

CHAPTER 325

THE NURSING AND MIDWIFERY ACT

[PRINCIPAL LEGISLATION]

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SCHEDULE

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CHAPTER 325

THE NURSING AND MIDWIFERY ACT

An Act to make provisions for protection, promotion and preservation of the public health, safety and welfare through regulation and control of nursing and midwifery education and practice.

[1st October, 2010]

[GN. No. 378 of 2010]

Act No.
1 of 2010

PART I

PRELIMINARY PROVISIONS

- Short title **1.** This Act may be cited as the Nursing and Midwifery Act.
- Application **2.** This Act shall apply to Mainland Tanzania.
- Interpretation **3.** In this Act, unless the context otherwise requires-
- “approved nursing institution” means an institution or part of an institution approved by the Council under the provisions of this Act, to provide a course leading to the acquisition of a qualifying award;
 - “Committee” means the Committee of the Council established under section 7;
 - “Council” means Nursing and Midwifery Council established under section 4;
 - “clinic” means a health care facility which is mainly used for health consultation and simple treatment;
 - “enrolled nurse or midwife” means a nurse or a midwife enrolled under section 15;
 - “health facility” means a facility established for the provision of health care services and includes hospital, health centre, medical and dental clinics, dispensary, pharmacy, healthy laboratory, diagnostic centre, radiological unit, maternity and a nursing home;

“internship” means a prescribed period during which a nurse or a midwife is under supervised placement for the purpose of gaining expected professional competence pending full registration;

“licence” means a licence issued under section 21 giving the bearer permission to practise as a nurse or midwife in accordance with qualifications obtained; or to operate a school of nursing or midwifery or maternity home, nursing home, nursing clinic or maternity clinic;

“midwife” means a person who is authorised by a licence issued under this Act to practise midwifery as an enrolled or registered midwife;

“midwifery” means giving care and supervision to a woman during pregnancy, labour and postpartum period and caring for the new born babies and infants;

“Minister” means the Minister responsible for health;

“nurse” means a person who is authorised by a licence to practise as an enrolled or a registered nurse;

“nursing home” means a place of residence for people who require constant nursing care established by a licensed nurse or midwife to provide such services in accordance with the provisions of this Act;

“nursing practice” means assisting individuals or groups of persons to maintain optimal health throughout the life process by assessing their health status, establishing nursing diagnosis, planning and implementing a strategy of care to accomplish defined goals and evaluating responses for care and treatment and shall include provision of nursing care, administration, supervision and teaching;

“private maternity home” means a place of residence for people who require constant maternity care established by licensed midwife under this Act;

“private midwifery services” means private services established by a midwife for providing reproductive and child health services as registered under this Act;

- “private nursing home” means a home established by a registered nurse to provide restorative, rehabilitative, curative and recuperative nursing care to an individual, a family or the community, by virtue of section 23;
- “private nursing services” means private services established by a nurse for assisting individual or groups of persons to maintain optimal health throughout the life process by assessing their health status, establishing nursing diagnosis, planning and implementing a strategy of care to accomplish defined goals and evaluating response of care and treatment;
- “private practice” in relation to a nurse or midwife means to practice as a nurse or midwife as authorised under section 22;
- “private provider” means any nurse who provides nursing services outside public service;
- “professional misconduct” means a conduct which, with regard to the profession of a nurse or midwife is improper, disgraceful, dishonorably or unworthy;
- “Register” means the register of nurses or midwives established and maintained by the Council under section 14;
- “registered nurse or midwife” means a nurse or midwife registered under section 15;
- “Registrar” means the Registrar of the Council appointed under section 9;
- “Roll” means an official document for enrolling names of nurses or midwives kept by the Council in accordance with the provisions of this Act; and
- “supervisory authority” means a person appointed by the Council under section 13.

PART II

ESTABLISHMENT OF THE COUNCIL

- Establishment of Council
- 4.**—(1) There is hereby established a Council to be known as the Tanzania Nursing and Midwifery Council.
- (2) The Council shall be a body corporate and shall-
- (a) have perpetual succession and an official seal;
 - (b) in its corporate name, be capable of suing and being sued; and
 - (c) subject to the provisions of this Act, be capable of holding, purchasing or otherwise, acquiring in any other way any movable or immovable property and disposing of any of its properties.
- Composition of Council
- 5.**—(1) The Council shall consist of not more than thirteen members appointed by the Minister as follows-
- (a) a Chairman of the Council who shall be appointed from amongst senior registered nurses;
 - (b) the head of nursing and midwifery services in the country;
 - (c) a representative of the nursing education section of the Ministry responsible for health;
 - (d) a nurse educator;
 - (e) a representative of the National Nurses Association;
 - (f) a representative of Regional Nursing Officers or District Nursing Officers;
 - (g) one nurse representing national, referral and specialised hospitals;
 - (h) one nurse representing private health providers;
 - (i) a representative of other healthcare professions;
 - (j) a law officer representing the Office of the Attorney General;
 - (k) an enrolled nurse; and
 - (l) two members appointed from the public who by their qualifications and experience can contribute to the work of the Council and the development of nursing

and midwifery in the country, at least one of whom shall be a woman.

(2) The Council may, whenever necessary, co-opt any person with special knowledge and skills to provide expertise on a particular issue but such a co-opted member shall have no voting right.

(3) A person shall not be appointed a member of the Council who is-

- (a) declared bankrupt;
- (b) convicted of a criminal offence and has been imprisoned for a term exceeding six months;
- (c) infirm of mind or body to perform the duties of a member; or
- (d) disqualified under the provisions of this Act, from practising as a nurse or a midwife.

(4) The provisions of the Schedule to this Act shall have effect as to the tenure of office of members, the proceedings of the Council and any matter relating to the Council.

Functions of
Council

6. The functions of the Council shall be to-

- (a) register and enrol duly qualified applicants by examination, endorsement, reinstatement of fulfilling any other requirement;
- (b) advise the Minister on matters concerning nursing and midwifery and to make recommendations on policy matters;
- (c) ensure that the Register and Roll of nurses and midwives are kept, maintained and updated in the prescribed manner;
- (d) establish standards of proficiency necessary to be admitted to the different parts of the Register or Roll;
- (e) collaborate with other relevant authorities on matters pertaining to nursing and midwifery education training and practice in approving various standards;
- (f) evaluate nursing education programs and approve such programs to meet the Councils' requirement;

- (g) issue, renew, replace and cancel nursing and midwifery practising licences;
- (h) approve the annual budget of the Council;
- (i) establish and keep under review the standards of conduct, performance and ethics expected from nurses and midwives and prospective nurses and midwives and give them guidance on these matters as it sees fit;
- (j) caution, censure, order the suspension from practice, or order the removal or restoration from the Register or Roll of the name of any registered nurse or midwife or enrolled nurse or midwife for malpractice, negligence or professional misconduct;
- (k) prescribe uniforms, badges and any other distinctive identities to be worn by nurses and midwives;
- (l) prescribe the form of professional oath to be used or administered upon all nurses and midwives on admission and other profession occasions;
- (m) prescribe standards and conditions for establishing private nursing or midwifery services including nursing homes, nursing clinics, maternity homes and maternity clinics;
- (n) grant licence for establishing private nursing or midwifery services, schools of nursing or midwifery;
- (o) develop, conduct and regulate nursing and midwifery registration or enrolment examinations; and
- (p) perform any other functions as prescribed under this Act or as may be directed by the Minister.

Committees of
Council

7.-(1) The Council shall, for the purpose of ensuring efficient performance of its functions and exercise of its powers appoint such number of Committees to perform functions as it may direct.

(2) Without prejudice to the generality of subsection (1), the Council may establish the following Committees-

- (a) the Finance Committee;
- (b) the Education and Professional Advancement Committee;

- (c) the Ethical and Disciplinary Committee;
- (d) the Research Committee; and
- (e) Registration and Enrolment Committee.

(3) The composition, procedures and other terms and restrictions of the Committees shall be as may be determined by the Council.

(4) The Committees shall, in the performance of their functions under this section, be answerable to the Council.

Delegation of powers and functions of Council

8.-(1) The Council may, subject to such terms, conditions and restrictions, as it may specify, delegate to any Committee or to any employee of the Council, some of its functions, powers or duties conferred or imposed to it by or under this Act.

(2) A delegation under this section may be made to the holder of an office of the Council specifying the office but without naming the holder and in every case where a delegation is so made each successive holder of the office in question and each person who occupies or performs the duties of that office may, without any further authority, perform or exercise the delegated function, power or duty in accordance with the delegation made by the Council.

(3) Delegation made under this section shall not prevent the Council from performing or exercising the function, power or duty delegated.

(4) Notwithstanding the foregoing provisions, the Council shall not have power to delegate-

- (a) its powers to delegate;
- (b) the power to approve the annual budget, supplementary budget, annual balance sheet or any statement of accounts; or
- (c) its powers to approve or change contents of the training, curriculum and other standards pertaining to nursing and midwifery professions in Tanzania.

PART III

MANAGEMENT AND STAFF OF THE COUNCIL

Appointment of Registrar **9.**-(1) There shall be a Registrar of the Council who shall be appointed by the Minister from amongst public servants who are senior registered nurses or midwives.

(2) The Registrar shall be the secretary and chief executive officer of the Council.

Functions of Registrar

10. The functions of the Registrar shall be -

- (a) effecting registration and enrolment of nurses and midwives upon directions of the Council;
- (b) keeping and maintaining the Register and Roll of nurses and midwives;
- (c) making necessary alterations and corrections to the Register or Roll in relation to any entry as may be directed by the Council;
- (d) inspecting and having full access, on behalf of the Council, to all maternity homes, nursing homes, clinics and nursing training schools;
- (e) recording all the minutes and proceedings of the meetings of the Council and its committees and having custody over all records and documents of the Council and committees;
- (f) keeping proper books of accounts and assets, preparing annual and supplementary estimates and financial statements;
- (g) implementing the decisions of the Council; and
- (h) performing any other duty that may be required under this Act or as the Council may direct subject to the provisions of this Act.

Deputy Registrar **11.**-(1) There shall be a Deputy Registrar to be appointed by the Minister from amongst public servants.

(2) The Deputy Registrar appointed under subsection (1) shall assist the Registrar in the performance of the functions under this Act and shall be answerable to the Registrar.

(3) Where the Registrar authorises the Deputy Registrar to act on his behalf in any matter, any reference in this Act to “the Registrar” shall include a reference to Deputy Registrar.

Officers and
employees of
Council

12.—(1) The Council shall appoint such number of officers and employees of the Council in various categories as may be required in accordance with the organisational structure of the Council.

(2) Officers and employees of the Council shall, in the performance of their functions, be answerable to the Registrar.

Appointment
and duties of
supervisory
authority

13.—(1) The Council may, in respect of any region, district or health institution, appoint a senior registered nurse or midwife to be the supervisory authority over all nurses or midwives in the respective region, district or health institution.

(2) It shall be the duty of every supervisory authority in respect of any registered or enrolled nurse or midwife under his supervision to—

- (a) exercise general supervision in accordance with the rules made under this Act;
- (b) investigate any charges or complaints against a registered or enrolled nurse or midwife including malpractice, lack of competence, unfit to practice, negligence and misconduct;
- (c) temporarily suspend from practice any registered or enrolled nurse or midwife for a period not exceeding three months;
- (d) report to the Council the name of any registered or enrolled nurse or midwife convicted of any offence and the nature of the offence committed as soon as possible; and
- (e) submit to the Council, the name of the registered or enrolled nurse or midwife who has ceased to practice nursing or midwifery or has died.

PART IV
REGISTRATION, ENROLMENT AND
LICENSING OF NURSES AND MIDWIVES

Register and Roll
of nurses and
midwives

14.–(1) Subject to the provisions of this Act, the Council shall establish, keep and maintain a Register and a Roll of qualified nurses and midwives.

(2) The Register or Roll of nurses and midwives shall contain the names, addresses, qualifications and other particulars of all nurses and midwives entitled for registration or enrolment.

(3) The Registrar shall-

- (a) have custody over the Register and Roll; and
- (b) be responsible for the making of entries in the Register or Roll.

Eligibility for
registration or
enrolment

15.–(1) Subject to the provisions of this Act and any conditions for inclusion into the register imposed by regulations made under this Act, any person shall be entitled to be registered as a nurse or midwife if such person has-

- (a) passed the nursing or midwifery examinations conducted by the Council;
- (b) complied with such other additional requirements relating to acquisition of practical experience in nursing or midwifery as the Council may prescribe;
- (c) produced evidence to the satisfaction of the Council that he is registered or that he has been and is still entitled to be registered as a nurse or a midwife in any country prescribed in regulations made under this Act;
- (d) produced evidence to the satisfaction of the Council that he is registered as a nurse or a midwife in any country which is not prescribed in regulations made under this Act, but is a country in which there was at the material time a law for the registration of nurses or midwives; or

(e) produced evidence to the satisfaction of the Council that he-

- (i) is a person of good conduct; and
- (ii) has successfully completed a course of training as a nurse of not less than three years or a midwife for a duration of not less than one year in a country in which there was at the material time no law for the registration of nurses or midwives, and the Council is satisfied that the standard of such training is not inferior to the standard adopted by the Council.

(2) Where in either of the cases referred to in subsection (1) (c), (d) and (e)(ii) the Council is not satisfied with evidence provided therein, the person seeking registration shall be required to pass the examinations as the Council may direct.

(3) A person shall be entitled to be enrolled as a nurse or midwife if he has-

- (a) successfully completed a course of nursing for a duration of not less than two years at an approved nursing institution or a course of midwifery for duration of not less than one year at an approved nursing or midwifery school; or
- (b) produces evidence to the satisfaction of the Council that he is certified or enrolled or that he has been and is still entitled to be certified or enrolled as a nurse or midwife in any country prescribed in regulations made under this Act.

Temporary
registration

16.-(1) Where a person who is not ordinarily a resident of Tanzania satisfies the Council that he-

- (a) is or intends to be employed in Tanzania in the capacity of registered nurse or a midwife in a hospital or other institution; and
- (b) is the holder of a qualification which is recognised by the Council as furnishing a sufficient guarantee of possession of the required knowledge and skill for the efficient practice of nursing or midwifery,

the Council may, if it considers fit, give direction that he shall be temporarily registered under this section.

(2) Subject to subsection (1), termination of registration shall automatically cease upon termination of such employment.

(3) A person registered under this section shall, in relation to the employment as mentioned in paragraph (a) of subsection (1) and to things done or omitted to be done in the course thereof, be treated as fully registered nurse or registered midwife under this Act.

Provisional
registration

17.—(1) A person who is not entitled to be registered as a nurse or a midwife on the ground of insufficient practical experience referred to in section 15(1)(b), shall, if he produces evidence satisfactory to the Council that he has been selected for internship in a hospital recognised by the Council for purposes of this section and that such internship provides the required practical experience, be entitled to be provisionally registered.

(2) A person who obtains a provisional registration shall, upon payment of a prescribed fee, be issued with a certificate of provisional registration.

(3) A provisionally registered nurse or midwife shall be deemed to be registered as far as it is necessary, to enable him to be employed for the purpose of this section in a supervised nursing capacity in such hospital recognised by the Council specified in the certificate of provisional registration and to carry out, under supervision in such hospital, any duties and responsibilities of a registered nurse or a midwife.

Removal from
Register or Roll

18.—(1) The Council may strike off from the relevant Register or Roll any name of any registered or enrolled person who fails to comply with the provisions of this Act.

(2) A person who has been stricken off from the Register or Roll shall not be employed or practice as a nurse or a midwife.

Surrender of
certificate on
removal of name
from Register or
Roll

19.—(1) A person whose name has been removed from the Register or Roll under the provisions of this Act shall, within three months or upon being notified of such order, surrender to the Council any certificate and licence issued to him by the Council.

(2) A person who contravenes the provisions of subsection (1) commits an offence and on conviction, shall be liable to a fine of not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

Restoration
of name after
removal

20. The Council may, on application of the person whose name has been removed from the Register or Roll, after the expiration of a prescribed period, cause the name of that person to be restored in the Register or Roll upon payment of a prescribed fee and fulfilment of other prescribed conditions.

Licence to
practice nursing
or midwife

21.—(1) The Registrar shall, in addition to registration or enrolment, issue the licence to a registered or enrolled nurse or midwife.

(2) Licences and certificates of all kinds shall be in the prescribed form and shall be subject to renewal as may be prescribed by the Council.

PART V REGISTRATION AND LICENSING FOR PRIVATE PRACTICE

Qualifications for
engagement in
private practice

22.—(1) A registered nurse or midwife who has served in a recognised health facility for a period of not less than three years and intends to engage in private practice shall apply to the Council in the prescribed manner for registration and a licence to establish and operate private nursing or maternity services.

(2) The Council may, if satisfied that the applicant possesses the necessary qualifications and after making inspection and receiving the prescribed fee, authorise the registration and issuance of a licence in respect of the nursing or maternity service with or without any conditions as the Council may deem necessary.

Registration and licensing of private nursing, maternity services or maternity homes

23.—(1) A person who intends to establish a private nursing, maternity services or a maternity homes to be operated by a licensed nurse or midwife shall apply to the Council for registration and licensing.

(2) The Council shall not register a nursing or maternity services or a maternity homes under subsection (1) unless the Registrar is satisfied that there is a licensed nurse or midwife employed on a full time basis to operate the nursing or maternity service and who will be responsible to oversee professional issues.

Inspection of private nursing or maternity homes, clinics and schools

24. The Registrar, a supervisory authority or any person authorised by the Council may, for purposes of ensuring that the provisions of this Act are complied with, enter upon and inspect any nursing, maternity home, clinic or school of nursing or midwifery.

PART VI

DISCIPLINARY PROVISIONS

Receipt of complaint by Registrar

25.—(1) The Registrar shall, on behalf of the Council, receive complaints against any nurse or midwife on unfitness to practise and present such complaints to the Council.

(2) For the purpose of this section, “unfitness to practise” means a person whose fitness to practice is impaired by reason of -

- (a) professional misconduct;
- (b) lack of competence;
- (c) a conviction for criminal offence;
- (d) his physical or mental health is impaired; or
- (e) a determination by a Medical Board in Tanzania or any other licensing body responsible for health regulation in any other jurisdiction.

(3) For the purpose of subsection (2), the term “professional misconduct” shall be construed as, but not limited to professional-

- (a) contravening a provision of this Act or the regulations;
- (b) failing to abide by terms, conditions or limitations of a licence as an enrolled or registered nurse or midwife;
- (c) abusing a client verbally, physically, sexually or emotionally;
- (d) having conflict of interest which affects the client and practitioner relationship;
- (e) influencing a client to change his will, advance health care directive or power of attorney;
- (f) abandoning a client who is in need of attention;
- (g) misappropriating drugs or other property belonging to a client or an employer;
- (h) failing to report the incompetence, negligence or professional misconduct of a colleague whose actions endanger the health of a client;
- (i) failure to exercise discretion in respect of the disclosure of confidential information about the client;
- (j) falsifying a record in respect of the observation or treatment of a client;
- (k) failing to maintain the standards of practice and the code of ethics of the profession; and
- (l) any conduct or an act relevant to the performance of service that, having regard to all the circumstances, would, reasonably be regarded by the profession as dishonourable, unprofessional or injurious to a client care.

(4) A complaint under this section shall be accompanied by a written statement made by a complainant, or any person acting on behalf of complainant or by a person interested in the act or omission giving rise to complaint.

(5) Notwithstanding the provisions of subsection (4), the Council may, on its own motion, initiate any preliminary inquiry on a nurse or midwife if it is satisfied that information

received by the Council warrants holding a preliminary inquiry.

(6) Except for complaints arising as a result of misconduct referred to under subsection (3), no inquiry shall proceed unless a statutory declaration by the complainant has been obtained.

Inquiry by
Council

26. The conduct of a registered or an enrolled nurse or midwife may be the subject of inquiry by the Council if the nurse or midwife is-

- (a) convicted of an offence under this Act;
- (b) convicted of criminal offence involving dishonesty or fraud or moral turpitude; or
- (c) alleged to have committed any malpractice, negligence or serious professional misconduct or disobeying any regulation or directive made under this Act.

Procedure for
inquiry

27.-(1) The Council shall, where it is of the opinion that a prima facie case has been established by the complainant, direct that an inquiry be held.

(2) The Council shall give opportunity to a nurse or a midwife against whom misconduct is alleged, to appear before the Council to be heard, and may be represented by an advocate.

(3) The Council may, where at the time and place fixed for the inquiry, the nurse or midwife subjected to an inquiry, fails without reasonable excuse to appear and the Council is satisfied that notice was duly served, proceed with the inquiry as if the nurse or the midwife were present.

Disciplinary
powers of Council

28.-(1) The Council may, upon receipt of-

- (a) a complaint against a nurse or midwife; or
- (b) a report from a supervisory authority,

temporarily suspend a nurse or midwife from practicing pending the conduct or completion of inquiry.

(2) On completion of inquiry, the Council may suspend, confirm, extend or reduce the temporary suspension.

(3) The Council after due inquiry made in accordance with the provisions of this Act may-

- (a) order the removal of the name of the nurse or midwife from the Register or Roll;
- (b) order the suspension from practice of the nurse or midwife for a period that it may deem fit; or
- (c) caution, censure or otherwise reprimand the nurse or midwife.

(4) A punishment other than an interim or temporary suspension may not be imposed upon a nurse or a midwife or in respect of a nursing, maternity home, clinic or school of nursing or midwifery unless due inquiry is made.

(5) Within seven days after the determination of an inquiry, the Registrar shall communicate the decision of the Council to the parties.

Power to summon witnesses

29. The Council shall have power to summon witness and call for the production of documents for the purpose of inquiry conducted under this Act.

Disobedience of summons and refusal to give evidence

30.-(1) A person who having been served with a summons to attend and give evidence or to produce any document at any inquiry held under the provisions of this Act-

- (a) fails without reasonable cause to obey summons;
- (b) refuses without reasonable cause to answer questions put to him by the Council; or
- (c) wilfully interrupts the proceedings of the Council or insults any member of the Council,

commits an offence.

(2) A person giving evidence before the Council shall, in respect of any evidence given by him or any other document produced by him, be entitled to all privileges which he would have been entitled to as a witness before the court of law.

Appeal against decision of Council

31.-(1) A person who is aggrieved by the decision of the Council may, within three months from the date of notification of the decision, appeal to the Minister.

(2) The Minister may dismiss or allow any appeal or alter or vary the decision of the Council or make any order, as he deems fit.

Appeals

32.—(1) The Ministers shall, within one month after determination of the appeal, serve a notice of such determination to the concerned person.

(2) A person aggrieved by the decision of the Minister may, within three months, refer the matter to the High Court.

PART VII FINANCIAL PROVISIONS

Funds of Council **33.**—(1) The funds and resources of the Council shall consist of-

- (a) money appropriated by the Parliament;
- (b) grants, gifts and donations;
- (c) fees paid for services rendered by the Council; and
- (d) money that may, in any manner become payable to or vested in the Council in pursuance of the provisions of this Act or in relation or incidental to the carrying out of its functions.

(2) The funds and resources of the Council shall be applied for the purpose for which the Council is established and in accordance with the directions of the Council.

(3) The Council shall open and maintain a bank account in a bank determined by the Council, and the account shall be maintained as may be determined by the Council.

Financial year

34. The financial year of the Council shall be twelve months beginning the 1st day of July and ending on the 30th day of June.

Estimates

35.—(1) The Council shall, within six months before the end of each financial year, prepare and submit to the Minister for his approval, estimates of its income and expenditure for the ensuing year.

(2) An expenditure shall not be made out of the funds of the Council unless that expenditure is part of expenditure approved by the Minister.

Accounts and
Audit

36.—(1) The Council shall keep proper books of accounts and shall prepare the annual financial statements of accounts for the proceeding financial year not later than three months after the following year.

(2) The annual accounts of the Council shall be audited by the Controller and Auditor-General.

(3) The Council shall within three months after the end of each financial year submit-

(a) to the Minister an annual report in respect of that year containing-

(i) financial statements;

(ii) a report on the operations of the Council; and

(iii) any other information that the Minister may, prior to the completion of the annual report or otherwise supplementary thereto, direct in writing; and

(b) to the Controller and Auditor-General-

(i) the accounts of the Council for that financial year; and

(ii) the annual report referred to under paragraph (a).

(4) The Controller and Auditor-General shall audit the accounts of the Council within two months of the receipt thereof and submit his opinion on the accounts and the annual report to the Minister and the Council.

(5) The Minister shall table copies of the annual report together with a copy of the audited accounts before the National Assembly at the first available opportunity after receipt of them.

Fees

37. Subject to the provisions of this Act, fees shall be charged for every registration including temporary registration, provisional registration, full registration, enrolment, registration of a school of nursing or midwifery, registration of private nursing, maternity home or clinic, registration of nursing or midwifery school or for the issuance of licences or permits.

PART VIII

OFFENCES AND PENALTIES

Penalty for illegal practice **38.**—(1) A person who-

- (a) practices nursing as a licensed nurse without a valid licence;
- (b) having been suspended from practice as a nurse or midwife by an order of the Council, habitually or for gain practices as a nurse or midwife; or
- (c) disobeys any order or directive of the Council,

commits an offence and on conviction, shall be liable to a fine not less than one million shillings and not more than three million shillings or to imprisonment for a term not exceeding five years or to both.

(2) Where a person is convicted of an offence under this section, the court may order any drugs, poison, medicines, needles, syringes or surgical, medical, dental or diagnostic instruments or appliances used by or belonging to or found in the possession of the person convicted, to be forfeited, destroyed or otherwise disposed of.

Penalty for illegal procuring of registration through false statement or document **39.** A person who-

- (a) procures or attempts to procure registration, enrolment, or a licence by making or causing to be made or producing any false or fraudulent statement or document;
- (b) deliberately makes or causes to be made any falsification in any matter relating to the Register or Roll; or
- (c) assists or aids that person therein,

commits an offence and on conviction, shall be liable to a fine not less than five hundred thousand shillings and not exceeding two million shillings or to imprisonment for a term of three years or to both.

Penalty for commencing private practice without Council's approval **40.** A person or institution commencing a nursing, maternity home or clinic, without approval of the Council, commits

an offence and on conviction, shall be liable to a fine not less than three hundred thousand shillings and not exceeding two million shillings or to imprisonment for a term not exceeding five years or to both.

Penalty for commencing school of nursing or midwifery without Council's approval

41. A person or institution commencing a nursing or midwifery training school or purporting to train any cadre of nurses or midwives without approval of the Council, commits an offence and on conviction, shall be liable to a fine not less than three million shillings and not more than five million shillings or to imprisonment for a term not exceeding five years or to both.

Penalty for impersonation, misrepresentation, false assumptions and use of titles

42. A person who impersonates, misrepresents, falsely assumes, uses and, or becomes known by names, titles, uniforms or distinctions of registered or enrolled nurse or midwife commits an offence and on conviction, shall be liable to a fine not less than five hundred thousand shillings and not exceeding two million shillings or to imprisonment for a term not exceeding twelve months or to both.

Penalty for refusal to answer summons, questions and interrupting proceedings of Council

43. A person who commits an offence under section 30 of this Act on conviction, shall be liable to a fine not less than three hundred thousand shillings and not exceeding one million shillings or to imprisonment for a term not exceeding six months or to both.

Knowingly employing person not licensed

44. A person who knowingly employs any person to practice nursing as a registered or enrolled nurse who is not licensed, commits an offence and on conviction, shall be liable to a fine not less than one million shillings or to imprisonment for a period not exceeding six months or to both.

Penalty for assisting or aiding commission of offence

45. A person who assists or aids another person to commit any offence under this Act commits an offence and on conviction, shall be liable to a fine not less than five hundred thousand shillings and not exceeding one million shillings or to imprisonment for a term not exceeding three years or to both.

PART IX

MISCELLANEOUS PROVISIONS

- Notification **46.** A notification required to be given or issued by Council to any person shall be sufficiently given if sent by registered post to that person at his last known address or his last address as contained in the register, and the time of receipt shall be deemed, unless the contrary is shown, to be the time at which such notification would have arrived in the ordinary course of post to such address.
- Indemnity for *bona fide* acts **47.** A matter or thing done by any member of the Council or its Committee or the Council shall not, if done in good faith in the execution or purported execution of the functions of the Council or Committee, render such member or employee personally liable for such matter or thing.
- Power to make rules **48.** Subject to the provisions of this Act, the Minister may, upon the advice of the Council, make rules generally for the better carrying out of the provisions of this Act and any such rules may-
 - (a) prescribe anything which is permitted or requires to be prescribed under this Act;
 - (b) provide for any matters in respect of which rules may be made under this Act; and
 - (c) provide for the procedure to be followed by the Council in any inquiry under this Act.
- Power to make regulations **49.**-(1) The Minister may, upon the advice of the Council, make regulations for better carrying out of the provisions of this Act.
 - (2) Without prejudice to the generality of subsection (1), the Minister may make regulations to-
 - (a) set procedures for the administration of nurses and midwives' ethics;
 - (b) prescribe the form of the Register or Roll of nurses and midwives, the parts into which the same is to be divided and any particulars to be entered therein;

- (c) regulate the manner in which applications for registration or enrolment as a nurse or midwife shall be made;
- (d) prescribe countries having qualifications for the licensure of nurses or midwives recognised by the Council;
- (e) impose conditions with regard to the inclusion in the Register or Roll or any part thereof for nurses or midwives;
- (f) regulate the private practice of licensed nurses or midwives;
- (g) prescribe the manner in which nurses or midwives may be suspended from practice and the manner in which such names of nurses or midwives may be removed from the Register or Roll and the procedure for termination or suspension and restoration to the Register or Roll for the name of the nurses or midwives removed therefrom;
- (h) impose conditions with regard to the issuance of licences to nurses and midwives;
- (i) prescribe modification to the titles to be used by registered and enrolled nurses and midwives;
- (j) prescribe the particulars required to be given, in any notification or notice given or issued under this Act;
- (k) prescribe the fees to be collected under this Act; and
- (l) prescribe any other matter which is to be or may be prescribed under this Act.

Repeal and
savings
Act No.
12 of 1997

50.—(1) [Repeals the Nurses and Midwives Registration Act.]

(2) Notwithstanding the repeal made under subsection (1), anything done or any action taken or purported to have been done under the repealed Act shall in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) All subsidiary legislation made or issued under the repealed Act which are in force on the commencement of this

Act, shall be deemed to have been made, given or issued under or in pursuance of the provisions of this Act and shall remain in force until revoked or suspended by subsidiary legislation made or issued under this Act.

SCHEDULE

(Made under section 5(4))

PROVISIONS RELATING TO THE COUNCIL

- Vice Chairman **1.** Members of the Council shall elect one of their members to be the Vice Chairman who shall, subject to his continuing to be a member, hold office for a term of one year from the date of his election and may be eligible for re-election.
- Tenure for appointment **2.**—(1) A member of the Council shall hold office for a term not exceeding three years from the date of his appointment and may be eligible for re-appointment;
 Provided that, except for appointment of the head of the nursing and midwifery service, a member shall not be reappointed for a third term.
 (2) In the case of a member who is a member by the virtue of his holding some other office, he shall cease to be a member upon his ceasing to hold that other office.
 (3) A member appointed may, at any time, resign his office by notice in writing to the appointing authority.
 (4) Notwithstanding the foregoing provisions, the appointing authority may at any time revoke an appointment of a member.
 (5) Where a member of the Council who is a member by the virtue of his office is unable for any reason to attend any meeting of the Council, he may nominate in writing another person from his institution to attend the meeting in his behalf.
 (6) Where any vacancy occurs in the membership of the Council by any reason of any member thereof or otherwise, the appointing authority may appoint another person to fill that vacancy and the person so appointed shall hold office for the unexpired period of office of the member in whose place is appointed.
- Meeting Council **3.**—(1) The Council shall ordinarily meet for the transaction of its business at the times and places determined by it but it shall meet at least once every three months.
 (2) The Chairman or in his absence the Vice Chairman, shall preside at every meeting of the Council and in the absence of both of them, the members present shall appoint one of their number to preside over the meeting.

(3) A member who fails to attend three consecutive meetings of the Council without leave of the Chairman shall cease to become a member of the Council.

Notice of meeting **4.** The secretary to the Council shall give each member adequate notice of the time and place of every meeting and shall keep record of the proceedings of every meeting of the Council.

Quorum **5.** The quorum at any meeting of the Council shall be one half of the total number of members of the Council and where there is an even number of members, it shall be the whole next number above half.

Decision of Council **6.**—(1) The matter proposed at the meeting of the Council shall be decided by a majority of the votes of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote in addition to his normal or deliberative vote.

(2) Notwithstanding subparagraph (1), a decision may be made by the Council without a meeting by way of circulation of the relevant papers among the members, and the expression in writing of the views of the majority of members.

Council to confirm minutes of its meetings **7.**—(1) The Council shall cause to be recorded and kept minutes of all business conducted or transacted at its meetings and the minutes of each meeting of the Council shall be read and confirmed or amended and confirmed at the next meeting and signed by the person presiding at the meeting.

(2) Minutes signed or purporting to have been signed by the person presiding at the meeting of the Council shall in absence of proof of error be deemed to be a correct record of the meeting whose minutes they purport to be.

Vacancies etc., not to invalidate proceedings **8.** An act or proceeding of the Council shall not be invalid by reason only of any vacancy among its members or defeat in the appointment of any of them.

Orders, direction etc., **9.** All orders, direction, notices or other documents made or issued on behalf of the Council shall be signed by—
 (a) the Chairman of the Council; and
 (b) the Registrar or any other officer of the Council appointed in writing in that behalf by the Registrar.

Council to regulate its own proceedings **10.** Subject to the provisions of this Schedule the Council shall regulate its own proceedings.