

LEGISLATIVE COUNCIL BRIEF

Midwives Registration Ordinance
(Chapter 162)

MIDWIVES REGISTRATION (MISCELLANEOUS PROVISIONS) REGULATION

MIDWIVES (REGISTRATION AND DISCIPLINARY PROCEDURES) REGULATION

INTRODUCTION

On 30 November 1999, the Secretary for Health and Welfare made the Midwives Registration (Miscellaneous Provisions) Regulation at **Annex A** under section 23(2) of the Midwives Registration Ordinance (Cap. 162) ("the Principal Ordinance") and approved the Midwives (Registration and Disciplinary Procedure) Regulation at **Annex B**, which was made by the Midwives Council of Hong Kong under section 23(3) of the Principal Ordinance on 29 November 1999.

BACKGROUND AND ARGUMENT

General Background

2. The Principal Ordinance provides a statutory framework for regulating the profession of midwifery through a system of registration and discipline. The Principal Ordinance was updated in June 1997 via the enactment of the Midwives Registration (Amendment) Ordinance 1997 ("the Amendment Ordinance"). Most of the provisions of the Amendment Ordinance have come into operation with effect from 30 September 1999.

3. With the enactment of the Amendment Ordinance, the following subsidiary legislation have to be made to replace the existing Midwives (Registration and Disciplinary Procedure) Regulations:-

- (a) **Midwives Registration (Fees) Regulation** ("the Fees Regulation"), to be made by the Chief Executive in Council, prescribing the fees payable under the Principal Ordinance;
- (b) **Midwives Registration (Miscellaneous Provisions) Regulation**, to be made by the Secretary for Health and Welfare, prescribing

the functions of the legal adviser and the secretary to the Midwives Council of Hong Kong; and

- (c) **Midwives (Registration and Disciplinary Procedure) Regulation**, to be made by the Midwives Council of Hong Kong subject to the approval of the Secretary for Health and Welfare, prescribing the registration and disciplinary procedures for the midwifery profession.

4. The Fees Regulation was tabled at the Legislative Council on 24 November 1999. This Brief covers the other two Regulations. We shall bring into operation all the three Regulations and the remaining provisions of the Amendment Ordinance on 1 January 2000. This is to tie in with the expiry of the validity of the current annual practising fees of midwives on 31 December 1999.

THE REGULATIONS

Midwives Registration (Miscellaneous Provisions) Regulation

5. Clause 1 provides for the commencement of the Regulation on a day to be appointed by the Secretary for Health and Welfare. Clauses 2 to 5 provide for the functions of the secretary of the Midwives Council of Hong Kong. Clauses 6 and 7 provide for the functions of the legal adviser.

Midwives (Registration and Disciplinary Procedure) Regulation

6. Part I sets out the definitions of the terms used in the Regulation. Part II is about application for registration and the forms of the register, certificate of registration and practising certificate. Part III is about training of midwives. Part IV prescribes the procedure to be followed by the Preliminary Investigation Committee in investigations carried out before an inquiry of the Midwives Council of Hong Kong. Part V is about proceedings at an inquiry of the Midwives Council of Hong Kong.

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follows:-

Publication in the Gazette	3 December 1999
Tabling at the Legislative Council	8 December 1999

BASIC LAW IMPLICATIONS

8. The Department of Justice advises that the two Regulations are consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

9. The Department of Justice advises that the two Regulations have no human rights implications.

BINDING EFFECT

10. The two Regulations will not affect the current binding effect of the Midwives Registration Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

11. There are no additional financial and staffing implications.

PUBLIC CONSULTATION

12. Public consultation is not considered necessary as the two Regulations affect only registered midwives. The Midwives Council has endorsed the two Regulations.

PUBLICITY

13. The two Regulations will be published in the Gazette on 3 December 1999. The Midwives Council Secretariat will inform the registered midwives of the new arrangement.

ENQUIRY

14. For enquiries in relation to this Regulation, please contact Mr Fletch CHAN, Assistant Secretary for Health and Welfare at 2973 8118.

Health and Welfare Bureau
3 December 1999
File Ref: HW CR/1/W/3261/92(99) Pt.5

**MIDWIVES REGISTRATION (MISCELLANEOUS PROVISIONS)
REGULATION**

(Made under section 23(2) of the Midwives Registration
Ordinance (Cap. 162))

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Health and Welfare by notice in the Gazette.

2. Functions of secretary relating to practising certificates

If a declaration referred to in section 22(3) (b) of the Ordinance shows that an applicant for a practising certificate has been convicted of a criminal offence that is punishable with imprisonment, in Hong Kong or elsewhere, the secretary shall submit the declaration to the chairman of the Preliminary Investigation Committee.

3. Functions of secretary to give prior notice to legal adviser

The secretary shall notify the legal adviser to the Council in advance of -

- (a) any inquiry to be held;
- (b) any other meeting held by the Council at which the legal adviser's presence is likely to be specifically required.

4. Functions of secretary relating to inquiry by Council

At an inquiry under section 8 or 10 of the Ordinance, the secretary has, in particular, the following functions -

- (a) read the notice of inquiry at the opening of the inquiry;
- (b) in the absence of the respondent and the respondent's representative at the opening of the inquiry, submit to the Council such evidence as the Council may require to prove that the notice of inquiry or, where applicable, the notice of adjournment has been served on the respondent in accordance with section 19(2)(b) or 20(2) of the Midwives (Registration and Disciplinary Procedure) Regulation (L.N. of 1999);
- (c) present the case against the respondent, adduce evidence to support the case and close the case;
- (d) make a reply, if the respondent or the respondent's representative has made any submission at the conclusion of the presentation of the case against the respondent by the secretary;
- (e) address the Council in reply at the conclusion of the respondent's case, if the respondent is called upon to state the respondent's case; and
- (f) produce to the Council the records of any meeting of the Council at which an order has been made against the respondent under the Ordinance, if an order against the respondent is to be decided.

5. Other functions of secretary

The secretary has, other than those mentioned in sections 2, 3 and 4, such other functions which are required to be performed by the secretary under the Midwives (Registration and Disciplinary Procedure) Regulation (L.N. of 1999).

6. Attendance of legal adviser

If notice has been given to the legal adviser to the Council under section 3 in respect of an inquiry or a meeting of the Council, the legal adviser shall attend such inquiry or meeting.

7. Advice given by legal adviser to inquiry

(1) If, during an inquiry held under section 8 or 10 of the Ordinance, the legal adviser to the Council advises the Council on any question of law as to evidence, procedure or any other matter, the legal adviser shall give the advice in the presence of every party to the proceedings or in the presence of the person representing each of the parties.

(2) If, after the Council has commenced to deliberate as to its findings, the legal adviser gives any advice on any question of law as to evidence, procedure or any other matter in respect of an inquiry under section 8 or 10 of the Ordinance, the legal adviser shall inform all parties to the proceedings or their representatives of his advice.

(3) If the Council does not accept any of the advice given by the legal adviser under subsection (1) or (2), the legal adviser

shall inform the parties to the proceedings or their representatives accordingly.

Secretary for Health and Welfare

30 Nov., 1999

Explanatory Note

This Regulation prescribes -

- (a) the functions of the legal adviser to the Midwives Council of Hong Kong ("the Council"); and
- (b) the functions of the secretary of the Council.

MIDWIVES (REGISTRATION AND DISCIPLINARY PROCEDURE) REGULATION
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MIDWIVES (REGISTRATION AND DISCIPLINARY PROCEDURE) REGULATION

(Made by the Midwives Council of Hong Kong under section 23(3)
of the Midwives Registration Ordinance (Cap. 162)
with the approval of the Secretary for
Health and Welfare)

PART I PRELIMINARY

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Health and Welfare by notice in the Gazette.

2. Interpretation

In this Regulation, unless the context otherwise requires -

"Committee" (委員會) means the Preliminary Investigation Committee established under section 12;

"complainant" (申訴人) means a person from whom a complaint against or information in respect of a registered midwife or an applicant for registration has been made to or received by the secretary under section 13;

"notice of adjournment" (押後研訊通知書) means a notice of adjournment mentioned in section 19(2);

"notice of inquiry" (研訊通知書) means a notice served under section 18(2) (b);

"register of the Nursing Council" (註冊護士名冊) means the register of nurses maintained by the Nursing Council of Hong Kong under the Nurses Registration Ordinance (Cap.

164);

"respondent" (答辯人) means a registered midwife or an applicant for registration against or in respect of whom a complaint or information has been made to or received by the secretary under section 13;

"student midwife" (見習助產士) means a person whose application for training is approved by the Council;

"training school" (訓練學校) means an establishment declared by the Council to be a training school for midwives in accordance with section 8.

PART II REGISTRATION AND PRACTICE

3. Form of register

A register required to be kept in accordance with section 5 of the Ordinance shall contain, in respect of each midwife whose name is entered upon the register, the particulars prescribed in Schedule 1.

4. Form of certificate of registration

A certificate of registration issued under section 9 of the Ordinance shall be in the form prescribed in Schedule 2.

5. Form of practising certificate

A practising certificate issued under section 22 of the Ordinance shall be in such form as the secretary may determine.

6. Application for registration, etc.

(1) An application for registration under section 8 of the Ordinance shall be submitted in writing to the secretary, and shall contain -

- (a) the personal particulars of the applicant;
- (b) the name and address of the hospital or training school at which the applicant has undergone training in midwifery;
- (c) the particulars of the training and practice, if any;
- (d) a declaration signed by the applicant stating -
 - (i) whether or not the applicant has been convicted of an offence punishable with imprisonment, in Hong Kong or elsewhere; and
 - (ii) whether or not the applicant has been guilty of unprofessional conduct, in Hong Kong or elsewhere;
- (e) the qualifications held by the applicant; and
- (f) any other information or particulars that the Council may require.

(2) An application for registration shall be accompanied by 2 unmounted copies of a recent photograph of the applicant concerned.

(3) The 2 unmounted copies referred to in subsection (2) shall be of such size as the Council may specify.

(4) The Council may require an applicant to produce or provide the original or certified true copy of one or more of the following -

- (a) the diploma, certificate or other document evidencing the degree or qualification by virtue of which the applicant is applying to be registered;
- (b) the applicant's Hong Kong Identity Card or passport;
- (c) (if the applicant is registered as a midwife in a place outside Hong Kong) a certificate of registration as a midwife in that place, which is still valid at the date of application for registration;
- (d) a practising certificate which is still valid at the date of application for registration and which is issued by a body or an organization in a place outside Hong Kong or, if there is no such certificate, other equivalent documentary evidence of entitlement to practise midwifery in that place;
- (e) (if the applicant applies to be registered immediately after the completion of training in a training school) a record book of midwifery cases attended by the applicant during the training;
- (f) references as to the applicant's character from a person, not being a relative of the applicant, who has known the applicant for at least 12 months.

7. Registration and re-registration

(1) Before the name of any person is entered in the register or, if removed from the register otherwise than by an order of the Council made under section 10(1)(ii) of the

Ordinance, re-entered in the register, such person shall pay to the secretary the fee prescribed in the Midwives Registration (Fees) Regulation (L.N. 281 of 1999).

(2) Upon registration or re-registration of any midwife, the secretary shall issue to that midwife a certificate of registration in the form prescribed in Schedule 2.

PART III TRAINING

8. Midwives' training schools

(1) No course of training in midwifery carried out in Hong Kong shall be recognized by the Council unless it is carried out in an establishment declared by the Council in the Gazette as a training school for midwives.

(2) No establishment shall be declared as a training school for the purpose of this Regulation, unless -

- (a) an average of not less than 500 confinements take place in the establishment every year;
- (b) if the establishment is not connected with a general hospital, ante-natal beds are provided in the establishment;
- (c) the establishment is associated with ante-natal and post-natal clinics;
- (d) if the establishment is not part of a general hospital, facilities for isolating infectious cases are provided in the establishment;
- (e) the establishment maintains a standard of medical and midwifery care that meets the Council's

requirements;

- (f) the establishment provides supportive services and midwifery teachers that meet the Council's requirements; and
- (g) the establishment maintains a quality of teaching and a level of student supervision that conform to the standards set by the Council from time to time.

(3) Subject to subsection (2), the Council may, for the purpose of considering whether an establishment is suitable to be a training school, take into account the following -

- (a) the number and qualifications of the members of the permanent medical and nursing staff of the establishment;
- (b) the equipment available for teaching purposes;
- (c) the facilities for study available to students; and
- (d) any other related matters.

(4) If at any time after the Council has declared an establishment to be a training school -

- (a) the establishment is found to have ceased to comply with any of the requirements under subsection (2)(a) to (g); or
- (b) the Council is of the opinion that the establishment is no longer suitable to be a training school,

the Council shall revoke, by notification in the Gazette, the declaration.

(5) Every training school shall be subject to such inspection as the Council may from time to time direct.

(6) An establishment approved or deemed to have been duly approved to be a training school, under the Midwives (Registration and Disciplinary Procedure) Regulations (Cap. 162 sub. leg.) as repealed by section 29 of the Midwives Registration (Amendment) Ordinance 1997 (61 of 1997), shall be taken to have been declared under this Regulation to be a training school.

9. Admission to midwives' training schools, etc.

(1) A person who intends to undergo training in midwifery shall apply in writing to the Council for its approval.

(2) The application shall be accompanied by documentary evidence of the required educational qualifications, and shall be submitted through the authority administering the training school at which the applicant intends to undergo the training.

(3) No person shall be admitted to a training school unless the Council has granted approval to that person to undergo training in midwifery.

(4) Unless a person -

- (a) has attained such educational qualifications as the Council may from time to time specify; and
- (b) is a person of good character,

no approval shall be granted to the person to undergo training in midwifery.

10. Training of midwives

(1) Every course of training in midwifery carried out in a training school shall be so carried out under the supervision of at least one person who is, in the opinion of the Council, competent to be teachers of midwifery.

- (2) Every course of training in midwifery shall include -
- (a) a syllabus approved by the Council;
 - (b) the conduct of ante-natal examination on not less than 50 pregnant women;
 - (c) attendance at not less than 30 cases of labour, making full examination during the course of labour and personally delivering the infant and afterbirth in each case, and the personal care of not less than 20 post-natal women and their infants;
 - (d) attendance at a maternal and child health centre recognized by the Council for the purposes of teaching and practical instruction in the care and management of infants; and
 - (e) if the student midwife concerned is required to take a 2-year training course, a course in elementary anatomy, physiology, elementary principles of general nursing and hygiene.
- (3) A student midwife shall undergo training in midwifery -
- (a) where the name of the student midwife appears on the register of the Nursing Council, for a continuous period of one year;
 - (b) in any other case, for a continuous period of 2 years.
- (4) Unless with the permission of the Council, a student midwife shall not, during the period of training, engage in any course or work, other than the course or work provided under this Regulation.
- (5) Subject to subsection (6), if, in any year of training, a student midwife interrupts his or her course of training for a

period in the aggregate exceeding 14 days, excluding any day on which the student midwife is not required to undergo training, no part of the training that the student midwife has undergone, in that year and prior to such interruption, shall be taken into account towards completion of the course of training required by this section, and the student midwife shall not be allowed to continue his or her course of training.

(6) Where the interruption referred to in subsection (5) -

- (a) is due to illness of the student midwife, and the student midwife has produced a medical certificate which is either -
 - (i) signed by the medical officer in charge of the hospital at which the student midwife undergoes training; or
 - (ii) signed by a registered medical practitioner and (if required) countersigned by the medical officer in charge of the hospital at which the student midwife undergoes training; or
- (b) is caused by domestic or other emergency beyond the student midwife's control,

and the person in charge of the training school is satisfied that there is sufficient cause, the Council may permit the student midwife to complete the course of training which he or she commenced before the interruption.

11. Examinations

(1) Where, under section 7 of the Ordinance, a person is required to take an examination, the person shall, before taking

the examination, pay the fee prescribed in the Midwives Registration (Fees) Regulation (L.N. 281 of 1999).

(2) The Council may from time to time determine the content and format of an examination referred to in subsection (1).

(3) If a person fails on 2 occasions to pass the examination, the person shall not be eligible to take the examination again on any further occasion, unless the person has undergone such period of additional training and instruction, not less than 3 months, as the Council may have directed.

(4) A person shall not be eligible to take any examination under this section unless that person has completed a course of training in accordance with section 10 or has obtained permission from the Council.

PART IV

PROCEEDINGS PREPARATORY TO EXERCISE OF DISCIPLINARY POWERS BY COUNCIL

12. Preliminary Investigation Committee

(1) For the purpose of making a preliminary investigation of complaints or information regarding a registered midwife or an applicant for registration, and for the purpose of determining whether or not an inquiry shall be held under the Ordinance, there is established by this Regulation a committee known as the Preliminary Investigation Committee.

(2) The Committee shall consist of 4 members appointed by the Council.

(3) The members are to comprise 2 registered midwives and 2 persons who are not midwives, and 2 of the members shall be

members of the Council.

(4) The Council shall appoint one of the members, who is also a member of the Council, as the chairman of the Committee.

(5) If the Council has made any of the orders referred to in section 10(1)(i) to (iv) of the Ordinance against any registered midwife, the registered midwife who is the subject of the order shall not be eligible for appointment to the Committee.

(6) Subject to subsections (9), (10), (11) and (12), a member who is also a member of the Council shall hold office for a period of 12 months or until he or she ceases to be a member of the Council (whichever is earlier), and shall be eligible for re-appointment from time to time.

(7) Subject to subsections (8), (9), (10), (11) and (12), a Committee member who is not a member of the Council shall hold office for a period of 12 months, and shall be eligible for re-appointment from time to time.

(8) A Committee member who is not a Council member shall cease to be a member of the Committee upon his or her becoming a member of the Council.

(9) If for any reason a member of the Committee is or will be temporarily unable to perform his or her functions as a member of the Committee, another person satisfying the same criteria as applied to the appointment of that member may be appointed by the Council, as a temporary member, to act in the place of that member, during the period for which that member is or will be unable to exercise his or her functions.

(10) If at the time the Committee is considering a complaint or information under this Regulation -

- (a) the membership of a person appointed under subsection (2) terminates by virtue of subsection (6), (7) or (8); or
- (b) the temporary membership of a person appointed under subsection (9) terminates,

the membership of that person may continue by virtue of this subsection for the purposes of the consideration of the complaint or information by the Committee, but for no other purpose, until the Committee has discharged its functions in respect of the complaint or information.

(11) Subject to subsection (12), a person appointed as a member of the Committee, including a temporary member referred to in subsection (9), may at any time by giving notice in writing to the secretary resign as such member.

(12) If the Committee is considering a complaint or information at the time a member of the Committee gives notice to the secretary on the member's resignation, notwithstanding the giving of that notice, the member may be required to continue to be a member of the Committee for the purposes of the consideration of such complaint or information, but for no other purpose, until the Committee has discharged its functions in respect of the complaint or information.

(13) If a member of the Committee has attended any meeting of the Committee relating to a complaint or information, that member shall not attend any meeting of the Council, as a member of the Council, relating to such complaint or information.

(14) The Committee shall meet from time to time as the chairman of the Committee may direct.

(15) The chairman of the Committee may at any time adjourn

any meeting of the Committee.

13. Submission of complaint or information

(1) Where a complaint is made to or information is received by the secretary, alleging -

- (a) a registered midwife of any matter set out in section 10(1) of the Ordinance; or
- (b) an applicant for registration of any matter set out in section 8(3) of the Ordinance,

the secretary shall submit the complaint or information to the chairman of the Committee.

(2) Where a declaration referred to in section 22(3)(b) of the Ordinance shows that an applicant for a practising certificate has been convicted of a criminal offence that is punishable with imprisonment, in Hong Kong or elsewhere, the secretary shall submit the declaration to the chairman of the Committee, and in such case, sections 14, 15 and 16 and the provisions relating to an inquiry shall, with all necessary modifications, apply accordingly.

14. Clarification and support for complaint or information

(1) The chairman of the Committee, after receiving a complaint or information submitted by the secretary, may take any or all of the following actions -

- (a) require the complainant to set out specifically in writing the allegation and the grounds of the allegation;
- (b) require the complainant to further explain in

writing the complaint or information concerned;

- (c) require that any matter alleged in the complaint or information be supported by one or more declarations, except where the complaint or information is in writing under the hand of a public officer acting in such capacity.

(2) A declaration referred to in subsection (1)(c) shall contain the following particulars -

- (a) address of the declarant;
- (b) description of the declarant, including -
 - (i) the name of the declarant; and
 - (ii) the Hong Kong Identity Card number or passport number of the declarant; and
- (c) all the facts of the case that are to the declarant's knowledge, and if any of the facts are not within the personal knowledge of the declarant, then the source of the declarant's information and the grounds for the declarant's belief in the truth of the facts.

15. Reference of complaint or information to Committee

(1) Where the secretary has submitted a complaint or information to the chairman of the Committee in accordance with section 13, the chairman of the Committee shall, subject to section 14, refer the complaint or information, together with all relevant documents to the Committee for its consideration.

(2) Where the chairman of the Committee has referred a complaint or information to the Committee, unless the members of the Committee are unanimously satisfied that the complaint or

information is frivolous or groundless, the chairman of the Committee shall then fix a date for the consideration of the complaint or information by the Committee, and shall direct the secretary to -

- (a) notify the respondent of the receipt of the complaint or information;
- (b) inform the respondent of the substance of the complaint or information;
- (c) forward to the respondent a copy of any declaration furnished under section 14(1)(c);
- (d) inform the respondent of the date fixed for the consideration of the complaint or information by the Committee; and
- (e) invite the respondent to submit to the Committee, either -
 - (i) in writing; or
 - (ii) in person, at the meeting to be held under section 16,

any explanation relating to the respondent's conduct or to any other matter alleged in the complaint or information that the respondent may offer,

and the secretary, when so directed, shall act accordingly.

(3) For and only for the purpose of subsection (2), the Committee may, by circulation of papers, determine whether a complaint or information is frivolous or groundless, and a resolution so made shall be as valid and effectual as if it had been passed at a meeting of the Committee, if it is approved in writing by all of the Committee's members.

(4) Where the Committee has, in accordance with subsection (3), determined that a complaint or information is frivolous or groundless, the chairman of the Committee shall direct the secretary to notify the complainant of the determination, and the secretary, when so directed, shall act accordingly.

16. Consideration of complaint or information by Committee

(1) A meeting of the Committee shall be held in camera.

(2) At a meeting of the Committee, the secretary shall submit for the Committee's consideration the following -

- (a) the complaint or information to be considered by the Committee;
- (b) any declaration or document furnished which is related to the complaint or information;
- (c) any written explanation submitted by the respondent; and
- (d) any other document or matter which the secretary has obtained and which is in the nature of evidence relevant to or in support of the complaint or information.

(3) After considering the matters referred to in subsection (2), and any other explanation submitted by the respondent at the meeting, the Committee may, subject to subsection (4), determine that -

- (a) no inquiry shall be held; or
- (b) the complaint or information shall, in whole or in part, be referred to the Council for inquiry.

(4) A determination under subsection (3)(a) shall only be made if supported by a majority of the members; otherwise the

Committee shall make a determination under subsection (3)(b).

(5) Before making any determination under subsection (3), the Committee may cause to be made such further investigations and may obtain such additional advice or assistance as it considers necessary.

17. Determination of Committee that no inquiry be held

If the Committee determines that no inquiry is to be held in respect of a case, the secretary shall inform the respondent and, in so far as it is practicable, the complainant, of the Committee's determination, including the reasons for the determination.

18. Determination of Committee that inquiry be held

(1) If the Committee determines that an inquiry shall be held, the Committee shall refer the case to the Council, and the chairman of the Committee shall notify the chairman of the Council of the matters into which inquiry shall be made.

(2) If a case is referred to the Council in accordance with subsection (1), the chairman shall -

- (a) fix a date on which an inquiry into the case is to be held; and
 - (b) direct the secretary to serve on the respondent a notice of inquiry in such form as the Council may determine and a copy of this Regulation, and the secretary shall do so within 30 days of the Committee's determination on holding an inquiry.
- (3) Unless the chairman receives a written consent from

the respondent consenting to the holding of the inquiry at an earlier date, the chairman shall fix, for holding the inquiry, a date not earlier than 30 days after the date of service of the notice of inquiry.

- (4) A notice of inquiry referred to in subsection (2)(b) -
- (a) shall specify in the form of a charge the matter into which inquiry is to be made; and
 - (b) shall state the date, time and place at which the inquiry is to be held.

(5) Within 30 days of the Committee's determination on holding an inquiry, the secretary shall, in so far as it is practicable, serve on the complainant a copy of the notice of inquiry.

19. Adjournment of inquiry

(1) Subject to subsection (2), the chairman may adjourn an inquiry to such date as the chairman thinks fit.

(2) If the chairman decides to adjourn an inquiry to a further date, the chairman shall -

- (a) serve on the respondent a notice of adjournment; and
- (b) in so far as it is practicable, serve on the complainant a copy of such notice,

at least 14 days before the date to which the chairman has adjourned the inquiry.

20. Reference of case back to Committee

(1) If, after a complaint or information is referred to the Council for inquiry, further information is produced in

writing which suggests that an inquiry should not be held, the chairman may refer the case back to the Committee for reconsideration.

(2) As soon as the chairman has referred the case back to the Committee in accordance with subsection (1), the secretary shall notify the respondent and, in so far as it is practicable, the complainant of the reference.

21. Documents to be furnished to Council

If a respondent or complainant intends to rely on any document at the hearing of an inquiry, the respondent or complainant shall furnish to the secretary, at least 10 days before the date of the inquiry, 2 copies of the document which the respondent or complainant intends to rely on.

22. Documents to be available to parties

(1) The respondent or complainant in respect of an inquiry may request a copy of any document furnished to the secretary by any other party to the inquiry.

(2) If a request is made to the secretary under subsection (1), the secretary shall, for the purposes of the inquiry and on payment of a reasonable charge, comply with the request accordingly.

23. Notice to produce document

(1) At any time before the hearing of an inquiry, and on application by any of the parties to the inquiry, the chairman may by order require a party to the inquiry to produce any material, record (in whatever form) or document which is

relevant to the case or issues of the case alleged to be in the possession of that party.

(2) If a party to the inquiry fails to produce the material, record or document required, the party who applied for the order may prove the contents thereof by other means.

24. Consolidation of charges and amendment of notice of inquiry

(1) If, after a case is referred to the Council for inquiry, the secretary receives further allegations of the matters set out in section 8(3) or 10(1) (as the case may be) of the Ordinance against the respondent, and the allegations are of the same nature as the case being investigated, the secretary shall submit the allegations to the chairman who may then direct that any or all of the allegations are to be inquired into at the same inquiry against the respondent.

(2) If the chairman makes a direction under subsection (1), further evidence which relates to the allegations mentioned in that subsection may be introduced at the inquiry in respect of the case, notwithstanding that the allegations have not been referred to the Committee or have not formed the subject of a determination of the Committee.

(3) If, at any time before the Council has made a determination under section 31, it appears to the chairman that a notice of inquiry is defective, the chairman may direct the secretary to amend the notice.

(4) After the amendment of the notice of inquiry, the secretary shall, unless the amendment does not affect the substance of the complaint or information -

- (a) serve on the respondent the amended notice of

inquiry; and

- (b) in so far as it is practicable, serve on the complainant a copy of the amended notice of inquiry.
- (5) Where the notice of inquiry is amended, and unless the amendment does not affect the substance of the complaint or information -
- (a) the respondent shall be allowed reasonable time to prepare his or her case on matters arising from the amendment; and
 - (b) where inquiry has been commenced, and unless the respondent agrees otherwise, the inquiry shall be suspended and the procedures under sections 28, 29 and 30 shall be repeated as if the amended notice of inquiry is a notice of inquiry under section 18(2)(b).

PART V

PROCEEDINGS AT HEARING OF COUNCIL

25. Inquiry in public or in camera

- (1) Subject to subsection (2), an inquiry of the Council shall be open to the public.
- (2) The Council -
 - (a) may at its discretion determine that an inquiry shall be held wholly or partly in camera;
 - (b) may at any stage of an inquiry determine that the remainder of the inquiry shall be held in camera.

26. Representation

(1) A party to an inquiry may be represented by a solicitor, a counsel or a friend of that party.

(2) The Secretary for Justice may, on the application of the secretary, appoint -

- (a) a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87);
- (b) a solicitor; or
- (c) a counsel,

to carry out the functions of the secretary in respect of an inquiry.

27. Record of proceedings

(1) The Council may appoint a person to prepare a verbatim record of the proceedings of an inquiry, or alternatively, the secretary may cause the proceedings to be recorded on tape and arrange for the transcription of the tape recording into a verbatim record in writing.

(2) A party to an inquiry may apply to the chairman for a full verbatim record of the proceedings, or any part of that record, which has been prepared.

(3) On an application of a party to the chairman under subsection (2), and on the payment of the prescribed fee by that party, the chairman shall provide that party with a copy of the full verbatim record of the proceedings or any part of that record required by that party.

28. Opening of inquiry

(1) At the opening of an inquiry, the secretary shall read

the notice of inquiry to the Council.

(2) If the respondent is not present and is not represented at the opening of an inquiry, the secretary shall submit such evidence as the Council may require to prove that the notice of inquiry or, where applicable, the notice of adjournment has been served on the respondent in accordance with section 18(2)(b) or 19(2).

(3) If, after considering the evidence submitted under subsection (2), the Council is satisfied that the notice of inquiry or the notice of adjournment (as the case may be) has been served on the respondent in accordance with section 18(2)(b) or 19(2), the Council may proceed with the inquiry in the absence of the respondent or person representing the respondent.

(4) If the respondent or person representing the respondent is present at the opening of an inquiry but is absent from the inquiry at any time during the course of the inquiry, the Council may continue to proceed with the inquiry notwithstanding the absence of the respondent or that person.

(5) If the respondent or person representing the respondent appears before the Council, the Council shall, immediately after the notice of inquiry is read, inform the respondent or that person (as the case may be) the right of the respondent to cross-examine any witness, to give evidence and to call witness on the respondent's behalf.

29. Objections on point of law

(1) Where the notice of inquiry has been read in accordance with section 28(1), the respondent or person

representing the respondent may object to the inquiry on a point of law.

(2) If the respondent or person representing the respondent makes an objection under subsection (1), the secretary may reply to the objection, and the respondent or person representing the respondent may then answer the reply.

(3) If the Council upholds the objection made under subsection (1), the Council shall consider the charge subject to the objection.

30. Order of procedure, etc.

(1) Subject to sections 28 and 29 and subsections (4) and (5), an inquiry shall be conducted in accordance with the following procedures -

- (a) the secretary shall present the case against the respondent, adduce evidence to support the case and then close the case;
- (b) at the conclusion of the presentation of the case against the respondent by the secretary, the respondent or person representing the respondent may make either or both of the following submissions in relation to any charge in respect of which evidence has been adduced -
 - (i) there is not sufficient evidence on which the Council can find that the facts alleged in that charge have been proved;
 - (ii) the facts alleged in the charge do not constitute the offence charged;

- (c) if the respondent or person representing the respondent makes either or both of the submissions referred to in paragraph (b), the secretary may make a reply, and the respondent or person representing the respondent may answer the reply;
- (d) the Council shall -
 - (i) consider and determine whether a submission (if any) made under paragraph (b) is to be upheld; and
 - (ii) announce the determination of the Council;
- (e) if the Council determines that a submission made under paragraph (b) shall be upheld, the Council's determination shall be recorded as a decision finding that the respondent is not guilty on the charge alleged;
- (f) if the Council rejects the submission made under paragraph (b), the chairman shall call on the respondent or person representing the respondent to state the respondent's case;
- (g) the respondent or person representing the respondent may then adduce evidence to support the respondent's case;
- (h) the respondent or person representing the respondent may make one address to the Council, and if evidence is adduced to support the respondent's case, the address may be made before or after the evidence is adduced;

- (i) at the conclusion of the respondent's case, the secretary may address the Council in reply;
- (j) if the secretary addresses the Council in reply, the respondent or person representing the respondent may make one address to the Council in reply to the secretary's reply mentioned in paragraph (i).

(2) The complainant or person representing that complainant may apply to the Council for permission to present the complainant's case.

(3) If the Council thinks appropriate in the circumstances of the case, the Council may permit the complainant or person representing the complainant to present the complainant's case.

(4) If the Council grants permission under subsection (3), a reference to the secretary in subsection (1) is to be construed as a reference to the complainant or person representing that complainant.

(5) No inquiry shall be held in the absence of the legal adviser to the Council.

31. Determination of Council

(1) Subject to subsection (3), at the conclusion of the proceedings under section 30, the Council shall consider and determine whether the facts alleged in any charge before the Council have been proved to its satisfaction and whether the respondent is guilty of the offence charged.

(2) If the Council comes to a determination under subsection (1), the chairman shall announce the determination,

including the reasons for making the determination, in such terms as the Council may approve, and notify the respondent and, in so far as it is practicable, the complainant of the determination.

(3) The Council may, if it thinks appropriate, postpone the making of its determination to a further meeting appointed by the Council.

32. Notice in relation to postponement of determination

(1) If the Council decides to postpone the making of a determination to a further meeting, the secretary shall, at least 7 days before the date fixed for such further meeting, serve on the respondent a notice inviting the respondent to attend that meeting.

(2) The notice referred to in subsection (1) shall specify the date, time and place fixed for the Council's meeting at which a determination is to be made.

(3) If there is a complainant in respect of the charge, the secretary shall, in so far as it is practicable, serve on the complainant a copy of the notice referred to in subsection (1).

(4) At the further meeting appointed under section 31(3), the Council may require the secretary to recall, for the Council's information, the position in which the case stands and the Council may hear any other party to the proceedings.

(5) The Council shall then consider and determine whether the facts alleged in any charge before the Council have been proved to its satisfaction and whether the respondent is guilty of the offence charged.

(6) If the Council comes to a determination, the chairman shall announce the determination, including the reasons for the determination, in such terms as the Council may approve, and notify the respondent and, in so far as it is practicable, the complainant of the determination.

33. Postponement of making order

The Council may, if it thinks appropriate, postpone the making of an order under section 10 of the Ordinance to such further meeting as the Council may determine.

34. Address in mitigation, etc.

The procedure for the meeting of the Council at which an order is to be made under section 10 of the Ordinance are as follows -

- (a) where the Council has previously made any order against the respondent pursuant to section 10 of the Ordinance, the secretary or any other person presenting the case against the respondent may produce to the Council the records of the meeting at which the order was made;
- (b) the Council shall ask the respondent or person representing the respondent whether the respondent wishes to address the Council;
- (c) the respondent or person representing the respondent may address the Council by way of mitigation and may adduce the following evidence -
 - (i) evidence as to the circumstances

leading to the commission of the offence;

- (ii) evidence as to the character and antecedents of the respondent;
- (iii) evidence as to the circumstances leading to any previous order as notified to the Council under paragraph (a);
- (d) the Council shall then consider and determine the order to be made against the respondent;
- (e) after the Council has determined the order to be made, the chairman shall announce the determination in such terms as the Council may approve, and notify -
 - (i) the respondent; and
 - (ii) in so far as it is practicable, the complainant, of the determination.

35. Notice of postponement of making order

(1) If the Council decides under section 33 to postpone the making of an order under section 10 of the Ordinance to a further meeting, the secretary shall, at least 7 days before the date fixed for such further meeting, serve on the respondent a notice inviting the respondent to attend that further meeting.

(2) The notice mentioned in subsection (1) shall specify the date, time and place fixed for the further meeting.

(3) The secretary shall, in so far as it is practicable, serve on the complainant a copy of the notice.

36. Evidence

(1) The rules of evidence shall not apply to the proceedings of an inquiry under this Regulation.

(2) Evidence may be taken by the Council by oral statement on oath or by written deposition or statement, and the chairman may administer an oath for the purpose.

(3) The form of a summons to witness issued under section 11(2) of the Ordinance shall be in accordance with the form prescribed in Schedule 3.

(4) A witness shall be examined by the party calling the witness to attend the inquiry, and be cross-examined by any other party to the inquiry.

(5) A witness may be re-examined -

(a) by the party calling the witness; and

(b) only on the matters arising out of cross-examination.

(6) The Council may refuse to admit evidence of any deponent to a document if that deponent is not present for, or refuses to submit to, cross-examination.

(7) If the chairman thinks desirable, the chairman may put questions to any of the parties to the inquiry or to any witness.

(8) Any member of the Council may, through the chairman, put questions to any of the parties to the inquiry or to any witness.

37. Voting

(1) If the Council is required to decide on any question

by way of voting, for the purposes of taking the number of votes, the chairman may call on the members of the Council to signify their votes in such manner as determined by the chairman.

(2) No proxy is allowed for the purposes of voting under this section.

(3) After counting the number of votes, the chairman shall declare the results in respect of the question.

(4) If a member challenges the results of the voting, the chairman shall call on each member to declare his or her own vote and announce the total number of members who have voted each way and the result of the voting.

(5) If the votes on either way are the same, it shall be taken as decided in favour of the respondent.

(6) No person, other than a member of the Council and the legal adviser to the Council, may be present when the Council votes on any matter.

38. Service of documents

(1) For the purposes of this Regulation, a notice or communication required by section 18(2)(b) or (5), 19(2), 20(2), 24(4), 31(2), 32(1), (3) or (6), 34(e)(ii) or 35(1) or (3) to be served on or given to the respondent or complainant may be served on the respondent or complainant by -

(a) delivering it to the respondent or complainant (as the case may be) by hand;

(b) leaving it at the respondent's or complainant's (as the case may be) address last known to the secretary; or

(c) sending it by registered post to the respondent's or complainant's (as the case may be) address last known to the secretary.

(2) In all other cases, notices or communications (except the notification referred to in section 34(e)(i) which is required to be served on the respondent in accordance with section 14(1) of the Ordinance) to be sent for the purposes of this Regulation may be sent by ordinary post.

(3) Where a notice or communication is effected by sending it by ordinary post, unless the context otherwise requires, it shall be deemed to have been effected at the time when the letter containing it would be delivered in the ordinary course of post.

(4) For the purposes of this Regulation, service of a notice or other communication effected by registered post may be proved by means of a sworn statement made by the secretary or an assistant secretary or any person responsible for effecting the service.

SCHEDULE 1
PARTICULARS TO BE ENTERED IN REGISTER

[s. 3]

1. Registration number.
2. Name of the applicant.
3. Date of registration as midwife.
4. Name and address of the hospital or training school at which the applicant has undergone training in midwifery.
5. Particulars of the training and practice in -
 - (a) general nursing;
 - (b) midwifery;
 - (c) other work.
6. Registration with the Nursing Council of Hong Kong.
7. Name of other body or organization with which the applicant has been registered.
8. Name of the person who provides references as to the character of the applicant.
9. Date of Midwives Council of Hong Kong Examination passed.

- 10. Signature of the applicant.
- 11. Signature of the secretary.

SCHEDULE 2
 CERTIFICATE OF REGISTRATION
 香港助產士管理局
 註冊證明書
 MIDWIVES COUNCIL
 HONG KONG
 CERTIFICATE OF REGISTRATION

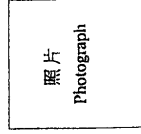
Iss. 4 and 7)

Registration Number Date

註冊編號 日期

I hereby certify that
 whose photograph is appended hereto, is registered as a
 midwife in accordance with the provisions of the
 Midwives Registration Ordinance (Chapter 162).

本人現證明
 (其照片貼於本證明書) 已按照《助產士
 註冊條例》(第162章) 註冊為助產士



.....
 香港助產士管理局主席
 Chairman, Midwives Council of Hong Kong

SCHEDULE 3

SUMMONS TO WITNESS

MIDWIVES REGISTRATION ORDINANCE
(Chapter 162)

MIDWIVES (REGISTRATION AND DISCIPLINARY PROCEDURE)
REGULATION

SUMMONS TO WITNESS

In the matter of an inquiry under section of the Midwives Registration Ordinance:

And in the matter of ⁽¹⁾
To ⁽²⁾

You are hereby summoned to appear before the Midwives Council of Hong Kong at
on theday ofato'clock in
thenoon to give evidence in respect of the matter under inquiry ⁽³⁾ and
to produce ⁽⁴⁾
.....

Given under my hand thisday of
.....

.....
Secretary of the Council

Note:

(1) Insert the name of the registered midwife or the person concerned.

- (2) Insert the name and address of the witness.
- (3) Delete if not required.
- (4) Specify the documents or other things to be produced.

Chairman,
Midwives Council of Hong Kong

29 Nov., 1999

Explanatory Note

The main purpose of this Regulation is to prescribe the disciplinary procedures in respect of a registered midwife pursuant to the Midwives Registration Ordinance (Cap. 162).

- 2. Part I sets out certain definitions and Part II is about application for registration and the forms of the register, certificate of registration and practising certificate.
- 3. Part III is about training of midwives and Part IV prescribes the procedure to be followed by the Preliminary Investigation Committee in investigations carried out before an inquiry of the Midwives Council of Hong Kong.
- 4. Part V is about proceedings at an inquiry of the Midwives Council of Hong Kong.