

19 March 2014 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..

DRAFT STATUTORY INSTRUMENTS

2014 No.

HEALTH CARE AND ASSOCIATED PROFESSIONS

NURSES AND MIDWIVES

**The Nursing and Midwifery (Amendment) Order in Council
2014**

Made - - - - 2014

Coming into force - - ***

At the Court at Buckingham Palace, the xx day xx of xx 2014

Present,

The Queen's Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 60 and 62(4) 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.

The period of three months mentioned in paragraph 9(2) of that Schedule expired before a draft of this Order was laid before Parliament.

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

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

(a) 1999 c. 8. Section 60 was amended by: the National Health Service Reform and Health Care Professions Act 2002 (c. 17) ("the 2002 Act"), section 26(9); the Health and Social Care Act 2008 (c. 14) ("the 2008 Act"), Schedule 8, paragraph 1, and Schedule 10, paragraph 10; sections 209 and 210 of the Health and Social Care Act 2012 (c. 7) ("the 2012 Act"); and S.I. 2002/253 and 254. Section 62 was amended by: the National Health Service (Consequential Provisions) Act 2006 (c. 43), Schedule 1, paragraphs 194 and 197, and Schedule 4; and the 2008 Act, Schedule 8, paragraph 2, and Schedule 10, paragraph 11. Schedule 3 has been amended by: the 2002 Act, section 26(10); the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), Schedule 11, paragraph 67, and Schedule 14, Part 4; the Health Act 2006 (c. 28), section 33 and Schedule 9; the 2008 Act, Schedule 8, paragraphs 3 to 10 (although paragraph 10 is not yet in force); the 2012 Act, section 211 and S.I. 2002/254.

Citation and commencement

1. This Order may be cited as the Nursing and Midwifery (Amendment) Order in Council 2014 and shall come into force on the day after the day on which this Order is made.

Amendments to the Nursing and Midwifery Order 2001

2. The Nursing and Midwifery Order 2001(a) is amended as follows.

Amendment to article 12A

3. In article 12A (indemnity arrangements)(b) after paragraph (7) insert—

“(7A) The Council may disclose to any person, information relating to a person’s indemnity arrangement which is provided to the Council by virtue of rules made under paragraph (4) or (7), for the purposes of verifying that information.”.

Amendment to article 25

4. In article 25(1) (Council’s power to require disclosure of information)(c) for “or any of its Practice Committees” substitute “, any of its Practice Committees, the Registrar or any other officer of the Council”.

Amendments to article 26

5. In article 26 (the Investigating Committee)—

(a) in paragraph (2)—

(i) omit “it shall”,

(ii) for sub-paragraph (a) substitute—

“(a) the Council shall without delay notify the person concerned of the allegation and invite him to submit written representations to the Committee within a prescribed period;”.

(iii) in sub-paragraphs (b), (c) and (d), at the beginning of those sub-paragraphs insert “the Committee shall”;

(b) in paragraph (11)—

(i) after “before” insert “or after”,

(ii) after “paragraph (6)” add “; but the Investigating Committee may only make an interim order after it has referred a case if the Health Committee or the Conduct and Competence Committee has not begun its consideration of the case”.

Insertion of articles 26A, 26B, and 26C

6. After article 26 insert—

“ Exercise of Investigating Committee functions by the Registrar or officers of the Council

26A.—(1) Rules under article 26 may make provision for—

(a) the Registrar; or

(b) any other officer of the Council,

(a) S.I. 2002/253.

(b) Article 12A was inserted by article 26 of [S.I.].

(c) Article 25 was amended by S.I. 2009/1182, article 4, Schedule 4, Part 6, paragraph 38(d)(i) and (ii).

to exercise the functions of the Investigating Committee under paragraphs (1), (2)(b) to (d), (5), (6) and (8) of article 26, whether generally or in relation to such classes of case as may be specified in the rules.

(2) Where, by virtue of paragraph (1), rules provide for the Registrar or any officer of the Council to exercise the functions of the Investigating Committee under paragraphs (5)(a) and (6)(b) of article 26, the referral of a case to the Conduct and Competence Committee or to the Health Committee shall be deemed to have been made by the Investigating Committee.

Review of decisions by the Council

26B. The Council may—

- (a) review a decision made under article 26(2)(d)(i) or made by virtue of rules made under article 26, that there is no case to answer; and
- (b) make rules in connection with the carrying out of a review under paragraph (a).

Exercise of Council functions by the Registrar or officers of the Council

26C.—(1) The Council may make rules providing for—

- (a) the Registrar; or
- (b) any other officer of the Council,

to exercise the functions of the Council under article 22, 26(2)(a) and 26B(a) whether generally or in relation to such classes of case as may be specified in the rules.

(2) Where, by virtue of paragraph (1), rules provide for the Registrar or any other officer of the Council to exercise the functions of the Council under article 22, the referral of a case to the Conduct and Competence Committee or to the Health Committee shall be deemed to have been made by the Council.”.

Amendments to article 30

7. In article 30 (review of orders by the Health Committee and the Conduct and Competence Committee) —

- (a) for paragraph (1)(b) substitute—
“(b) with effect from the expiry of the order, and subject to article 29(6) and (7), make an order falling within article 29(5);”;
- (b) for paragraph (4)(d) substitute—
“(d) subject to article 29(6) and (7), replace the order with one falling within article 29(5); any replacement order falling within article 29(5)(b), (c) or (d) shall have effect for the remainder of the term of the order it replaces;”.

Amendments to article 31

8. In article 31 (interim orders by a Practice Committee)—

- (a) in paragraph (2) omit “Subject to paragraph (4),”;
- (b) omit paragraph (4);
- (c) in paragraph (5) for sub-paragraph (a) substitute—
“(a) in a case falling within paragraph (1)(a)—
 - (i) when the Conduct and Competence Committee or the Health Committee reaches a decision in respect of the allegation in question,
 - (ii) where, in respect of an allegation of the kind mentioned in article 22(1)(b), the Investigating Committee reaches a decision in respect of the allegation;”;

(d) for paragraph (6) substitute—

“(6) In a case coming within paragraph (1)(a), an order made under paragraph (2) shall be reviewed by either the Committee which made the order or any Practice Committee to which the matter has been referred—

- (a) within the period of six months beginning on the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it before the end of the period of three months beginning on the date of the decision of the immediately preceding review;
- (b) where new evidence relevant to the order has become available after the making of the order.”;
- (e) in paragraph (7)—
 - (i) before “the Practice Committee” where it first appears insert “then either”,
 - (ii) after “which made the order or” insert “any Practice Committee to which the matter has been referred”,
 - (iii) omit “where the case has been referred to another Practice Committee, that Committee.”.

Amendment to article 37

9. In article 37(a) (appeals against Registrar’s decisions) omit paragraph (5)(c)(iii) and (d).

Richard Tilbrook
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Nursing and Midwifery Order 2001 (S.I. 2002/253) (“The Order”).

Article 3 of this Order amends article 12A of the Order to provide that the Council can disclose information relating to a person’s indemnity arrangement for the purposes of verifying that information.

Article 6 of this Order inserts articles 26A, 26B and 26C. Article 26A provides that rules made under article 26(3) may make provision for the Registrar or any other officer of the Council to exercise certain functions of the Investigating Committee. By virtue of these provisions, Case Examiners, who will be officers of the Council, will investigate allegations of impairment of fitness to practise and will make case to answer decisions at the conclusion of the investigation stage.

Article 26B introduces a power for the Council to review a decision made by the Investigating Committee under article 26(2)(d)(i) of the Order or made by Case Examiners by virtue of rules made under article 26 of that Order that there is no case to answer and to make rules in connection with the carrying out of such a review.

Article 26C provides that the Council may make rules providing for the Registrar or any other officer of the Council to exercise the functions of the Council under articles 22 (allegations), 26(2)(a) (notification of allegation and invitation to submit written representations) and 26B(a) (review of a decision of no case to answer). As Case Examiners and the Registrar will, by virtue of the new powers in Articles 26A, 26B and 26C, undertake some functions of the Council or of the Investigating Committee, article 4 of this Order amends the Order to provide that the Council

(a) Article 37 was amended by S.I. 2007/3101, regulation 1(2), S.I. 2008/1485, article 2(1), Schedule 1, paragraph 6(a) and (b) and S.I. 2009/1182, article 4(1), Schedule 4, part 6, paragraph 38(f).

may require any person to supply information for the purposes of assisting the Council or any of its Practice Committees or the Registrar or any other officer of the Council in carrying out functions in respect of fitness to practise.

Article 5 of this Order amends article 26(2) of the Order to provide that, where an allegation is referred to the Investigating Committee, the Council, rather than the Investigating Committee, will notify the person concerned of the allegation and invite that person to submit written representations.

Article 5 also amends article 26(11) of the Order to provide that the Investigating Committee may also make an interim order in accordance with article 31 after it has referred a case to another Practice Committee but before that Practice Committee has started to consider the case. This change is necessary as new information which suggests that an interim order may be appropriate might be received by the Council after the allegation has been referred to the Health Committee or to the Conduct and Competence Committee but before that Committee has convened to consider the allegation. Article 8 makes consequential amendments to article 31 of the Order (interim orders).

Article 7 of this Order amends article 30 of the Order to allow the Health Committee or the Conduct and Competence Committee, before the expiry of a suspension order or a conditions of practice order, to review the order and (subject to article 29(6) and (7)) make any order falling within article 29(5). It makes similar provision in respect of a review of a suspension order or a conditions of practice order undertaken on the application of the person concerned or where the Committee, at any time, considers that a review is necessary.

Article 9 of this Order amends article 37 of the Order to remove the requirement for a Council member to chair the Registration Appeals Panel and to remove the requirement for this Panel to include a registered medical practitioner where the health of a registrant is in issue.