EXPLANATORY MEMORANDUM TO

THE DENTISTS, DENTAL CARE PROFESSIONALS, NURSES, NURSING ASSOCIATES AND MIDWIVES (INTERNATIONAL REGISTRATIONS) ORDER 2023

2023 No. 162

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This Order amends the General Dental Council's (GDC) and the Nursing and Midwifery Council's (NMC) legislative frameworks for the registration of internationally trained healthcare professionals to provide these regulators with greater flexibility to improve these processes and introduce alternative routes to registration for international applicants.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 Will Quince MP, Minister of State for Health and Secondary Care has made the following statement regarding Human Rights:

"In my view, the provisions of the Dentists, Dental Care Professionals, Nurses, Nursing Associates and Midwives (International Registrations) Order 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This Order amends the Dentist Act 1984 and the Dental Council (Overseas Registration Examination Regulations) Order of Council 2015, the Nursing and Midwifery Order 2001 and the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004. The Order also makes consequential amendments to the Health Care and Associated Professions (Knowledge of English) Order 2015.

6.2 The Dentists Act 1984 is amended to provide the GDC with greater flexibility to apply a range of assessment options in determining whether international dentist and

dental care professional (DCP) applicants have the necessary knowledge, skills and experience for practice in the UK. The Order specifies that registration routes for international dentists may include, but will not be limited to, recognition of overseas diplomas. The GDC will be able to make rules to provide for the detail of its international registration processes for both dentists and DCPs, which will need to be consulted on, but will not require Privy Council approval. In addition, the GDC is provided with a power in the Act to charge fees for the purpose of meeting expenses incurred, or to be incurred, by the Council in relation to international registration for dentists and DCPs.

6.3 The requirement in the Act that an assessment for overseas dentists, such as the Overseas Registration Exam (ORE), must be provided by dental authorities, or a group of dental authorities, is removed. In addition, the requirement that the overseas dentist assessment fee be contained within an Order approved by the Privy Council is removed, allowing the GDC to set such exam fees within rules.

6.4 Regarding DCP registration, the relevant qualification relied upon by an applicant to satisfy the registrar that they have the requisite knowledge, skills and experience to be registered under a particular title in the dental care professionals register can no longer be a diploma in dentistry. Following consultation on these proposals, the Department has made a minor amendment to the Order to allow the GDC to process DCP title applications received from international dentists up until the day before the Order comes into force and to deal with any resulting appeals and applications for restoration to the register from such registrants.

6.5 The Nursing and Midwifery Order 2001 is amended to remove prescriptive detail on the process that the NMC must follow in relation to qualification comparability and the assessment of international applicants will be removed, providing the NMC with greater flexibility to change these processes in future. The NMC's good health and good character requirements, as set out in the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004, are amended to clarify that separate declarations are required in support of both good health and good character and to specify what evidence of good character that applicants who are not currently registered with an overseas regulator must provide. The validity period of health declarations is also extended from 6 to 12 months.

7. Policy background

What is being done and why?

7.1 Ahead of the broader reform of the GDC's and NMC's legislation there is a pressing need to amend the legislative framework underpinning these regulators' international registration routes.

7.2 Aspects of the current legislative requirements for registering international dentists make it difficult and time-consuming for the GDC to make changes to its registration processes. For example, restrictions within the GDC's legislation mean that the regulator cannot change the price of or explore alternative providers for its Overseas Registration Exam (ORE), which is a registration requirement for most international dentists. This restricts the number of applicants who can take ORE and join the register. Similarly, excessive detail on the process that the Nursing and Midwifery Council (NMC) must follow to assess international applicants makes it difficult for the regulator to explore alternative registration routes.

7.3 More generally, the level of detail within the regulators' legislation regarding international registration processes is out of line with the Government's broader reform work for professional regulation, which aims to enable regulators to set out their operational processes in rules and guidance rather than having these set out in legislation. This will allow registration processes to be adapted to meet the needs of different professions and different requirements over time.

Changes to registration requirements relating to overseas dental qualifications

7.4 The draft Order enables the GDC to set out and change its processes for international registration more efficiently. This includes providing updated powers for the GDC to charge for services it undertakes. Any fees must only cover the costs of the expenses incurred, or to be incurred, by the Council. The draft Order makes the following changes:

- the GDC has flexibility to apply a range of assessment options in determining whether applicants have the necessary knowledge, skills and experience for practice in the UK
- the requirement that an assessment for overseas applicants, such as the ORE, must be provided by dental authorities, or a group of dental authorities, is removed
- registration routes for international candidates may include, but will not be limited to, recognition of overseas diplomas
- the GDC will be able to charge fees for the purpose of meeting expenses incurred, or to be incurred, by the Council in relation to international registration. This will allow the GDC to cover the costs of recognising individual international qualifications which reflect UK standards. This may reduce the number of dentists required to sit an 'ORE' style assessment in future
- the GDC will be able to make rules to provide for the detail of its international registration process, which will need to be consulted on, but will not require Privy Council approval. This will allow any necessary changes to be made in a timely and efficient manner
- the Dental Council (Overseas Registration Examination Regulations) Order of Council 2015 will be revoked but its provisions will continue to apply for the purpose of any overseas skills assessment for 12 months after the new Order comes into force, at which point GDC will publish new rules on the detail of its international registration processes. In drafting changes to section 50D of the Dentists Act on consultation requirements, previous legislative changes made to the consultation requirements for GDC rules (which are yet to take effect) have been updated so that they align with the draft Order.

7.5 The GDC is exploring how best to use the increased flexibility these changes will provide to take forward 2 international registration routes:

- an assessment of an individual applicant's qualifications, skills and training, to be evidenced by their completion of an ORE style assessment, without the present restrictions on the exam's delivery
- registration based on recognition of the qualification held by an applicant, where the GDC has assessed that qualification and considers that it provides applicants with the required knowledge, skills and experience

7.6 The Order also provides the GDC with flexibility to implement additional routes to registration in future, as it considers appropriate.

Proposals relating to suspension of the ORE due to the COVID-19 pandemic

7.7 While the 2015 Order requires that applicants must pass Part 2 of the ORE within 5 years of first attempting Part 1, the draft Order specifies that in calculating this, no account should be taken of the period between 2 April 2020 (when the ORE was suspended due to the coronavirus (COVID-19) pandemic) and the day after the new Order comes into force. In addition, those people whose 5-year period was due to end within 3 months of April 2020 and who had secured a place on that month's ORE sitting (which was cancelled), are provided with an additional extension of 12 months to provide them with sufficient time to secure a place on an ORE exam. Without the extension, these candidates would only have one month remaining within their 5-year period to sit the ORE at the point that this legislation comes into force.

7.8 These measures will protect candidates whose opportunity to sit Part 2 within 5 years was missed because of restrictions on the operation of the exam resulting from the pandemic. The GDC will contact candidates affected directly to inform them of the length of time they have available to sit the ORE after this legislation comes into force.

Changes to the GDC's legislative framework for the registration of international dental care professionals (DCPs)

7.9 The Order provides the GDC with flexibility to apply a range of assessment options in determining whether an international DCP applicant has the necessary knowledge, skills and experience for practice in the UK. To support this, the GDC will be able to charge fees for the purpose of meeting expenses incurred, or to be incurred, by the Council in relation to the assessment of international registration. This will allow the GDC to cover the costs of recognising individual international qualifications which reflect UK standards.

7.10 In the same way as described for dentists above, the Order will allow the GDC to make rules setting out the detail of its DCP international registration process. These rules will need to be consulted on but will not require Privy Council approval. The department understands that the GDC plans to continue to apply the current assessment process for DCPs qualified outside the UK in the short term but will use the flexibility that these changes provide to explore the use of alternative methods. These may include competence testing or the application of different assessment methods for different protected titles.

7.11 In addition, the Order specifies that a relevant qualification relied upon by an applicant to satisfy the registrar that they have the requisite knowledge, skills and experience to be registered under a particular title in the dental care professionals register cannot be a diploma in dentistry. This change aligns international DCP registration requirements with requirements for DCPs registering with UK qualifications.

7.12 The GDC is currently processing a high volume of DCP applications from dentists and has advised that it will need more than 12 months after the Order comes into force to process those applications received up until the day before the Order comes into force and to deal with any resulting appeals. The Government has therefore agreed to amend the Order to allow the GDC to continue to process such applications after the

Order is in force, so that current applicants are not unfairly prevented from completing the registration process. The additional drafting, which also makes clear that existing DCP registrants holding a dentist qualification will continue to be eligible to apply for restoration to the DCP register, can be seen at paragraph 2 of Schedule 5 to the Order.

7.13 Following this period of ongoing application processing, the GDC is planning to introduce improvements to the ORE which will support increased exam places and an improved pass rate. This will help those dentists who may have sought to use the DCP registration route to join the register as dentists more quickly.

Changes to the NMC's legislative framework for the registration of international nurses, midwives and nursing associates

7.14 The NMC has made improvements to its international registration process, resulting in increased numbers of international applicants passing its test of competence and joining the register. The number of people on NMC's permanent register whose initial registration was outside the EEA rose from 67,345 during 2016 to 2017 to 113,579 in 2021 to 2022. However, some aspects of the NMC's legislation relating to international registration processes are restrictive.

7.15 Article 13(1)(d)(ii) of the Nursing and Midwifery Order 2001 requires the NMC to consider whether a person's qualification is of a comparable standard to a UK qualification before the regulator may require an applicant to sit a test of competence. The draft Order amends the wording to encompass a range of international testing routes. In addition, the duty in article 13(2) for the NMC to determine procedures to assess whether a qualification is of a comparable standard and publish a list of such qualifications is removed, providing the NMC with greater flexibility to its approach in this area.

7.16 The NMC plans to continue to apply its test of competence as the primary assessment route for international applicants. A test of an applicant's competence will therefore remain in the legislation as one of the ways that the NMC can determine whether an individual meets its standards. The Order provides the NMC with the flexibility to use other pathways, including:

- recognition of a programme of education delivered outside the UK which the NMC has approved using its existing programme approval powers set out in article 15(7) of the Nursing and Midwifery Order. Applicants holding an NMC approved qualification could meet the NMC's requirements without needing to sit a test of competence in the UK.
- undertaking a qualification comparability exercise to ascertain whether an applicant's qualification gained outside of the UK is of a comparable standard to a UK qualification approved by the NMC. This approach is distinct to the NMC itself approving programmes, as described at (a) and would be used in limited situations. This may include exploring mutual recognition of qualifications as part of a government-to-government trade deal, or where the NMC has been given powers to agree mutual recognition agreements.

7.17 In all cases, such applicants would still be required to meet the NMC's other registration requirements, including those relating to English language, indemnity and payment of a fee.

7.18 In addition, the NMC has identified changes to its rules which set out its registration processes that will reduce the time taken to process international applications. The

draft Order makes the following changes to rule 6 of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004:

- clarification that the applicant is required to provide separate third-party declarations in support of both good health and good character. The current wording can be interpreted as requiring only one such declaration from applicants which leads to delays in some applications being processed.
- extension of the validity time period for health declarations submitted by applicants from 6 months to 12 months, reflecting the length of time it can take for a final decision to be made after the submission of the declaration at the start of the application process. This will reduce the likelihood that an applicant is asked to provide a second declaration.
- illustrative confirmation of the types of evidence of good character that would satisfy the registrar of the applicant's good character where they are not currently registered with a regulator or licensing body which can provide a declaration on their behalf.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Department has no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 The Department of Health and Social Care consulted on proposed changes to the legislative framework governing the NMC and GDC between 7 February and 6 May 2022. The consultation sought views on a number of changes which were intended to enable the GDC and NMC to set out and change their processes for international registration more efficiently.

10.2 The Department received 1634 responses to the consultation from individuals and organisations, such as the UK health and care professional regulators, trade unions and professional bodies. Over 70% of responses to the consultation were from dental care professionals.

10.3 Many respondents were supportive of improvements being made to the regulators' international registration processes, and the GDC's ORE exam in particular, but stressed the importance of maintaining high registration standards to protect public safety, and cautioned that any changes to processes should not reduce registration standards. In addition, many of the responses received from individual dental care professionals indicated concern that the changes may result in more stringent and difficult registration processes which are not a proportionate means of assessing overseas-qualified dentists.

10.4 The Department's view is that it is for the regulators as independent bodies to set the standards that registrants must meet to demonstrate that they are capable of practising safely and effectively. We also consider that the current level of detail within the GDC's and NMC's legislation regarding international registration processes is out of line with the wider reform principles which aim to enable regulators to set out their

operational processes in rules and guidance rather than having these set out in legislation. The proposed changes will support the regulators to adapt registration processes to meet the needs of different professions and different requirements over time, in a more timely and efficient manner than the current legislation allows.

10.5 Full details of the consultation can be found at: https://www.gov.uk/government/consultations/changes-to-the-general-dental-council-and-the-nursing-and-midwifery-councils-international-registration-legislation

11. Guidance

11.1 The Department of Health of Social Care has not issued any guidance in relation to this Order.

11.2 If the GDC or NMC changes their processes for international registration, they will publish supplementary guidance to assist healthcare professionals applying for inclusion in their registers. This will cover operational matters which fall outside the legal rights and responsibilities described in the Order.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the potential impact on business foreseen falls below the threshold for producing one.

12.4 If the regulators decide to use the increased flexibility that these changes provide to develop new or amend existing pathways for international registration, this would potentially result in costs to the regulator.

12.5 In addition to individual applicants, which may include some self-employed professionals, we expect that some businesses employing health professionals, such as dental practices, may also potentially be impacted by any future process changes, but we expect this impact to be low. Examples of potential costs include the cost to the regulators or external providers of delivering alternative forms of assessment such as assessing programmes of education delivered outside the UK. The fee that applicants pay to take the GDC's ORE is also likely to increase if the regulator decides to amend the exam fees to cover the cost of running the assessment. It is also possible that the development of new registration pathways could lead to reduced costs for individuals, some employers and the GDC and/or NMC.

12.6 Any costs or benefits to individuals, employers or the regulators will depend on the specific requirements of any new registration pathways developed by the GDC and NMC and will not be a direct outcome of these legislative amendments.

12.7 In addition to considering the costs and benefits of the proposals, we have considered them in relation to the Equality Act 2010, specifically the Public Sector Equality Duty, and also Section 75 of the Northern Ireland Act 1998. We have identified that the policy changes which we expect to follow these legislative changes may potentially impact international applicants and existing registrants with different protected characteristics, particularly with regards to age, sex and race. However, we have not identified any evidence which suggests these changes will directly have a significant impact on individuals, or between communities, with protected characteristics, or on family relationships and functions.

12.8 We have also identified that future changes may contribute to the elimination of discrimination and advancement of equality of opportunity between people who hold protected characteristics and those who do not, as we understand that both regulators may develop additional registration pathways.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 No monitoring or review provisions have been made in this instrument. The Order provides the GDC and NMC with greater flexibility to amend their existing international registration pathway and develop new ones. Any such new procedures will be subject to monitoring by the regulator and amended as it considers appropriate.

15. Contact

15.1 Charlotte Bone at the Department of Health and Social Care (Telephone: 0113 254 6534 or email: charlotte.bone@dhsc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Phil Harper, Deputy Director for Professional Regulation, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Will Quince MP, Minister of State for Health and Secondary Care at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.