

# The Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004 (SI 2004/1762)

## Consolidated text

Effective from 2<sup>nd</sup> June 2014

This consolidated text has been produced for internal use by the Nursing and Midwifery Council. It is not the official text and users must consult an authorised version of the legislation for the purpose of interpreting and applying the law.

Amended text is enclosed in [ ], a footnote identifies the amending legislation.

### This text incorporates amendments made by:

SI 2006/1441      The Nursing and Midwifery Order 2001 (Transitional Provisions) (Amendment) Order of Council 2006

*Further provisions relating to the establishment of the NMC and transitional arrangements have been set out in the following pieces of legislation:*

SI 2002/881      *The Nursing and Midwifery Order 2001 (Consequential Amendments) Order 2002*

SI 2002/923      *The Nursing and Midwifery (Transfer of Staff and Property etc.) Order 2002*

SI 2002/1125      *The Nursing and Midwifery Order 2001 (Transitional Provisions) Order 2002*

SI 2004/865      *The General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004*

SI 2004/1016      *The General Medical Services Transitional and Consequential Provisions (Wales) (No. 2) Order 2004*

SI 2004/1771      *The Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order 2004*

SI 2005/641      *The National Health Service (Pharmaceutical Services) Regulations 2005*

*National Health Service (Consequential Provisions) Act 2006*

SI 2006/5      *The Public Contracts Regulations 2006*

<i>SSI 2006/1</i>	<i>The Public Contracts (Scotland) Regulations 2006</i>
<i>SI 2006/635</i>	<i>The Special Health Authorities Abolition Order 2006</i>
<i>SI 2007/121</i>	<i>National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Wales) Regulations 2007</i>
<i>SI 2007/937</i>	<i>The Scottish Parliament (Elections etc.) Order 2007</i>
<i>SSI 2007/139</i>	<i>The National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2007</i>
<i>SI 2008/1741</i>	<i>The Representation of the People (Northern Ireland) Regulations 2008</i>
<i>SSI 2009/183</i>	<i>The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009</i>
<i>SI 2010/807</i>	<i>The Health and Social Care Act 2008 (Commencement No. 16, Transitory and Transitional Provisions) Order 2010</i>
<i>SI 2012/1909</i>	<i>The National Health Service (Pharmaceutical Services) Regulations 2012</i>

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STATUTORY INSTRUMENTS

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2004 No. 1762

HEALTH CARE AND ASSOCIATED PROFESSIONS

NURSES AND MIDWIVES

The Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council  
2004

*Made*..... 2004

*Coming into force*..... 1st August 2004

At the Council Chamber, Whitehall, the \*\* day of \*\* 2004

By the Lords of Her Majesty's Most Honourable Privy Council

Their Lordships, in exercise of the powers conferred on them by articles 47(2) and 54(2) of the Nursing and Midwifery Order 2001<sup>1</sup>, and of all other powers enabling them in that behalf, hereby make the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004 and shall come into force on 1st August 2004.

(2) In this Order—

“the Act” means the Nurses, Midwives and Health Visitors Act 1997<sup>2</sup>;

“case relating to conduct” means any case in which, under the Act, a person would be, or would have been, liable to have her name removed from the register because of misconduct;

“case relating to health” means any case in which, under the Act, a person would be, or would have been, liable to have her name removed from the register because her fitness to practise is seriously impaired by reason of her physical or mental condition;

“the Conduct Rules” means the Rules scheduled to the Nurses, Midwives and Health Visitors (Professional Conduct) Rules 1993 Approval Order 1993<sup>3</sup>;

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<sup>1</sup> S.I.2002/253 as amended  
<sup>2</sup> 1997 c. 24.

“misconduct” means conduct unworthy of a registered nurse or midwife and includes obtaining registration by fraud;

“old register” means the register maintained under the Act or by the Nursing and Midwifery Council pursuant to paragraph 10 of Schedule 2 to the Order;

“the Order” means the Nursing and Midwifery Order 2001; and

“respondent” means a person who is the subject of an allegation in a case relating to conduct or health.

(3) For the purposes of this Order, the Act and relevant rules made under the Act (including the Conduct Rules) shall apply as they were in force on 31st March 2002, except that, where necessary, references in the Act or the rules to the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (“UKCC”) are to be treated as references to the Council.

### **Cases relating to conduct**

2. Subject to the following provisions of this Order, where an allegation of misconduct has been received by the Council before 1st August 2004, the Council shall deal with that allegation in accordance with section 10 of the Act and the Conduct Rules as if they remained in force.

### **Cases relating to health**

3. Subject to the following provisions of this Order, where before 1st August 2004 the Council has received information about any practitioner which raises a question as to whether her fitness to practise is seriously impaired by reason of her physical or mental condition, the matter shall be dealt with in accordance with section 10 of the Act and the Conduct Rules as if they remained in force.

### **Modification of the Conduct Rules**

4. Where, by virtue of this Order a case is dealt with in accordance with section 10 of the Act and the Conduct Rules, the Conduct Rules shall apply as if—

[(za) in rule 7—

(i) in paragraph (1), for the words “constituted by, and shall include members of, the Council” were substituted “constituted by the Council”, and .

(ii) in paragraph (5), the words “, of whom at least 1 shall be a Council member” were omitted;]<sup>4</sup>

(a) in rule 10, the words “or the President” and “or rule 14(2) respectively” were omitted;

[(aa) in rule 12—

(i) in paragraph (1), for the words “constituted by, and shall include members of, the Council” were substituted “constituted by the Council”, and .

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<sup>3</sup> S.I.1993/893 as amended by: S.I. 1998/1103; in relation to England and Wales by S.I. 2001/536 and 2002/82 and 708 ; and in relation to Scotland by SSI 2001/54 and 2002/59 and 142.

<sup>4</sup> Inserted: SI 2006/1441

- (ii) in paragraph (2), the words “, of whom at least 1 shall be a Council member” were omitted;<sup>5</sup>
- (b) rules 14(1) and (2) and 36(1) were omitted;
- (c) in rule 24(2), the words “or the President” were omitted;
- [(ca) in rule 29— .**
  - (i) in paragraph (1), for the words “constituted by, and include members of, the Council” were substituted “constituted by the Council”, and .
  - (ii) in paragraph (6), the words “, of whom at least 1 shall be a Council member” were omitted;<sup>6</sup>
- (d) in rule 34—
  - (i) in paragraph (4)(b), the words “or, in the case of referral by the President under rule 14(2), to the President who shall, subject to a determination pursuant to rule 14(1), refer the matter to the Conduct Committee”, and
  - (ii) in paragraphs (1) and (3)(b), the references to the President, were omitted;
- (e) in rule 38(1), after the words “in private” were added “unless the Committee is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the practitioner and require all or part of a hearing to be held in public”; and
- (f) in rule 44(a), the words “or, in the case of referral by the President, to the President who shall, subject to a determination pursuant to rule 14(1), refer the matter to the Conduct Committee” were omitted.

## Appeals

5. Subject to the following provisions of this Order, where, in respect of an allegation which is received by the Council before 1st August 2004, a person is aggrieved by a decision made—

- (a) to remove her from the register;
- (b) to direct that her registration be suspended;
- (c) to remove or alter any entry in respect of her; or
- (d) pursuant to section 10(3) or (4) of the Act,

then notwithstanding the repeal of section 12 of the Act the person may appeal under that section and the appeal shall be dealt with in accordance with that section as if it remained in force.

## Postponing judgments

6. Where a committee deals with a case relating to conduct or health in accordance with the section 10 of Act and the Conduct Rules—

- (a) it may not from 1st August 2004 postpone, or further postpone, judgment pursuant to rule 18(4), 20(1)(f), 43(c) or 51 of the Conduct Rules, and rules

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5 Inserted: SI 2006/1441  
6 Inserted: SI 2006/1441

18(5), (6), (7) and (8)(b), 20, 26(3), 45, 48(2), 50 and 51 of the Conduct Rules shall cease to apply on that date in so far as they relate to postponement of judgment; and

- (b) if, but for paragraph (a), a committee would have postponed judgment, it shall, having invited the parties to address it on any relevant matter, act in accordance with article 29(4) or (5) of the Order, and—
  - (i) thereafter Part V and article 38 of the Order will apply to the decision or order of the committee as if it were a decision or order of a Committee under article 29(4) or (5) of the Order,
  - (ii) for these purposes, Part V and article 38 of the Order shall apply as if references to a Practice Committee (however made), except in article 38(3)(d) of the Order, were references to the committee dealing with the case, and
  - (iii) for these purposes, article 38(3)(d) of the Order shall apply as if for the words “Practice Committee concerned” there were substituted “such Practice Committee as the court or sheriff considers appropriate”.

### **Judgments which immediately before 1st August 2004 stand postponed**

7.—(1) Where, as regards a case relating to health or conduct, immediately before 1st August 2004 a judgment of the committee dealing with the case stands postponed, or further postponed, pursuant to rule 18(4), 20(1)(f), 43(c) or 51 of the Conduct Rules, the Council shall no later than 1st August 2005 or six weeks before the date fixed for resumption of the proceedings, whichever is sooner, send to the respondent a notice which shall—

- (a) specify the day, time and place at which the proceedings are to be resumed, and which committee is to deal with the case, and invite her to appear at the hearing;
  - (b) unless the Chairman otherwise directs, invite the respondent—
    - (i) to furnish the Registrar with names and addresses of persons to whom reference may be made, confidentially or otherwise, concerning her employment, character, conduct or health since the decision to postpone or further postpone judgment was made,
    - (ii) in a case relating to health, to submit to medical examination by a registered medical practitioner nominated by the Council; and
  - (c) invite the respondent to send to the Council, not less than three weeks before the date fixed for the resumption of proceedings, a statement or statutory declaration, whether made by the respondent or not—
    - (i) relating to her conduct or other relevant matters since the decision to postpone or further postpone judgment was made, and
    - (ii) setting out any material facts which have arisen since that decision was made.
- (2) In a case relating to conduct, a copy of—
- (a) the notice sent by the Council in accordance with paragraph (1); and
  - (b) any statement or statutory declaration sent to the Council by the respondent as a result of the invitation issued pursuant to paragraph (1)(c),

shall be sent to the person making the allegation that led to the case if any, and she may in turn, if she so desires, send to the Council a statement or statutory declaration, whether made by herself or not, concerning any matter raised by the respondent.

(3) At the hearing of the committee at which the proceedings are resumed, the Chairman shall first invite the Council's officer or the Solicitor to recall, for the information of the committee, the position in which the case stands, and the committee—

- (a) may then receive further oral or documentary evidence in relation to the case, or to the conduct or health of the respondent since the decision to postpone or further postpone judgment was made; and
- (b) shall hear any party to the proceedings who desires to be heard or her or its representative.

(4) The committee shall then consider the case and—

- (a) may not further postpone judgment pursuant to rule 20(1)(f), 43(c) or 51 of the Conduct Rules; and
- (b) if, but for sub-paragraph (a), the committee would have further postponed judgment, it shall act in accordance with article 29(4) or (5) of the Order, and—
  - (i) thereafter Part V and article 38 of the Order will apply to the decision or order of the committee as if it were a decision or order of a Committee under article 29(4) or (5) of the Order,
  - (ii) for these purposes, Part V and article 38 of the Order shall apply as if references to a Practice Committee (however made), except in article 38(3)(d) of the Order, were references to the committee dealing with the case, and
  - (iii) for these purposes, article 38(3)(d) of the Order shall apply as if for the words "Practice Committee concerned" there were substituted "such Practice Committee as the court or sheriff considers appropriate".

(5) Subject to the provisions of the Order, the validity of any resumed proceedings shall not be called into question by reason only that members of the Committee who were present at any former hearing are not present at the hearing of the committee at which the proceedings are resumed.

(6) In this article—

"Chairman" means the person selected by the committee dealing with the case to preside at the resumed proceedings;

"Solicitor" means any solicitor appointed by the Council to present the case against the respondent; and

"party" means the respondent or the Council.

### **Restoration to the register: applications made on or after 1st August 2004 in respect of old cases**

**8.—**(1) This article applies where a person whose name has been removed from the old register or, pursuant to this Order, from the register—

- (a) in a case that was a case relating to conduct, in the circumstances described in rule 2(1)(a) of the Conduct Rules; or

- (b) in a case that was a case relating to health, in the circumstances described in rule 2(1)(b) of the Conduct Rules,

applies on or after 1st August 2004 to be included in the register.

(2) The application referred to in paragraph (1) shall—

- (a) in cases where the applicant was removed from the old register, be construed, where necessary, as an application to be registered in the part of the register which is listed in column 2 of Schedule 2 to the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004<sup>7</sup> opposite the part of the old register set out in column 1 of that Schedule in which she was registered immediately before being removed from the old register;
- (b) be made to the Council and referred by it to the Practice Committee it considers appropriate; and
- (c) subject to paragraph (3), be otherwise dealt with in accordance with article 33 of the Order as if the applicant had been struck off the register by virtue of an order made by a Practice Committee or the court and as if the application were an application referred to in paragraph (1) of that article.

(3) Paragraph (2)(a) of article 33 of the Order shall not apply in relation to an application referred to in paragraph (1) above if it is the first application made on or after 1st August 2004 in respect of the removal from the register to which it relates.

#### **Restoration to the register: applications made before 1st August 2004**

9.—(1) This article applies where a person whose name has been removed from the old register—

- (a) in a case that was a case relating to conduct, in the circumstances described in rule 2(1)(a) of the Conduct Rules; or
- (b) in a case that was a case relating to health, in the circumstances described in rule 2(1)(b) of the Conduct Rules,

has applied before 1st August 2004 to be restored to the register or any part of it pursuant to section 10 of the Act and rule 22 or 49 of the Conduct Rules but at 1st August 2004 a decision has not been made on the application.

(2) Subject to paragraph (4), the Council shall continue to deal with the application referred to in paragraph (1), and a decision shall be made on it—

- (a) in accordance with the Conduct Rules as if they were still in force; or
- (b) in such manner as the Council considers just.

(3) The application shall be construed, where necessary, as an application to be registered in the part of the register which is listed in column 2 of Schedule 2 to the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 opposite the part of the old register set out in column 1 of that Schedule in which she was registered immediately before being removed from the old register.

(4) A committee dealing with the application may not make restoration to the register subject to limitations imposed pursuant to rule 22(11) or 49(10) of the Conduct Rules but may—

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<sup>7</sup> S.I. 2004/1765

(a) make the granting of an application for restoration subject to the applicant satisfying such requirements as to additional education or training and experience as the Council has specified under article 19(3) of the Order and which apply to her; and

(b) on granting an application for restoration, make a conditions of practice order under article 33(7)(b) of the Order in respect of her.

(5) The provisions of articles 29 and 30 of the Order shall have effect in relation to a conditions of practice order made pursuant to paragraph (4)(b) as they have effect in relation to any other conditions of practice order made under article 33(7)(b) of the Order.

(6) If the application for restoration referred to in paragraph (1) is refused article 33(9) to (11) of the Order shall apply to any subsequent application for restoration as if the applicant had been struck off the register by virtue of an order made by a Practice Committee or the court and as if the application were an application referred to in paragraph (1) of that article.

### **Termination of suspension: applications made on or after 1st August 2004 in respect of old cases**

**10.**—(1) This article applies to a case relating to health where a person, whose registration in the old register has been suspended in the circumstances described in rule 3(1)(a) of the conduct rules in pursuance of a direction under rule 46 of those Rules, applies on or after 1st August 2004 for that suspension to be terminated.

(2) The application referred to in paragraph (1) shall—

(a) be made to the Council and referred by it to the Practice Committee it considers appropriate; and

(b) be dealt with in accordance with article 30 of the Order, in so far as appropriate treating the direction as a suspension order made under article 29(5)(b) of the Order, and the Committee may take any of the steps referred to in article 30(4) (and in so doing may make any suspension order it considers just).

### **Termination of suspension: applications made before 1st August 2004**

**11.**—(1) This article applies to a case relating to health where a person, whose registration in the old register has been suspended in the circumstances described in rule 3(1)(a) of the Conduct Rules in pursuance of a direction under rule 46 of those Rules, has applied before 1st August 2004 for that suspension to be terminated but as at 1st August 2004 a decision has not yet been made on the application.

(2) Subject to paragraph (3), the Council shall continue to deal with the application referred to in paragraph (1), and a decision shall be made on it—

(a) in accordance with the Conduct Rules as if they were still in force; or

(b) in such manner as the Council considers just.

(3) A committee dealing with an application for termination of suspension may not make termination of the suspension subject to limitations pursuant to rule 49(10) of the Conduct Rules but may—

(a) 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) of the Order and which apply to her; and

- (b) on granting an application, make a conditions of practice order and—
- (i) the provisions of article 29 of the Order shall have effect in relation to a conditions of practice order made under this sub-paragraph as they have effect in relation to a conditions of practice order made under that article, and
  - (ii) article 30 of the Order shall have effect as if the order made under this sub-paragraph were an order made under article 29 of the Order.

### **Termination of interim suspension**

**12.** In respect of any direction of interim suspension made on or after 1st August 2004, rule 59 of the Conduct Rules shall apply as if—

- (a) in paragraph (2)(b)(i) the words “postponement of judgment,” were omitted; and
- (b) paragraph (2)(c)(ii) were omitted.

### **Reconsideration of cases after an appeal to the court**

**13.** Where, as a result of this Order or paragraph 17 of Schedule 2 to the Order, a case has been disposed of in accordance with the Act or relevant rules made under the Act, any further consideration of that case as a consequence of a decision of a court on an appeal, shall, subject to any order of the court, be dealt with as if the case had been disposed of under the corresponding provisions of the Order.

### **Local supervision of midwifery practice**

**14.—**(1) Subject to paragraph (2), any notice given or person appointed pursuant to rules made under section 14 or 15 of the Act shall be regarded as validly given or appointed for the purposes of the Order, until the expiry of the notice or the termination of the appointment.

(2) From 1st August 2006, paragraph (1) shall not apply in respect of the appointment of a local supervising authority midwifery officer, if that officer does not meet the criteria for appointment as a local supervising authority midwifery officer set out in rule 13(2) of the Nursing and Midwifery Council (Midwives) Rules 2004<sup>8</sup>.

*A.K. Galloway*  
Clerk of the Privy Council

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<sup>8</sup> Scheduled to S.I. 2004/1764, replaced by SI 2012/3025

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes further transitional provisions arising out of the implementation of the Nursing and Midwifery Order 2001. It relates essentially to cases concerning the fitness to practise of nurses and midwives, and provides for the manner in which outstanding cases are to be dealt with, including cases where a decision has been postponed, or where the applicant is applying for restoration to the register or for the termination of a suspension. This Order also includes a provision relating to the local supervision of midwives and the continuing effect of notices and appointments.