STATUTORY INSTRUMENTS

2017 No. 703

HEALTH CARE AND ASSOCIATED PROFESSIONS

NURSES AND MIDWIVES

The Nursing and Midwifery Order (Legal Assessors) (Amendment) and the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules Order of Council 2017

Made - - - -	*23rd June 2017*
Laid before Parliament	*28th June 2017*
Coming into force - -	*28th July 2017*

At the Council Chamber, Whitehall the 23rd day of June 2017
By the Lords of Her Majesty's Most Honourable Privy Council

The Nursing and Midwifery Council has made the Rules as set out in the Schedule to this Order, in exercise of the powers conferred by articles 26(3) and (5B), 26A(1), 26B(2), 26C(1), 32(1) and (2) and 47(2) of the Nursing and Midwifery Order 2001(**1**).

In accordance with article 47(3) of that Order, the Nursing and Midwifery Council has consulted representatives of groups of persons who appear likely to be affected by the proposed rules.

In accordance with articles 47(1) and 48 of the Nursing and Midwifery Order 2001 such Rules shall not come into force until approved by order of the Privy Council.

The Privy Council makes the following order in exercise of the powers in article 46(1), 47(1) and 48 of the Nursing and Midwifery Order 2001.

Citation and commencement

1. This Order may be cited as the Nursing and Midwifery Order (Legal Assessors) (Amendment) and the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules Order of Council 2017 and comes into force on 28th July 2017.

(**1**) S.I. 2002/253. The relevant amending instruments are S.I. 2014/3272 and S.I. 2017/321.

Amendment of the Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004

2. In article 2 of the Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004(**2**) for paragraphs (b) and (c) substitute—

"(b) the Fitness to Practise Committee under Part V of the Order; or".

Council approval of Rules

3. Their Lordships, having taken the Rules contained in the Schedule into consideration, are pleased to, and do approve them.

Richard Tilbrook
Clerk of the Privy Council

(**2**) S.I. 2004/1763. Article 2 specifies the hearings at which advice tendered by a legal assessor must be given in the presence of the parties or their representatives.

SCHEDULE Article 3

THE NURSING AND MIDWIFERY COUNCIL (FITNESS TO PRACTISE) (AMENDMENT) RULES 2017

The Nursing and Midwifery Council, having consulted in accordance with article 47(3) of the Nursing and Midwifery Order 2001(**3**), makes the following Rules in exercise of the powers conferred by articles 26(3) and (5B), 26A(1), 26B(2), 26C(1), 32(1) and (2) and 47(2) of that Order.

Citation and commencement

1. These Rules may be cited as the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2017 and shall come into force on 28th July 2017.

Amendments to the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

2. The Nursing and Midwifery Council (Fitness to Practise) Rules 2004(**4**), are amended in accordance with rules 3 to 31.

3. In rule 2(**5**) (interpretation)—

(a) in the definition of "review hearing", for "Conduct and Competence Committee or the Health" substitute "Fitness to Practise";

(b) in the definition of "sanction" for "Health or Conduct and Competence" substitute "Fitness to Practise".

4. In rule 2A(**6**) (initial consideration of allegations), for paragraph (2) substitute—

"(2) Where the Registrar considers that an allegation falls within article 22(1)(a)(**7**) of the Order, the Registrar, must refer the allegation—

(a) to the Case Examiners for consideration under rule 6C; or

(b) to the Fitness to Practise Committee for consideration in accordance with Part 4.".

5. In rule 3(**8**) (notice of allegations of fraudulent or incorrect entries in the register), in paragraph (3)—

(a) at the end of sub-paragraph (a), insert "and";

(b) omit sub-paragraphs (c) and (d).

6. In rule 6A(**9**) (notice of fitness to practise allegations)—

(a) in paragraph (1), for "2A(2)" substitute "2A(2)(a)";

(b) in paragraph (2)(b), before "invite the registrant" insert "inform the registrant of the actions the Case Examiners could take under rule 6C(**10**) and".

7. In rule 6C (consideration of fitness to practise allegations by Case Examiners)—

(**3**) S.I. 2002/253. The relevant amending instruments are S.I. 2014/3272 and 2017/321.
(**4**) These Rules are set out in the Schedule to S.I. 2004/1761.
(**5**) The definition of "sanction" was inserted by rule 3(1) of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2007 which are set out in the Schedule to S.I. 2007/893.
(**6**) Rule 2A was inserted by rule 5 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in the Schedule to S.I. 2015/52.
(**7**) Article 22(1)(a) was amended by section 81 of the Policing and Crime Act 2009 (c.26) and by article 37 of S.I. 2015/806.
(**8**) Paragraph (3) of rule 3 was inserted by rule 6 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in the Schedule to S.I. 2015/52.
(**9**) Rule 6A was inserted by rule 10 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in Schedule to S.I. 2015/52.
(**10**) Rule 6C was inserted by rule 10 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in the Schedule to S.I. 2015/52.

(a) in paragraph (1), for "2A(2)" substitute "2A(2)(a)";

(b) for paragraphs (2) and (3), substitute—

"(2) Where the Case Examiners agree that there is a case to answer—

(a) the Case Examiners must either—

(i) refer the case to the Fitness to Practise Committee, or

(ii) recommend undertakings to be agreed with the registrant pursuant to rule 6E; and

(b) the Registrar must notify in writing both the registrant and the person making the allegation (if any) of the Case Examiners' decision and their reasons for it.

(2A) Paragraph (2)(a)(ii) does not apply where the Case Examiners consider that, if the allegation were referred to the Fitness to Practise Committee, there is a realistic prospect of that Committee making an order directing the Registrar to strike the registrant off the register.

(2B) Where the Case Examiners agree that there is no case to answer, they may give advice to the registrant or issue the registrant with a warning.

(3) Where the Case Examiners agree that there is no case to answer, the Registrar must notify in writing—

(a) the person making the allegation (if any) of the Case Examiners' decision together with their reasons, including whether the registrant has been issued with a warning or given advice; and

(b) the registrant—

(i) of the Case Examiners' decision together with the reasons for it,

(ii) of the details of any warning issued or advice given,

(iii) of the period during which any warning issued will be published under article 22(9) of the Order, and

(iv) that the allegation may be taken into account in the consideration of any further allegation about the registrant received by the Council within three years from the date of the Case Examiners' decision that there is no case to answer.";

(c) in paragraph (5), for "the Investigating" substitute "a Practice".

8. In rule 6D(**11**) (consideration of fitness to practise allegations by the Investigating Committee)—

(a) in paragraph (1)(c), after "must consider," insert "in private,";

(b) for paragraphs (2) to (4), substitute—

"(2) Where the Investigating Committee determines that there is a case to answer—

(a) the Investigating Committee must either—

(i) refer the allegation to the Fitness to Practise Committee, or

(ii) recommend undertakings to be agreed with the registrant pursuant to rule 6E;

(**11**) Rule 6D was inserted by rule 10 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in the Schedule to S.I. 2015/52, and amended by rule 4 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No.2) Rules 2015 which are set out in the Schedule to S.I. 2015/1923.

(b) the Registrar must notify in writing both the registrant and the person making the allegation (if any) of the Investigating Committee's determination and its reasons for it.

(2A) Paragraph (2)(a)(ii) does not apply where the Investigating Committee considers that, if the allegation were referred to the Fitness to Practise Committee, there is a realistic prospect of that Committee making an order directing the Registrar to strike the registrant off the register.

(2B) Where the Investigating Committee determines that there is no case to answer, it may give advice to the registrant or issue the registrant with a warning.

(3) Where the Investigating Committee determines that there is no case to answer, the Registrar must notify in writing—

(a) the person making the allegation (if any) of the Investigating Committee's determination together with its reasons, including whether the registrant has been issued with a warning or given advice; and

(b) the registrant—

(i) of the Investigating Committee's determination together with the reasons for it,

(ii) of the details of any warning issued or advice given,

(iii) of the period during which any warning issued will be published under article 22(9) of the Order, and

(iv) that the allegation may be taken into account in the consideration of any further allegation about the registrant received by the Council within three years from the date of the Investigating Committee's determination that there is no case to answer.".

9. After rule 6D (consideration of fitness to practise allegations by the Investigating Committee), insert—

"**Undertakings**

6E.—(1) Where, under rule 6C(2)(a)(ii), the Case Examiners recommend undertakings to be agreed with the registrant, or the Investigating Committee makes such a recommendation under rule 6D(2)(a)(ii), the Registrar must write to the registrant—

(a) inviting the registrant to confirm in writing, within 28 days of the date of that invitation, or within such further period allowed by the Registrar, that the registrant will comply with the undertakings recommended by the Case Examiners or by the Investigating Committee, as the case may be (referred to in this rule as "the undertakings"); and

(b) informing the registrant of the provisions of paragraph (4) of this rule.

(2) If, in accordance with paragraph (1), the registrant confirms in writing that the registrant will comply with the undertakings—

(a) the Case Examiners or the Investigating Committee, as the case may be, must cease consideration of the allegation;

(b) where the allegation has been referred to the Fitness to Practise Committee, the Fitness to Practise Committee must not consider the allegation; and

(c) any interim order in place under article 31 of the Order ceases to have effect.