as if a reference to the Committee concerned were to the Council.

(7) Article 25, with the exception of paragraph (2), shall apply to appeals under this article as if a reference to a Practice Committee were to the Council.

(8) A hearing provided for by the rules made under paragraph (4) is to be held—

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

(9) Having considered the appeal under this article, the Council may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against;
- (c) substitute for the decision appealed against any other decision that the Registrar could have made; or

(d) remit the case to the Registrar to be disposed of in accordance with its directions.

(10) The person concerned may appeal to a county court or, in Scotland, a sheriff against an unfavourable decision made under paragraph (9)(a), (c) or (d) and article 38 shall apply to that appeal.

(11) Subject to paragraph 12, the Council shall publish as soon as reasonably practicable a decision of the Council made under this article together with the reasons for it.

(12) If the decision is favourable to the person concerned, the Council is not required to publish it unless the person concerned so requests but it may do so with the consent of the person concerned.

#### Textual Amendments

- F1** Art. 37(1)(aa) inserted (3.12.2007) by The European Qualifications (Health and Social Care Professions) Regulations 2007 (S.I. 2007/3101), regs. 1(2), **166**
- F2** Art. 37(1)(ab) inserted (17.7.2014) by The Health Care and Associated Professions (Indemnity Arrangements) Order 2014 (S.I. 2014/1887), art. 1(2), **Sch. 1 para. 28(a)**
- F3** Art. 37(1A) inserted (17.7.2014) by The Health Care and Associated Professions (Indemnity Arrangements) Order 2014 (S.I. 2014/1887), art. 1(2), **Sch. 1 para. 28(b)**
- F4** Art. 37(2A) inserted (12.6.2008) by The Nursing and Midwifery (Amendment) Order 2008 (S.I. 2008/1485), art. 1(2)(b), **Sch. 1 para. 6(a)**
- F5** Art. 37(2B) inserted (17.7.2014) by The Health Care and Associated Professions (Indemnity Arrangements) Order 2014 (S.I. 2014/1887), art. 1(2), **Sch. 1 para. 28(c)**
- F6** Art. 37(5)(c)(ii) substituted (14.5.2009) by The Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (S.I. 2009/1182), art. 1(2)(e), **Sch. 4 para. 38(f)**
- F7** Word in art. 37(5)(g) substituted (1.1.2009 as notified in the London Gazette (Issue 58904, published 5.12.2008)) by The Nursing and Midwifery (Amendment) Order 2008 (S.I. 2008/1485), **Sch. 1 para. 6(b)**

#### Commencement Information

- I1** Art. 37(1)(4)(5) 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)**
- I2** Art. 37 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)**

### Appeals

**38.**—(1) An appeal from—

- (a) any order or decision of the Health Committee or the Conduct and Competence Committee other than an interim order made under article 31, shall lie to the appropriate court; and
- (b) [<sup>F8</sup>a decision of the Council mentioned in paragraph (1A)] or of the Investigating Committee under article 26(7) or (12) shall lie to a county court or, in Scotland, to a sheriff.

[<sup>F9</sup>(1A) The decisions referred to in paragraph (1)(b) are—

- (a) any decision of the Council under article 37;
- (b) a decision of the Council under Part 3 of the General Systems Regulations requiring an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to have access to, and to pursue, the profession of nurse or midwife in the United Kingdom.]

(2) In any appeal under this article the Council shall be the respondent.

(3) The Court or sheriff may—

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- (a) dismiss the appeal;
  - (b) allow the appeal and quash the decision appealed against;
  - (c) substitute for the decision appealed against any other decision the Practice Committee concerned or the Council, as the case may be, could have made; or
  - (d) remit the case to the Practice Committee concerned or Council, as the case may be, to be disposed of in accordance with the directions of the court or sheriff,
- and may make such order as to costs (or, in Scotland, expenses) as it, or he, as the case may be, thinks fit.

(4) In this article “the appropriate court” means—

- (a) in the case of a person whose registered address is (or, if he were registered, would be) in Scotland, the Court of Session;
- (b) in the case of a person whose registered address is (or, if he were registered, would be) in Northern Ireland, the High Court of Justice in Northern Ireland; and
- (c) <sup>F10</sup>... in any other case, the High Court of Justice in England and Wales.

#### Textual Amendments

- F8** Words in art. 38(1)(b) substituted (3.12.2007) by [The European Qualifications \(Health and Social Care Professions\) Regulations 2007 \(S.I. 2007/3101\)](#), regs. 1(2), **167(a)**
- F9** Art. 38(1A) inserted (3.12.2007) by [The European Qualifications \(Health and Social Care Professions\) Regulations 2007 \(S.I. 2007/3101\)](#), regs. 1(2), **167(b)**
- F10** Words in art. 38(4)(c) omitted (3.12.2007) by virtue of [The European Qualifications \(Health and Social Care Professions\) Regulations 2007 \(S.I. 2007/3101\)](#), regs. 1(2), **167(c)**

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

- C1** Art. 38 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** Art. 38 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)**

#### Commencement Information

- I3** Art. 38 in force at 1.8.2004 as notified in the London Gazette (Issue 57361, published 21.7.2004), see [art. 1\(2\)\(3\)](#)

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