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

D R A F T S T A T U T O R Y I N S T R U M E N T S

2018 No.

HEALTH CARE AND ASSOCIATED PROFESSIONS

NURSES, MIDWIVES AND NURSING ASSOCIATES

The Nursing and Midwifery (Amendment) Order 2018

Made - - - - ****2018*

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the *** day of ***2018

Present,

The Queen's Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 60(1)(b) and 62(4) and (4A) of, and Schedule 3 to, the Health Act 1999(**a**).

The Secretary of State published a draft Order and invited representations as required by paragraph 9(1) of Schedule 3 to that Act, and in accordance with paragraph 9(1A) of that Schedule consulted the Scottish Ministers.

The period of three months mentioned in paragraph 9(2) of that Schedule expired before a draft of this Order in Council, together with a report about consultation, was laid before Parliament.

A draft of this Order in Council has been laid before, and approved by resolution of, each House of Parliament in accordance with section 62(9) of that Act.

(**a**) 1999 c.8. Section 60 was amended by paragraph 16 of Schedule 5 to the Nursing and Midwifery Order 2001 (S.I. 2002/253); section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c.17); paragraph 1 of Schedule 8 and paragraph 10 of Schedule 10 to the Health and Social Care Act 2008 (c.14); sections 209, 210 and 213 of, and paragraphs 60 and 72 of, Schedule 15 to the Health and Social Care Act 2012 (c.7); paragraph 7 of Schedule 4 to the Pharmacy Order 2010 (S.I. 2010/231); paragraph 43 of Schedule 34 to the Human Medicines Regulations 2012 (S.I. 2012/1916). Section 62 was amended by paragraph 1 of Schedule 4 to the National Health Service (Consequential Provisions) Act 2006 (c.43); and paragraph 2 of Schedule 8 to the Health and Social Care Act 2008. Subsections (4) and (4A) were substituted in section 62 by paragraph 11 of Schedule 10 to the Health and Social Care Act 2008. Schedule 3 was amended by section 26(10) of the National Health Service Reform and Health Care Professions Act 2002 (c.17); paragraph 8(b) of Schedule 4 to the Health and Social Work Professions Order 2001 (S.I. 2002/254); paragraph 67 of Schedule 11, and paragraph 1 of Schedule 14, to the Health and Social Care (Community Health and Standards) Act 2003 (c.43); sections 33 and 80 of, and Schedule 9 to, the Health Act 2006 (c.28); paragraphs 4 to 10 of Schedule 8, and paragraph 12 of Schedule 10 and paragraph 1 of Schedule 15, to the Health and Social Care Act 2008; section 211 of, and paragraphs 61 and 72 of Schedule 15 to, the Health and Social Care Act 2012.

Accordingly, Her Majesty is pleased by and with the advice of Her Privy Council, to make the following Order in Council.

Citation and commencement

1. —(1) This Order may be cited as the Nursing and Midwifery (Amendment) Order 2018.

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

(a) this article;

(b) the following provisions of Schedules 1 and 2 and article 2 so far as it relates to those provisions—

(i) paragraph 1 (insertion of article 2A) of Schedule 1,

(ii) paragraph 2 (amendment of article 3) of Schedule 1,

(iii) paragraph 3(a) (amendment of article 5) of Schedule 1 for the purpose only of establishing standards in relation to nursing associates,

(iv) paragraph 12 (amendment of article 15) of Schedule 1,

(v) paragraph 13 (amendment of article 16) of Schedule 1,

(vi) paragraph 3 (insertion of article 2A) of Schedule 2, and

(vii) paragraph 5 of Schedule 2 (which amends Schedule 1 to the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004(**a**)) for the purposes of establishing standards for nursing associates under article 5(2)(a) of the Nursing and Midwifery Order 2001(**b**) and for making rules under article 7(1) (the register: supplemental provisions) of that Order as to the payment of fees by nursing associates.

(3) The remaining provisions, and article 2 for all remaining purposes, come into force on 28th January 2019.

Amendments

2.—(1) Schedule 1 (amendments to the Nursing and Midwifery Order 2001(**c**)) has effect.

(2) Schedule 2 (amendments to other subordinate legislation) has effect.

(3) Schedule 3 (consequential amendments to primary legislation) has effect.

Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

Amendments to the Nursing and Midwifery Order 2001

1. The Nursing and Midwifery Order 2001 is amended as follows.

Insertion of new Article 2A

2. After article 2 (interpretation) insert—

(**a**) S.I. 2004/1765.
(**b**) S.I. 2002/253.
(**c**) S.I.2002/253.

"**Application to nursing associates**

2A. The provisions of this Order that apply to nursing associates, and only to the extent that they apply to nursing associates, apply in respect of England only.".

Amendment of article 3

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

(a) in paragraph (2) for "nurses and midwives" substitute "nurses, midwives and nursing associates";

(b) in paragraph (5)(b)(ii) after "midwives" insert, ", nursing associates".

Amendment of article 5

4. In article 5 (establishment and maintenance of register)(**b**)—

(a) in paragraph (1) for "nurses and midwives" substitute "nurses, midwives and nursing associates";

(b) in paragraph (2)(b) for "nurse or midwife" substitute "nurse, midwife or nursing associate ";

(c) omit paragraph (5).

Amendment of article 6

5. In paragraph (3)(aa) of article 6 (register)(**c**) for "a visiting nurse or midwife" substitute "a visiting nurse, midwife or nursing associate".

Amendment of article 6A

6. In article 6A (temporary annotations with regard to emergencies involving loss of human life or human illness etc.)(**d**) before paragraph (1) insert—

"(A1) The Registrar may not exercise the powers conferred by this article in relation to a registrant who is entered in the nursing associates' part of the register.".

Amendment of article 7

7. In article 7 (the register: supplemental provisions)(**e**) for paragraph (4) substitute—

"(4) Rules under this article shall not provide for fees to be charged in respect of a person's registration in exercise of an entitlement under article 39A (visiting general systems nurses from relevant European States), article 39C (visiting general systems nursing associates from relevant European States) or Schedule 2A (visiting midwives, and certain visiting nurses, from relevant European States).".

Amendment of article 9

8. In article 9 (registration)(**f**)—

(a) in paragraph (2)(b) for "as a nurse or midwife" substitute "as a nurse, midwife or nursing associate";

(**a**) Article 3 was amended by the Health and Social Care (Safety and Quality) Act 2015 (c. 28) and by S.I. 2008/1485 and S.I. 2017/321.
(**b**) Article 5 was amended by S.I. 2009/1182.
(**c**) Article 6 was amended by 2007/3101.
(**d**) Article 6A was inserted by S.I. 2008/1485 and amended by S.I. 2009/1182.
(**e**) Article 7 was amended by S.I. 2007/3101 and S.I. 2008/1485.
(**f**) Article 9 was amended by S.I. 2007/3101, S.I. 2014/1887 and S.I. 2015/806.

(b) in paragraphs (3B)(a), (3C) and (6) for "article 13(1)(b), (c) or (e)" substitute "article 13(1)(b), (c), (e) or (f)";

(c) for paragraph (7) substitute—

"(7) This article does not apply to a person who seeks registration in exercise of an entitlement under article 39A (visiting general systems nurses from relevant European States), article 39C (visiting general systems nursing associates from relevant European States) or Schedule 2A (visiting midwives, and certain visiting nurses, from relevant European States).".

Amendment of article 10

9. In article 10 (renewal of registration and readmission)(**a**) in paragraph (6) for "nurse or midwife" substitute "nurse, midwife or nursing associate".

Amendment of article 12A

10. In article 12A (indemnity arrangements)(**b**)—

(a) in paragraph (3) for "registered nurse or midwife" substitute "registered nurse, midwife or nursing associate";

(b) for paragraph (11) substitute—

"(11) This article does not apply to a person who has an entitlement to be registered under article 39 and Schedule 2A (visiting midwives, and certain visiting nurses, from relevant European States), article 39A (visiting general systems nurses from relevant European States), or article 39C (visiting general systems nursing associates from relevant European States).".

Amendment of article 13

11. In paragraph (1) of article 13 (approved qualifications)(**c**)—

(a) for sub-paragraph (a) substitute—

"(a) he has a nursing or midwifery qualification awarded in the United Kingdom or a nursing associate qualification awarded in England which has been approved by the Council as attesting to the standard of proficiency it requires for admission to the part of the register in respect of which he is applying;";

(b) in sub-paragraph (d) immediately after "in nursing or midwifery" insert "or training comparable to that of a nursing associate";

(c) after sub-paragraph (d) insert—

"(dd) he has, in Northern Ireland, Scotland or Wales undergone training comparable to that of a nursing associate, and either—

(i) the Council is satisfied that his qualification attests to a standard of proficiency comparable to that attested to by a qualification referred to in sub-paragraph (a) required for admission to the nursing associates' part of the register, or

(ii) the Council is not so satisfied, but the applicant has undergone in the United Kingdom or elsewhere such additional training or experience as satisfies the Council, following any test of competence as it may require him to take, that he has the requisite standard of proficiency for admission to the nursing associates' part of the register;";

(**a**) Article 10 was amended by S.I. 2007/3101, S.I. 2014/1887 and S.I. 2015/806.
(**b**) Article 12A was inserted by S.I. 2014/1887 and amended by S.I. 2014/3272.
(**c**) Article 13 was amended by S.I. 2007/3101, S.I. 2015/806 and S.I. 2016/1030.

(d) in sub-paragraph (f) for "to practise as a nurse in the United Kingdom" substitute "to practise as a nurse in the United Kingdom, or as a nursing associate in England".

Insertion of new article 13A

12. After article 13 (approved qualifications) insert—

"**Transitional provisions relating to admission to the register**

13A.—(1) This article applies to a person who, on or before 26th July 2019—

(a) has been awarded a specified qualification; or

(b) has commenced a course of education or training leading to a specified qualification.

(2) A person referred to in paragraph (1) who applies for admission to the nursing associates' part of the register under article 9(1) ("the applicant") and who satisfies the conditions in paragraph (3) of this article, shall be treated as holding an approved qualification for the purposes of article 9(2)(a).

(3) The conditions referred to in paragraph (2) are that—

(a) the applicant provides evidence of the award of the specified qualification and the Council is satisfied, on the basis of that evidence, that the applicant has been awarded that qualification; and

(b) the Council is satisfied that the qualification attests to a standard of proficiency comparable to the requisite standard of proficiency for admission to the nursing associates' part of the register; or

(c) the Council is not so satisfied but the applicant has undergone in the United Kingdom or elsewhere such additional training or experience as satisfies the Council, following any test of competence as it may require the applicant to take, that the applicant has the requisite standard of proficiency for admission to the nursing associates' part of the register.

(4) For the purposes of this article—

(a) "a specified qualification" means a qualification as a nursing associate awarded—

(i) on the satisfactory completion of a course of education or training which has been approved by Health Education England(**a**) in accordance with sections 97, 98, 99, 100 and 101 of the Care Act 2014(**b**), or

(ii) as part of an approved English apprenticeship for nursing associates under an approved English apprenticeship agreement;

(b) "an approved English apprenticeship" and "an approved English apprenticeship agreement" have the meanings given in section A1(2) and (3) respectively of the Apprenticeship, Skills, Children and Learning Act 2009(**c**).".

Amendment of article 15

13. In article 15 (education and training)(**d**) after paragraph (5) insert—

"(5A) The Council's duties in paragraph (5), where these relate to nursing associates, are exercisable in relation to universities and other bodies in England only.".

(**a**) Health Education England is a body corporate established by section 96(1) of the Care Act 2014 (c. 23).
(**b**) 2014 c.23.
(**c**) 2009 c.22.
(**d**) Article 15 was amended by S.I. 2007/3101.

Amendment of article 16

14. In article 16 (visitors) for paragraphs (5) and (6) substitute—

"(5) A person is not to be prevented from being a visitor merely because he is a member of the Council, or any of its committees, but he may not be a visitor if he is employed by the Council.

(6) Visitors are to be selected with due regard to the profession with which the education and training they are to report on is concerned and subject to paragraph (6A), at least one of the visitors must be registered in that part of the register which relates to that profession.

(6A) At least one of the visitors who are to report on the education and training of nursing associates shall be registered in the nurses' or the nursing associates' parts of the register.".

Amendment of article 19

15. In article 19(**a**) (post-registration training)—

(a) in paragraph (2A) for "visiting nurse or midwife from a relevant European State," substitute "visiting nurse, midwife or nursing associate from a relevant European State,";

(b) in paragraph (2B)(a), for "nursing or midwifery" substitute "a nurse, midwife or nursing associate";

(c) in paragraphs (2C) and (2D), for "as a nurse or midwife" substitute "as a nurse, midwife or nursing associate".

Amendment of Article 22

16. For paragraph (5)(b) of article 22 (allegations)(**b**) substitute—

"(b) in any other case, to a Practice Committee.".

Revocation of articles 23 and 24

17. Omit article 23 (screeners) and article 24 (screeners: supplementary).

Amendment of article 25

18. In paragraph (2)(a)(i) of article 25 (Council's power to require disclosure of information)(**c**) after "nursing or midwifery" insert ", or as a nursing associate".

Amendment of article 26

19. In article 26 (the Investigating Committee)(**d**)—

(a) in paragraph (1) omit "or 24";

(b) for paragraph (6)(b) substitute—

"(b) refer the case to the Fitness to Practise Committee.";

(c) in paragraph (6A) for "paragraphs (5A), (6)(a) or (b)(i)," substitute "paragraphs (5A) or (6)(a)".

(**a**) Article 19 was amended by S.I. 2007/3101.
(**b**) Article 22 was amended by section 81(5) of the Policing and Crime Act 2009 (c. 26) and by S.I. 2015/806 and S.I. 2017/321.
(**c**) Article 25 was amended by S.I. 2009/1182 and by S.I. 2014/3272.
(**d**) Article 26 was amended by section 5(2) of the Health and Social Care (Safety and Quality) Act 2015 (c. 28) and by S.I. 2014/3272 and S.I. 2017/321.

Amendment of article 26D

20. In paragraph (a) of article 26D (the Fitness to Practise Committee)(**a**) omit ", Screeners".

Amendment of article 29

21. For paragraph (4) of article 29 (orders of the Fitness to Practise Committee)(**b**) substitute—

"(4) The Committee may undertake mediation of the matter, or decide that it is not appropriate to take any further action.".

Amendment of article 32

22. In paragraph (2)(h) of article 32 (investigation of allegations: procedural rules)(**c**) omit ", Screeners".

Amendment of article 34

23. In article 34 (legal assessors)—

(a) in paragraph (2) omit sub-paragraph (a);

(b) in paragraph (6)(c) omit "Screener,".

Amendment of article 35

24. In article 35 (medical assessors)—

(a) in paragraph (2) omit sub-paragraph (a);

(b) in paragraph (4)(c) omit "Screener,".

Amendment of article 36

25. In article 36 (registrant assessors)—

(a) in paragraph (2) insert "or" at the end of sub-paragraph (b) and omit sub-paragraph (c);

(b) in paragraph (4)(c) omit "Screener,".

Amendment of Article 37

26. In article 37 (appeals against Registrar's decisions)(**d**)—

(a) in paragraph (1)(zb) for "article 13(1)(b), (c) or (e)" substitute "article 13(1)(b), (c), (e) or (f)";

(b) in paragraph (1)(aa) immediately after "article 39A (visiting general systems nurses from relevant European States)" insert ", article 39C (visiting general systems nursing associates from relevant European States)";

(c) in paragraph (1)(e) for "the profession of nurse or midwife in the United Kingdom" substitute "the profession of a nurse or midwife in the United Kingdom, or a nursing associate in England";

(d) for paragraph (5)(c) substitute—

"(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—

(**a**) Article 26D was inserted by S.I. 2017/ 321.
(**b**) Article 29 was amended by S.I. 2015/806 and S.I. 2017/321.
(**c**) Article 32 was amended by S.I. 2008/1485 and S.I. 2017/321.
(**d**) Article 37 was amended by S.I.s: 2007/3101, 2008/1485, 2009/1182, 2014/1887, 2014/3272, 2015/806, 2016/1030 and 2017/321.

(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 except in relation to appeals concerning nursing associates, where the panel must include one registrant registered in the nurses' or the nursing associates' part of the register, and

(ii) a person who—

(aa) is not and never has been a registered nurse, midwife or nursing associate,

(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, midwife, nursing associate or a registered medical practitioner;".

Amendment of article 38

27. In article 38 (appeals)(**a**)—

(a) after paragraph (1) insert—

"(1ZA) An appeal from a decision referred to in paragraph (1)(b) relating to a nursing associate or a person seeking registration in the nursing associates' part of the register lies only to the county court.";

(b) in paragraph (4) for "In this article" substitute "Subject to paragraph (5), in this article";

(c) after paragraph (4) insert—

"(5) Where the appeal mentioned in paragraph (1)(a) concerns a nursing associate, "the appropriate court" means the High Court of Justice in England and Wales.".

Amendment of article 39A

28. In article 39A(1) (visiting general systems nurses from relevant European States)(**b**) for sub-paragraph (b) substitute—

"(b) who seeks to provide, or is providing, nursing services in the United Kingdom of a kind which are provided, in the United Kingdom, by nurses admitted to sub-part 1 of the nurses' part of the register whose field of practice is mental health nursing, learning disabilities nursing or children's nursing.".

Insertion of new article 39C

29. After article 39B (European Professional Card) insert—

"Visiting general systems nursing associates from relevant European States

39C.—(1) This article applies to an exempt person ("V") who—

(a) is lawfully established as a nursing associate in a relevant European State other than the United Kingdom ("State A"); and

(b) seeks to provide, or is providing, services as a nursing associate in England of a kind which are provided, in England, by nursing associates admitted to the nursing associates' part of the register.

(2) Paragraph (3) applies if V has the benefit of regulation 12 of the General Systems Regulations in connection with the provision by V of services as a nursing associate in England on a temporary and occasional basis (V having complied with any requirements

(**a**) Article 38 was amended by S.I. 2007/3101, S.I. 2016/1030 and S.I. 2017/321.
(**b**) Article 39A was inserted by S.I. 2007/3101 and amended by S.I. 2016/1030.

imposed under Part 2 of those Regulations in connection with the provision by V of those services).

(3) V is entitled to be registered in the nursing associates' part of the register and the Registrar shall give effect to the entitlement.

(4) If V is entitled under paragraph (3) to be registered, but is not registered in the nursing associates' part of the register, V shall be treated as being registered in that part.

(5) V's entitlement under paragraph (3) ceases if V ceases, whether as a result of the operation of regulation 24 of the General Systems Regulations or otherwise, to have the benefit of regulation 12 of those Regulations in connection with the provision by V of services as a nursing associate in England on a temporary and occasional basis.

(6) If—

(a) V's entitlement under paragraph (3) ceases by reason of the operation of paragraph (5); and

(b) V is registered,

the Registrar may remove V's name from the register.

(7) Paragraph (8) applies if—

(a) V's establishment in State A is subject to a condition relating to V's practice as a nursing associate;

(b) V's name is registered in the nursing associates' part of the register; and

(c) for any of the purposes of this Order it falls to be decided whether V's fitness to practise is or may be impaired on the ground of misconduct.

(8) The matters that may be counted as misconduct include (in particular) any act or omission by V during the course of the provision by V of services as a nursing associate in England on a temporary and occasional basis that is, or would be if the condition applied in relation to practice as a nursing associate outside State A, a breach of the condition.

(9) In paragraphs (7) and (8) "condition" includes limitation.

(10) Paragraphs (1) to (6) are not to be taken to prejudice the application, in relation to registrants, of any other provision of this Order under which a registrant's name may be removed from the register or under which a registrant's registration may be suspended.".

Amendment of article 44

30. In article 44 (offences), in paragraph (1)—

(a) for "A person commits an offence" substitute "Subject to paragraph (1A), a person commits an offence";

(b) in sub-paragraph (c) after "nursing or midwifery" insert "or a qualification as a nursing associate";

(c) after paragraph (1), insert—

"(1A) Where the representations referred to in paragraph (1) relate to the nursing associates' part of the register or a nursing associate qualification, or where a person uses the title of nursing associate when not entitled to, the offence referred to in that paragraph is committed only when those representations are made, or the title is used, in England.";

(d) in paragraph (2) for "A person commits an offence" substitute "Subject to paragraph (2A), a person commits an offence";

(e) after paragraph (2), insert—

"(2A) Where the representations referred to in paragraph (2) relate to the nursing associates' part of the register or a nursing associate qualification, the offence referred to in that paragraph is committed only when those representations are made in England.";

(f) in paragraph (3) for "A person who fraudulently procures" substitute "Subject to paragraph (3A), a person who fraudulently procures";

(g) after paragraph (3), insert—

"(3A) Where under paragraph (3), a person fraudulently procures, or tries to procure, the making, amendment, removal or restoration of an entry in the nursing associates' part of the register, the offence referred to in that paragraph is committed only if the fraudulent procurement, or attempted procurement, occurs in England.".

Amendments to Schedule 1

31. In Schedule 1 (Nursing and Midwifery Council and Committees)(**a**) in paragraph 1A(1)(b)(i) for "registered nurses or registered midwives" substitute "registered nurses, midwives or nursing associates".

Amendments to Schedule 4

32. In Schedule 4 (interpretation)(**b**)—

(a) in the definition of "competent authority" for "in connection with the practice of nursing or midwifery" substitute "in connection with practice as a nurse, midwife or nursing associate";

(b) in the definition of "exempt person" for the words "in relation to the profession of nursing or in relation to the profession of midwifery," substitute "in relation to the profession of a nurse, midwife or nursing associate,";

(c) omit the definition of "lay person";

(d) in the definition of "the necessary knowledge of English" after paragraph (b) insert—

"(c) in relation to a person registered, or applying to be registered, as a nursing associate means knowledge of English which is necessary for the safe and effective practice as a nursing associate in England;";

(e) for the definition of "practising" substitute—

""practising" means working as a registered nurse or a midwife or working as a nursing associate in England;";

(f) for the definition of "the professions regulated under this Order" substitute—

""the professions regulated under this Order" means the professions of nurse, midwife and nursing associate;";

(g) for the definition of "registrant" substitute—

""registrant" means a nurse, midwife or nursing associate who has been admitted to the register maintained under article 5;";

(h) for the definition of "visiting nurse or midwife from a relevant European State" substitute—

""visiting nurse, midwife or nursing associate from a relevant European State" means a nurse or midwife registered in exercise of entitlement under article 39A (visiting general systems nurses from relevant European States) or Schedule 2A (visiting midwives, and certain visiting nurses, from relevant European States) or, a nursing associate registered in exercise of entitlement under article 39C (visiting general systems nursing associates from relevant European States);";

(i) omit the definition of "Screeners".

(**a**) Schedule 1 was amended by S.I. 2008/1485, S.I. 2009/1182, S.I. 2013/235 and S.I. 2017/321 and by section 187(8) of, and paragraph 7 of Schedule 12 to, the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) and by section 80 of, and paragraph 47 of Schedule 8 to, the Health Act 2006 (c. 28).

(**b**) Schedule 4 was amended by S.Is. 2003/3148, 2004/1947, 2007/3101, 2008/1485, 2011/1043, 2014/1887, 2015/806, 2016/1030 and 2017/321.

SCHEDULE 2

Article 2(2)

Amendments to other subordinate legislation

Amendment of the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004

1. The Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004(**a**) is amended as follows.

2. In article 1(1) (citation, commencement and interpretation), for "the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004" substitute "the Nursing and Midwifery Council (Parts of and Entries in the Register) Order of Council 2004".

3. After article 2 (parts and sub-parts of the register) insert—

"Closure of Sub-Part 2 of the nurses' part of the register

2A.—(1) Except where paragraph (2) applies, Sub-Part 2 of the Nurses' Part of the register is to be closed on the appointed day so that on or after that date no further person may become registered in that Sub-Part.

(2) Sub-Part 2 of the Nurses' Part of the register will remain effective and continue to apply for the purposes of registrants registered in that Sub-Part before the appointed day.

(3) For the purposes of this article, "appointed day" means the date of coming into force of article 1(2) of the Nursing and Midwifery (Amendment) Order 2018.".

4. For article 8 (annotations denoting visiting nurses or midwives from relevant European States)(**b**) substitute—

"Annotations denoting visiting nurses, midwives or nursing associates from relevant European States

8. The entries in the register are to include such annotation as the Council considers appropriate to denote that a registrant is a visiting nurse, midwife or nursing associate from a relevant European State.".

5. In Schedule 1 (parts and sub-parts of the register)—

(a) in column 1, immediately after the entry "Midwives" add the following entry: "Nursing Associates in England";

(b) in column 2, immediately after the entry "Midwife" and opposite the entry in column 1 added by paragraph (a), add the following entry: "Nursing Associate".

Amendment of the Schedule to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004

6. In the Schedule to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004(**c**)—

(a) in rule 2 (interpretation)(**d**)—

(i) for the definition of "lay" substitute—

""lay", in relation to a Case Examiner, means a person who—

(a) is not and never has been a registered nurse, midwife or nursing associate;

(**a**) S.I. 2004/1765.
(**b**) Article 8 was inserted by S.I. 2007/3101.
(**c**) S.I. 2004/1761.
(**d**) Rule 2 was amended by rules Scheduled to S.Is 2007/893, 2008/3148, 2012/17 and 2015/52.

(b) is not and never has been a registered medical practitioner; and

(c) does not hold qualifications which would entitle them to apply for registration as a registered nurse, midwife, nursing associate or registered medical practitioner;",

(ii) in the definition of "professional" for "registered nurse or midwife" substitute "registered nurse, midwife or nursing associate";

(b) in paragraph (3)(a) of rule 3 (notice of allegations of fraudulent or incorrect entries in the register)(**a**) for "services in, or in relation to, nursing or midwifery" substitute "professional services".

Amendment of the Schedule to the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004

7. In the Schedule to the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004(**b**)—

(a) for rule 2A (application to visiting nurses and midwives from relevant European States)(**c**) substitute—

"Application to visiting nurses, midwives and nursing associates from relevant European States

2A. In these Rules—

(a) Part 2 does not apply to visiting nurses, midwives or nursing associates from relevant European States, or in respect of a person's registration in exercise of an entitlement under article 39A or 39C of, or Schedule 2A to, the Order, except for rule 3(3)(education leading to registration and re-registration: continuing professional development);

(b) Part 3 does not apply in respect of a person's registration in exercise of an entitlement under article 39A or 39C of, or Schedule 2A to, the Order, except for rules 4 (the register), 14 (lapse of registration) and 16 (amendments to the register);

(c) Part 4 applies in respect of a person's registration in exercise of an entitlement under article 39A or 39C of, or Schedule 2A to, the Order.";

(b) in rule 5 (application for admission to a part of the register)—

(i) in paragraph (2)(a)(iii) for "article 13(1)(c) or (d)" substitute "article 13(1)(c), (d) or (dd)",

(ii) omit "or" after paragraph (2)(a)(iii) and insert "or" after paragraph (2)(a)(iv),

(iii) after paragraph (2)(a)(iv) insert—

"(v) where the applicant is relying on article 13A of the Order, evidence of her specified qualification as mentioned in article 13A(4) of the Order and, where appropriate, such other evidence as the Council may reasonably require (such as a document that details her training and references) in order to satisfy the Council that she has met the requisite standard of proficiency for admission to the part of the register in respect of which she is applying;";

(c) in rule 6 (requirements for declarations of good health and good character)(**d**)—

(i) omit "or" after paragraph (1)(a)(i) and insert "or" after paragraph (1)(a)(ii),

(ii) after paragraph (1)(a)(ii) insert—

(**a**) Rule 3 was amended by rules Scheduled to S.I. 2012/17, S.I. 2015/52 and S.I. 2017/703.
(**b**) S.I. 2004/1767.
(**c**) Rule 2A was inserted by S.I. 2007/3101.
(**d**) Rule 6 was amended by the Policing and Crime Act 2009 (c. 26) and by S.I. 2005/2114 and S.I. 2007/3101.

"(iii) by the registered nurse or nursing associate, whose name has been notified to the Council, who is responsible for the nursing associate education in the relevant approved educational institution, or her designated registered nurse substitute or designated registered nursing associate substitute;",

(iii) in paragraph (1)(b)(i) for "with paragraph (1)(a)(i) or (ii)" substitute "with paragraph (1)(a)(i), (ii) or (iii)",

(iv) for paragraph (1)(b)(ii) substitute—

"(ii) by a declaration signed by a registrant who is registered in a relevant part of the register and who has known the applicant for at least one year, and has been in contact with her during the preceding six months and can attest to the matters set out in the declaration;",

(v) after sub-paragraph (b) insert—

"(ba) for an applicant who is applying to the nursing associates' part of the register and who is a person to whom article 13A of the Order applies, by a declaration signed by a registered nurse who has known the applicant for at least one year and has been in contact with her during the preceding six months and can attest to the matters set out in the declaration;",

(vi) for paragraph (1)(c) substitute—

"(c) for an applicant applying for readmission to the register who has not completed a return to practice programme, by a declaration signed by a registrant who is registered in a relevant part of the register and who has known the applicant for at least one year, and has been in contact with her during the preceding six months and can attest to the matters set out in the declaration;",

(vii) before paragraph (1)(e) insert—

"(da) for an applicant applying to join the nursing associates' part of the register who is relying on article 13(1)(dd) of the Order, by a declaration signed by a registered nurse or registered nursing associate who has known the applicant for at least one year and has been in contact with her during the preceding six months and who is able to attest to the matters set out in the declaration;

(db) for an applicant to whom sub-paragraph (da) applies, in addition to the declaration referred to in that sub-paragraph, a declaration signed by—

(i) a member of the occupational health department of a body that has employed or engaged the applicant who, on the basis of a health assessment of the applicant undertaken by that department, is able to attest to the matters set out in the declaration, or

(ii) a registered medical practitioner who has undertaken a health assessment of the applicant in the last six months;",

(viii) before paragraph (1A) insert—

"(1ZA) For the purpose of paragraph (1)(b) and (c) "a relevant part of the register" means—

(a) where the applicant is applying to be registered as a nurse or midwife, the part of the register in which the applicant is applying to be registered;

(b) where the applicant is applying to be registered as a nursing associate, the nurses' part of the register or the nursing associates' part of the register.",

(ix) in paragraphs (1D)(b) and (1E) for " nurse or midwife" substitute " nurse, midwife or nursing associate",

(x) in paragraph (1F)(a) after "midwifery" insert ", or her qualification which is comparable to that of a nursing associate in England",

(xi) in paragraph (5)(b) for "paragraph (1)(a), (b), (c) or (e)" substitute "paragraph (1)(a), (b), (ba), (c), (da), (db) or (e)",

(xii) in paragraph (6)(b) for "paragraph (1)(a), (b), (c) or (e)" substitute "paragraph (1)(a), (b), (ba), (c), (da), (db) or (e)";

(d) in rule 8 for "article 13(1)(b), (c), (d), (e) or (f) of the Order" substitute "article 13(1)(b), (c), (d), (dd), (e) or (f) of the Order";

(e) in paragraph (4)(a) of rule 15 (readmission to the register)(**a**) for "as a nurse or midwife" substitute "as a nurse, midwife or nursing associate";

(f) in paragraph (1)(c) of rule 16A (evidence in connection with indemnity arrangements)(**b**) for " as a nurse or midwife" in both places that it occurs, substitute "as a nurse, midwife or nursing associate in England";

(g) in rule 25 (consideration by appeal panel)(**c**)—

(i) for paragraph (3)(a) substitute—

"(a) a person who is registered in—

(i) the same part of the register in respect of an appellant who is, or is applying to be, registered as a nurse or midwife, or

(ii) the nurses' or nursing associates' parts of the register in respect of an appellant who is, or is applying to be, registered as a nursing associate;",

(ii) in paragraph (3)(aa) for "the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules 2008" substitute "the Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008",

(iii) for paragraph (3)(b) substitute—

"(b) a person who—

(i) is not and never has been a registered nurse, midwife or nursing associate,

(ii) is not and never has been a registered medical practitioner, and

(iii) does not hold qualifications which would entitle them to apply for registration as a registered nurse, midwife, nursing associate or registered medical practitioner;";

(h) in paragraph (j) of Schedule 3 (application for admission to a part of the register)(**d**) for "nurse or midwife" in both places that it occurs, substitute "nurse, midwife or nursing associate in England";

(i) in paragraph 1(h) of Schedule 4 (notice of renewal of registration)(**e**) for "nurse or midwife" in both places that it occurs, substitute "nurse, midwife or nursing associate in England".

Amendment of the Schedule to the Nursing and Midwifery Council (Midwifery and Practice Committees)(Constitution) Rules Order of Council 2008

8. In the Schedule to the Nursing and Midwifery Council (Midwifery and Practice Committees)(Constitution) Rules Order of Council 2008(**f**)—

(a) in rule 2 (interpretation)(**g**) in the definition of "non registrant" for "registered nurse or midwife" substitute "registered nurse, midwife or nursing associate";

(b) in rule 8(l) and (m) (disqualification from appointment as committee member)(**h**), for "the nursing and midwifery professions" substitute "nurses, midwives and nursing associates";

(**a**) Rule 15 was amended by S.I. 2007/3101 and S.I. 2014/1887 and by rules Scheduled to S.Is 2012/2754 and 2015/1923.
(**b**) Rule 16A was inserted by rules Scheduled to S.I. 2015/52.
(**c**) Rule 25 was amended by S.I. 2009/1182 and by rules Scheduled to S.I. 2015/52.
(**d**) Schedule 3 was inserted by S.I. 2007/3101 and amended by rules Scheduled to S.I. 2015/52.
(**e**) Schedule 4 was amended by rules Scheduled to S.I. 2015/52.
(**f**) S.I. 2008/3148.
(**g**) Rule 2 was amended by S.I. 2017/321.
(**h**) Rule 8 was amended by S.I. 2012/3006.

(c) in rule 9(1)(j) (termination of committee membership)(**a**) for "the nursing and midwifery professions" substitute " nurses, midwives and nursing associates".

Amendment of the Nursing and Midwifery Council (Constitution) Order 2008

9. In the Nursing and Midwifery Council (Constitution) Order 2008(**b**) in articles 5(l) and (m) (disqualification from appointment as a member)(**c**) and 6(1)(j) (removal of members from office), for "the nursing and midwifery professions" substitute " nurses, midwives and nursing associates".

Amendment of the European Union (Recognition of Professional Qualifications) Regulations 2015

10. In the European Union (Recognition of Professional Qualifications) Regulations 2015(**d**)—

(a) in Schedule 1(regulated professions), in Part 1 (professions regulated by law or public authority)(**e**) in the column headed "Profession" immediately after "Nurse (other than a nurse admitted to Sub-Part 1 of the nurses' part of the register maintained by the Nursing and Midwifery Council whose field of practice is adult nursing),", insert "Nursing Associate in England";

(b) in Schedule 2 (regulated professions having public health or safety implications), in the list immediately after "Nurse (other than a nurse admitted to Sub-Part 1 of the nurses' part of the register maintained by the Nursing and Midwifery Council whose field of practice is adult nursing)" insert "Nursing Associate in England".

SCHEDULE 3

Article 2(3)

Consequential Amendments to Primary Legislation

The Interpretation Act 1978 (c. 30)

1. In Schedule 1 to the Interpretation Act 1978 (words and expressions defined)(**f**), for the definition of "Registered" substitute—

> ""Registered" in relation to nurses, to midwives or to nursing associates, means registered in the register maintained under article 5 of the Nursing and Midwifery Order 2001 by virtue of a qualification which is an approved qualification for the purposes of registration in the relevant part of that register.".

The Value Added Tax Act 1994 (c. 23)

2. In Part II of Schedule 9 to the Value Added Tax Act 1994 (exempt supplies of goods and services)(**g**), in item 1(d) in Group 7 (health and welfare) for "nurses and midwives" substitute "nurses, midwives and nursing associates".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Nursing and Midwifery Order 2001 (S.I. 2002/253) ("the 2001 Order") to include provisions relating to the regulation of nursing associates in England and to make

(**a**) Rule 9 was amended by S.I. 2017/321.
(**b**) S.I. 2008/2553.
(**c**) Article 5 was amended by S.I. 2012/3006.
(**d**) S.I. 2015/2059.
(**e**) Schedule 1 Part 1 was amended by S.I. 2016/1094 and by S.I 2018/166.
(**f**) This definition was substituted by S.I. 2002/253, article 54(3), Schedule 5, paragraph 7 and amended by S.I. 2004/1771, article 3, Schedule 1.
(**g**) Group 7 item 1(d) was substituted by S.I. 2002/253, article 54(3), Schedule 5 paragraph 12.

consequential amendments in that regard. This Order also i) makes other miscellaneous amendments to the 2001 Order ii) amends other subordinate legislation and iii) makes consequential amendments to primary legislation.

Schedule 1 to this Order amends the 2001 Order as follows.

Paragraph 2 inserts article 2A (application to nursing associates) to provide that the application of the provisions in the 2001 Order which apply to nursing associates, is limited to England. This reflects that the regulation of nursing associates is limited to England.

Paragraph 3 amends article 3 (the Council and its Committees) to include nursing associates within the remit of the Nursing and Midwifery Council ("the Council") and its Committees so that the Council can exercise its functions in relation to nursing associates, including the establishment of standards of education, training, conduct and performance.

Paragraph 4 amends article 5 (establishment of the register) to provide that the Council's register is to include nursing associates and the Council must therefore establish standards of proficiency for admission to the nursing associate part of the register and prescribe the requirements to be met regarding the evidence to be provided by a nursing associate as to good health and good character in order to satisfy the Registrar that they are capable of safe and effective practice as a nursing associate.

Paragraph 5 amends article 6 (register) to provide that an order by the Privy Council in relation to the register may provide that an annotation is made to the register denoting that a registrant is a visiting nursing associate from relevant European States.

Paragraph 6 amends article 6A (temporary annotations with regard to emergencies involving loss of human life or illness etc.) so as to dis-apply this provision in relation to nursing associates meaning that in an emergency, unlike the position with nurses and midwives, the Registrar will not be able to annotate the register giving nursing associates temporary prescribing rights.

Paragraph 7 amends article 7 (supplemental provisions) to extend the scope of this provision to ensure that fees are not charged in respect of a visiting nursing associate from a relevant European State, who has an entitlement to register by virtue of article 39C of the 2001 Order.

Paragraph 8 amends article 9 (registration) to provide that a person applying to be registered as a nursing associate must satisfy the same registration requirements as nursing and midwifery applicants. It dis-applies these registration requirements to visiting nursing associates from relevant European States who seek registration in accordance with article 39C, in the same way as they are dis-applied in respect of visiting nurses and midwives. Paragraph 9 amends article 10 (renewal of registration and readmission) to dis-apply those provisions in relation to renewal of registration or readmission to the register and visiting nursing associates from relevant European States.

Paragraph 10 amends article 12A (indemnity arrangements) to dis-apply that provision in relation to visiting nursing associates from relevant European States exercising that entitlement in the same way as it is for visiting nurses and midwives.

Paragraph 11 amends article 13 (approved qualifications) to include nursing associate qualifications awarded in England within the scope of qualifications approved by the Council for admission to the nursing associates' part of the register. It also allows those who have undergone training outside the United Kingdom that is comparable to that of a nursing associate, to satisfy the Council that their qualification reaches the appropriate standards for admission to that part of the register, or if necessary have undertaken additional training or experience to so satisfy the Council following any test of competence it may require them to take. A new provision is also included for those who have training comparable to that of a nursing associate obtained in Scotland, Wales and Northern Ireland, to have those qualifications accepted for admission, or if necessary, to undergo additional training or experience to so satisfy the Council following any test of competence it may require them to take.

Paragraph 12 inserts article 13A (transitional provisions relating to admission to the register). The provision applies to those applying for admission to the nursing associates' part of the register, who have either been awarded a "specified qualification" or have commenced a course of education or training on or before 26th July 2019 leading to a "specified qualification". A "specified qualification" is defined to include certain pilot schemes approved by Health Education England in accordance with the Care Act 2014(**a**) for nursing associates and apprenticeships for nursing associates approved in accordance with section A1(3) of the Apprenticeship, Skills, Children and Learning Act 2009(**b**).

Paragraph 13 amends article 15 (education and training) to insert paragraph (5A) which provides that the Council's duties under paragraph (5) of that article, where these relate to nursing associates, are exercisable in relation to universities and other bodies in England only.

Paragraph 14 amends article 16 (visitors) to allow a visitor to be selected from either the nurses' or nursing associates' parts of the register in respect of nursing associate courses.

Paragraph 15 amends article 19 (post registration training) to apply these provisions to visiting nursing associates from relevant European States in the same way as they apply to visiting nurses and visiting midwives.

Paragraph 17 revokes article 23 and 24 (screeners) as this power to make rules to appoint screeners has never been used and the Council do not intend to use screeners in fitness to practise procedures. A number of consequential amendments have been made to reflect this revocation (see paragraphs 16 and 19 to 25 of Schedule 1 to this Order).

Paragraph 18 amends article 25 (Council's power to require disclosure of information) to provide that the Council's power to require disclosure of information applies to nursing associates in the same way as it applies to nurses and midwives.

Paragraph 26 amends article 37 (appeals against Registrar's decisions) to provide that certain Registrar's decisions concerning registration which involve visiting nursing associates from relevant European states and nursing associates who are exempt persons who have been required to complete an adaptation period or pass an aptitude test have the same appeal rights to the Council against those decisions as visiting nurses and midwives and nurses and midwives who are exempt persons. Article 37 is also amended to allow panel members for appeals under that article brought by a nursing associate to include a registrant selected from the nurses' or the nursing associates' parts of the register.

Paragraph 27 amends article 38 (appeals) to provide that a nursing associate or a person applying to be registered as a nursing associate who appeals against a Council decision taken under article 37, or who appeals against certain Investigating Committee decisions must bring that appeal to the county court in England. This reflects that nursing associates are regulated in England only. Likewise "the appropriate court" to which a nursing associate can appeal an order of decision of the Fitness to Practise Committee will be to the High Court of Justice in England and Wales.

Paragraph 28 amends articles 39A (visiting general systems nurses from relevant European States) to reflect the closure of Sub-Part 2 of the Nurses' Part of the register to new applicants.

Paragraph 29 inserts article 39C (visiting nursing associates from relevant European States) to make similar provision to that in article 39A for visiting general systems nurses from relevant European States which will ensure that nursing associates who benefit from regulation 12 of the General Systems Regulations(**c**) have their qualifications and training recognised in England and to be registered in the nursing associate part of the register.

Paragraph 30 amends article 44 (offences) to provide that the offences in paragraphs (1), (2) and (3) of that article where they concern the nursing associate part of the register, the use of the

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(**a**) 2014 c. 23.
(**b**) 2009 c. 22.
(**c**) The European Union (Recognition of Professional Qualifications) Regulations 2015 S.I. 2015/2059.

nursing associate title or representations as to nursing associate qualifications are offences only where the representations are made, or the title is used in England. This is to reflect that fact that nursing associates are regulated in England only.

Paragraph 32 amends Schedule 4 (interpretation) to amend certain definitions to include reference to nursing associates and to insert definitions consequential on the regulation of nursing associates. It is also amended to omit the definition of Screeners.

Schedule 2 of this Order amends other subordinate legislation as a consequence of the amendments to the 2001 Order by this Order.

The Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004(**a**) is amended by paragraphs 1 to 5 of Schedule 2 to this Order. The effect of these amendments is to i) change the name of that order to reflect the Council's wider remit ii) close Sub-Part 2 of the Nurses' Part of the register to new applicants after the appointed day and iii) open a new Nursing Associate Part of the register. Sub-Part 2 of the Nurses' Part of the register will remain effective for registrants registered in that Sub-Part before the appointed day. A new part of the register is opened for nursing associates in England who will use the title 'Nursing Associate'. Provision is made enabling an entry in the nursing associate part of the register to be annotated denoting that a registrant is a visiting nursing associate.

Schedule 2 to this Order also makes consequential amendments to the Nursing and Midwifery Council (Fitness to Practise) Rules 2004(**b**), the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004(**c**), the Nursing and Midwifery Council (Practice Committees)(Constitution) Rules 2008(**d**), the Nursing and Midwifery Council (Constitution) Order 2008(**e**) and the European Union (Recognition of Professional Qualifications) Regulations 2015.

Schedule 3 of this Order makes consequential amendments to primary legislation.

A report on the Consultation in relation to the Secretary of State's proposals to make this Order, is available at https://www.gov.uk/government/consultations/regulation-of-nursing-associates-in-england copies of which can be obtained by writing to the Department of Health and Social Care, Professional Regulation, Room 2W09, Quarry House, Quarry Hill, Leeds, LS2 7UE.

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(**a**) S.I. 2004/1765.
(**b**) These Rules are Scheduled to S.I. 2004/1761.
(**c**) These Rules are Scheduled to S.I. 2004/1767.
(**d**) These Rules are Scheduled to S.I. 2008/3148.
(**e**) S.I. 2008/2553.

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