

A BILL

entitled

NURSING AMENDMENT ACT 2018

TABLE OF CONTENTS

|    |  |
|----|--|
| 1  | Citation   |
| 2  | Amends title of principal Act                              |
| 3  | Amends title of Bermuda Nursing Council                    |
| 4  | Amends title of Nursing Profession Complaints Committee    |
| 5  | Amends section 2   |
| 6  | Amends section 3   |
| 7  | Inserts section 3A   |
| 8  | Amends section 4   |
| 9  | Amends section 6B  |
| 10 | Amends Act to provide for divisions in register            |
| 11 | Amends Act to insert “midwifery”, “midwife” and “midwives” |
| 12 | Inserts section 8AA  |
| 13 | Amends section 9   |
| 14 | Amends First Schedule                                      |
| 15 | Amends Second Schedule                                     |
| 16 | Repeal and transitional provisions                         |
| 17 | Consequential amendments                                   |
| 18 | Commencement   |

WHEREAS it is expedient to repeal the Midwives Act 1949 and to amend the Nursing Act 1997 so as to cause the Act to apply also to midwives by providing for the title to the Act to include midwives; by transferring the regulatory oversight for midwives from the Bermuda Medical Council to the Bermuda Nursing and Midwifery Council; by providing for an updated regulatory framework for midwives in accordance with best practice; and by providing for matters related and incidental to the foregoing;

Be it enacted by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

## NURSING AMENDMENT ACT 2018

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### Citation

1 This Act, which amends the Nursing Act 1997 (the “principal Act”), may be cited as the Nursing Amendment Act 2018.

### Amends title of principal Act

2 The principal Act is amended by repealing the title of the Act and substituting the title “Nursing and Midwifery Act 1997”.

### Amends title of Bermuda Nursing Council

3 The principal Act is amended by deleting the words “Bermuda Nursing Council” wherever they may appear and substituting the words “Bermuda Nursing and Midwifery Council”.

### Amends title of Nursing Profession Complaints Committee

4 The principal Act is amended by deleting the words “Nursing Profession Complaints Committee” wherever they may appear and substituting the words “Nursing and Midwifery Professions Complaints Committee”.

### Amends section 2

5 The principal Act is amended in section 2—

(a) by inserting in the appropriate alphabetical order the following new definitions—

“ “midwife” means a midwife holding such qualifications and competencies as may be prescribed;”;

(b) in paragraph (a) of the definition of “professional misconduct”, by inserting after the word “nursing” the words “or midwifery”.

(c) by deleting the definition of “the register” and substituting the following—

“ “the register” means the register maintained by the Council under section 4, and reference to—

(a) “registration” and “to register” are to be construed accordingly;

(b) “part of the register” means a part of a division of the register in relation to the divisions of the register as provided in section 4(2A);”.

### Amends section 3

6 The principal Act is amended in section 3 by repealing subsections (1), (2) and (3) and substituting the following subsection—

“(1) There is established a body called “the Bermuda Nursing and Midwifery Council”. ”.

## NURSING AMENDMENT ACT 2018

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Inserts section 3A

7 The principal Act is amended by inserting after section 3 the following new section—

“Protection from personal liability

3A A member of the Council shall not be personally liable for damages for anything done or omitted to be done in the discharge or purported discharge of the Council’s functions under this Act, unless the act or omission was done or made in bad faith.”.

Amends section 4

8 The principal Act is amended in section 4—

- (a) in subsection (1), by deleting “and nursing associates” and substituting “, nursing associates and midwives”;
- (b) by repealing subsection (2) and substituting the following—

“(2) The register of nurses, nursing associates and midwives shall consist of the divisions set out in subsection (2A) and shall contain—

- (a) the names of the nurses, nursing associates and midwives registered;
- (b) the different qualifications they are entitled to have registered;
- (c) the different standards of training; and
- (d) any other details as may be prescribed in the rules.

(2A) The register of nurses, nursing associates and midwives shall consist of the following divisions—

- (a) the nurses and nursing associates division; and
- (b) the midwives division. ”.

Amends section 6B

9 The principal Act is amended in section 6B—

- (a) in subsection (1)—
  - (i) by deleting “and nursing associates” and substituting “, nursing associates and midwives”;
  - (ii) by inserting after the word “nursing” the words “and midwifery”;
- (b) in subsection (2)—
  - (i) in paragraph (a), by deleting “or nursing associate” and substituting “, nursing associate or midwife”;

## NURSING AMENDMENT ACT 2018

---

- (ii) in paragraph (b), by inserting after the word “nursing” the words “or midwifery”.
- (iii) in paragraph (c), by deleting “or nursing associates” and substituting “, nursing associate or midwives”;

Amends Act to provide for divisions in register

10 The principal Act is amended—

- (a) in sections 5(1), (2), (3)(a) and (b)(i) and 8(1)(b), by inserting before the word “part” the words “division or”;
- (b) in section 6E(5)(c), by deleting the first occurrence of the words “the register” and substituting “a division”.

Amends Act to insert “midwifery”, “midwife” and “midwives”

11 The principal Act is amended—

- (a) by inserting after the word “nursing” the words “or midwifery” in—
  - (i) section 6E(5)(b) and (d);
  - (ii) section 8(1)(a);
  - (iii) the heading for section 8A;
  - (iv) section 8A(1), in the two instances it appears;
- (b) in section 3(4)(a) to (d), by inserting after the word “nursing” the words “and midwifery”;
- (c) in section 6(3)(b), by inserting after the word “registered,” the words “or midwifery”;
- (d) by deleting “and nursing associates” and substituting “, nursing associates and midwives” in section 3(4)(e);
- (e) by deleting “or nursing associate” and substituting “, nursing associate or midwife” in—
  - (i) section 4(9), in the two instances it appears;
  - (ii) section 5(4);
  - (iii) section 8(1)(a);
  - (iv) section 8A(1);
- (f) in section 6A(1), by deleting “and nursing associate” and substituting “, nursing associate and midwife”;
- (g) in section 6A(2), by deleting “or nursing associates” and substituting “, nursing associates or midwives” ;

## NURSING AMENDMENT ACT 2018

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- (h) in section 8B(1) by inserting after the words “no nursing associate” the words “or midwife”.

### Inserts section 8AA

12 The principal Act is amended by inserting after section 8A the following new section—

#### “Prohibition regarding practice of midwives

8AA (1) A person who is not a registered midwife shall not attend any woman in childbirth, whether or not such attendance is for gain, unless such attendance—

- (a) is given under the direction and personal supervision of a registered medical practitioner; or
- (b) is given in an emergency.

(2) Any person who contravenes any provision of this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 3,000 dollars.

(3) Nothing in this section shall apply—

- (a) in relation to a registered medical practitioner; or
- (b) in relation to a woman who attends another woman in childbirth under the direction and personal supervision of a registered midwife, where such attendance is part of a course of training in midwifery approved by the Council.”.

### Amends section 9

13 The principal Act is amended in section 9(2)—

- (a) in paragraph (a), by deleting “and “nursing associate”” and substituting “, “nursing associate” and “midwife””;
- (b) in paragraph (d), by deleting “and for nursing associates” and substituting “, for nursing associates and for midwives”.

### Amends First Schedule

14 The principal Act is amended in the First Schedule—

- (a) in paragraph 1(1), by deleting “nine” and substituting “ten”;
- (b) in paragraph 1(2), by inserting after subparagraph (e) the following new subparagraph—
  - “(ea) one member shall be a midwife appointed by the Minister after consultation with the registered midwives;”;
- (c) in paragraph 1(2)(ca), by deleting “Association” and substituting “Minister on the recommendations of registered advanced practice nurses”;

## NURSING AMENDMENT ACT 2018

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- (d) in paragraph 1(2)(f)(i), by inserting at the end of the paragraph the words “or a midwife”;
- (e) in paragraph 2, by inserting after the word “(e)” the word “, (ea)”;
- (f) in paragraph 7(2), by inserting after the word “members” the words “but for matters affecting midwives the member representing midwives must be present”;
- (g) in paragraph 7, by inserting the following new subparagraph—

“(2A) At a meeting of the Council—

- (a) in the event of an equality of votes, the chairman shall have a casting vote;
- (b) a member of the Council shall have no vote in relation to any matter arising which touches or concerns him, unless the Council has resolved that the interest the member has in the matter does not give rise to a conflict of interest.”;
- (h) in paragraph 7, by repealing subparagraph (4) and substituting the following subparagraphs—

“(4) The Council may, in its discretion, appoint from among its own members or from among other persons such number of committees as it thinks fit for purposes which, in the opinion of the Council, would be more expediently carried out and managed by such committees.

(4A) The chairman of any committee appointed under subparagraph (4) shall be a member of the Council.”.

### Amends Second Schedule

15 The principal Act is amended in the Second Schedule—

- (a) in paragraph 1, by deleting subparagraphs (a) and (b) and substituting the following—
  - “(a) two from a list that consists of a registered nurse, a registered nursing associate and a registered midwife in good standing who are nominated by the Council;”;
- (b) by inserting after paragraph 1 the following new paragraph—

“1A. Where a question or matter to be determined by the Committee concerns a nurse, nursing associate or midwife whose profession is not represented in the Committee constituted under paragraph 1, the Council shall appoint a member in good standing from the profession not represented in the Committee as a co-opted member of the Committee for the purpose of the determination of that question or matter.”.

## NURSING AMENDMENT ACT 2018

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- (c) in paragraph 9, by deleting the word “Two” and substituting “Three”.

### Repeal and transitional provisions

- 16 (1) The Midwives Act 1949 (the “repealed Act”) is repealed.
- (2) Notwithstanding the repeal of the Midwives Act 1949, any person registered as a midwife under that Act shall continue to be considered registered as a midwife under that Act for a period of six months from the date of the coming into operation of this Act.
- (3) A person registered as a midwife under the repealed Act, shall, upon the coming into operation of this Act, commence application procedures under section 5 of the Nursing and Midwifery Act 1997 for registration as a midwife under that Act.
- (4) The Minister responsible for health may by order subject to the negative resolution procedure extend the period set forth in subsection (2).

### Consequential amendments

- 17 (1) The Government Fees Regulations 1976 are amended in the Schedule under Head 50—
- (a) by deleting the heading and substituting “Nursing and Midwifery Act 1997”;
  - (b) in paragraphs (1) and (3), by deleting “or Advanced Practice Nurse” and substituting “, Advanced Practice Nurse or Midwife”.
- (2) The Government Authorities (Fees) Act 1971 is amended in Part B of the First Schedule by —
- (a) deleting the entry “Bermuda Nursing Council - established by section 2 of the Nurses Act 1960”; and
  - (b) substituting “Bermuda Nursing and Midwifery Council - established by section 3 of the Nursing and Midwifery Act 1997”.
- (3) The Pharmacy and Poison Act 1979 is amended in the Second Schedule—
- (a) by deleting “Advanced Practice Nurse” and substituting “Advanced Practice Nurse or Midwife”;
  - (b) by deleting “Nursing Act 1997” and substituting “Nursing and Midwifery Act 1997”.
- (4) The Police and Criminal Evidence Act 2006 is amended in section 72 in paragraph (a) of the definition of “registered health care professional” by deleting “Nursing Act 1997” and substituting “Nursing and Midwifery Act 1997”.
- (5) The Residential Care Homes and Nursing Homes Act 1999 is amended in section 2 in the definition of “nursing services” by deleting “Nursing Act 1997” and substituting “Nursing and Midwifery Act 1997”.

## NURSING AMENDMENT ACT 2018

---

(6) The Registration (Births and Deaths) Act 1949 is amended in section 1 in the definition of “midwife” by deleting “Midwives Act 1949” and substituting “Nursing and Midwifery Act 1997”.

(7) The Misuse of Drugs Regulations 1973 is amended in regulation 1 in the definition of “midwife” by deleting “Midwives Act 1949” and substituting “Nursing and Midwifery Act 1997”.

### Commencement

18 The provisions of this Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette.



## NURSING AMENDMENT BILL 2018

### EXPLANATORY MEMORANDUM

This Bill amends the Nursing Act 1997 (the “principal Act”): to cause the Act to apply to both nurses and midwives by changing the title of the Act to include midwives; by transferring the regulatory oversight for midwives from the Bermuda Medical Council to the Bermuda Nursing and Midwifery Council; by providing for an updated regulatory framework for midwives in accordance with best practice; and by providing for incidental matters.

Clause 1 provides a citation for the Bill.

Clause 2 amends the principal Act by repealing the title of the Act and substituting the title “Nursing and Midwifery Act 1997”.

Clause 3 amends the principal Act by renaming the Bermuda Nursing Council as the “Bermuda Nursing and Midwifery Council”.

Clause 4 amends the principal Act by renaming the Nursing Profession Complaints Committee as the “Nursing and Midwifery Professions Complaints Committee”.

Clause 5 amends section 2 of the principal Act to insert a definition for the term “midwife”. A “midwife” is defined as a person who holds the qualifications and competencies as may be prescribed in the rules. The clause also amends the definition of “the register” so as to provide that “part of the register” means part of a division of the register. This is to take account of the register divisions as provided under clause 8.

Clause 6 amends section 3 of the principal Act to remove the Council’s corporate status.

Clause 7 amends the principal Act by inserting a new section 3A to provide protection for Council members from liability for any act or omission done during the course of the discharge of the Council’s functions, except in the case where it is proved that the act or omission was done in bad faith.

Clause 8 amends section 4 of the principal Act to provide for the register of nurses and nursing associates to include midwives and for the register to consist of a nurses and nursing associates division and a midwives division. Each division is to include the names of those professionals registered in relation to that division and such other identifying particulars of those professionals as are specified.

Clause 9 amends section 6B of the principal Act by inserting the terms “midwife” “midwives” and “midwifery” so as to empower the Council to prescribe a code of conduct for midwives.

Clause 10 amends sections 5, 6E and 8 to provide reference to the divisions of the register in order to take account of the divisions to the register introduced under clause 8.

Clause 11 amends sections 3, 4, 5, 6, 6A, 6E, 8, 8A and 8B of the principal Act to cause the sections to apply to midwives. Under the amended section 3, the functions of the Council

## NURSING AMENDMENT BILL 2018

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are to include regulatory oversight of midwives. Under the amended section 4, the requirements with respect to the register apply to midwives. Under the amended section 5, the requirements for admission to a register apply to those seeking admission to the register for midwives. Under the amended section 6, the requirements with respect to renewal of registration apply to midwives. Under the amended section 6A, the requirements with respect to continuing education apply to midwives. Under the amended section 6E, the Council's power to impose discipline extends to midwives where complaints against them have been proved. Under the amended section 8, it has been made an offence for any person to falsely claim to be a midwife. Under the amended section 8A, it is prohibited for any person to practise midwifery without being registered. Under the amended section 8B, it is prohibited for midwives to prescribe drugs.

Clause 12 amends the principal Act to insert section 8AA. The section is carried over from the repealed Midwives Act 1949. Section 8AA provides to prohibit any person to practise as a midwife without being registered as a midwife, except where such person is acting under the direction of a medical practitioner or in an emergency.

Clause 13 amends section 9 of the principal Act to empower the Minister, in consultation with the Council, to make rules for purposes of midwives.

Clause 14 amends the First Schedule to the principal Act to provide for midwives to be represented in the Council. The First Schedule is further amended to provide that the chairman of the council shall have a casting vote in the event of an equality of votes and to prevent members of the Council voting where they have a conflict of interest.

Clause 15 amends the Second Schedule to the principal Act to provide for midwives to be represented in the Nursing and Midwifery Professions Complaints Committee.

Clause 16 repeals the Midwives Act 1949 and provides the saving of the registration of midwives made under the repealed Midwives Act 1949 for a period of six months from the date of the coming into operation of this Bill in order to enable registration of midwives under the Nursing and Midwifery Act 1997.

Clause 17 provides for consequential amendments to the Government Fees Regulations 1996, the Government Authorities (Fees) Act 1971, the Pharmacy and Poison Act 1979, the Police and Criminal Evidence Act 2006, the Residential Care Homes and Nursing Homes Act 1999, the Registration (Births and Deaths) Act 1949 and the Misuse of Drugs Regulations 1973.

Clause 18 provides for the Minister to cause the Act to come into operation on such date as the Minister may determine.