STATUTORY INSTRUMENTS

# 2015 No. 52

# HEALTH CARE AND ASSOCIATED PROFESSIONS

NURSES AND MIDWIVES

## The Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules Order of Council 2015

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| *Made - - - -* | *21st January 2015* |
| *Laid before Parliament* | *27th January 2015* |
| *Coming into force - -* | *9th March 2015* |

At the Court Council Chamber, Whitehall, the 21st day of January 2015
By the Lords of Her Majesty's Most Honourable Privy Council

The Nursing and Midwifery Council has made the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014, as set out in the Schedule to this Order, in exercise of the powers conferred by articles 7(1) and (2), 9(1) and (2), 10(1), 12A(4) to (7), 22(5), 26(2) to (5), 26A(1), 26B, 26C(1), 37(4) and (5) and 47(2) of the Nursing and Midwifery Order 2001(**1**).

In accordance with article 47(3) of the Nursing and Midwifery Order 2001 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 that Order the Rules shall not come into force until approved by Order of the Privy Council.

(**1**) S.I. 2002/253. Article 10(1) was amended by S.I. 2007/3101, regulation 1(2) and by S.I. 2014/1887, article 2, Schedule 1, Part 7, paragraph 25. Article 12A was inserted by S.I. 2014/1887, article 2, Schedule 1, Part 7, paragraph 26 and amended by S.I. 2014/3272, article 3. Articles 26A, 26B and 26C were inserted by S.I. 2014/3272, article 6.

## Citation and commencement

**1.** This Order may be cited as the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules Order of Council 2015 and comes into force on 9th March 2015.

## Privy Council approval

**2.** Their Lordships, having taken the Rules into consideration, are pleased to, and do approve them.

*Richard Tilbrook*
Clerk of the Privy Council

SCHEDULE Article 2

The Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014

The Nursing and Midwifery Council makes the following Rules in exercise of the powers conferred under articles 7(1) and (2), 9(1) and (2), 10(1), 12A(4) to (7), 22(5), 26(2) to (5), 26A(1), 26B, 26C(1), 37(4) and (5) and 47(2) of the Nursing and Midwifery Order 2001, having consulted in accordance with article 47(3) of that Order.

# PART I

## Preliminaries

### Citation and commencement

**1.** These Rules may be cited as the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 and come into force on 9th March 2015.

# PART II

## Amendment of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

**2.** The Nursing and Midwifery Council (Fitness to Practise) Rules 2004(**2**) are amended as follows.

**3.** In rule 2 (interpretation)(**3**) at the appropriate place in the alphabetical order insert—

> ""Case Examiner" means a professional or lay officer of the Council appointed by the Registrar for the purposes of exercising the functions of the Investigating Committee in accordance with article 26A of the Order, and "Case Examiners" means the professional and lay Case Examiner to whom an allegation is referred under rule 2A(2) and includes any replacement Case Examiner appointed by the Registrar;";
>
> "lay", in relation to a Case Examiner, means a person who—
>
> (a) is not and never has been a registered nurse or midwife (and article 5(5) does not apply for these purposes);
>
> (b) is not and never has been a registered medical practitioner; and
>
> (c) does not hold qualifications which would entitle them to apply for registration as a registered nurse, a registered midwife or a registered medical practitioner;
>
> "professional", in relation to a Case Examiner, means a registered nurse or midwife;".

**4.** In Part 2 (Investigating Committee), for the heading "Investigating Committee" substitute "Investigation of Allegations".

**5.** Before rule 3 (notice provisions) insert—

(**2**) These Rules are set out in the Schedule to S.I. 2004/1761.

(**3**) Rule 2 was amended 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, by rule 12 of the Nursing and Midwifery Council (Midwifery and Practice Committees)(Constitution) Rules 2008 which are set out in the Schedule to S.I. 2008/3148 and by rules 2 and 3 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to S.I. 2012/17.

"**Initial consideration of allegations**

**2A.**—(1) Where the Registrar considers that an allegation falls within article 22(1)(b) of the Order, the Registrar must refer the allegation to the Investigating Committee for consideration under rule 5.

(2) Where the Registrar considers that an allegation falls within article 22(1)(a) of the Order, the Registrar must refer the allegation to the Case Examiners for consideration under rule 6C.

(3) Where the Registrar considers that an allegation does not fall within article 22(1)(a) of the Order, the Registrar must notify the maker of the allegation (if any).

(4) The Registrar may carry out any investigations as in the Registrar's opinion are appropriate to the consideration of—

(a) whether or not the allegation falls within article 22(1)(a) of the Order;

(b) whether or not the allegation falls within article 22(1)(b) of the Order;

(c) the registrant's fitness to practise; or

(d) the registrant's entry in the register.".

**6.** In rule 3(**4**)—

(a) for the heading substitute "Notice of allegations of fraudulent or incorrect entries in the register";

(b) for paragraph (1) substitute—

"(1) Where an allegation is referred under rule 2A(1), the Registrar shall, in accordance with article 26(2)(a) of the Order, notify the registrant of any allegation referred to the Investigating Committee, by serving a notice of referral upon her.";

(c) in paragraph (2)(b) for "Council" substitute "Registrar";

(d) after paragraph (2)(d) add—

"(e) invite the registrant to inform the Registrar within 28 days from the date of service of the notice of referral if the registrant wishes the allegation to be considered at a hearing.";

(e) after paragraph (2) add—

"(3) The Registrar shall give notice of the referral made under paragraph 2A(1) to the following—

(a) where known, the registrant's employer or any other person with whom the registrant has an arrangement to provide services in, or in relation to, nursing or midwifery;

(b) where known, any other body by which the registrant is authorised to practise a health or social care profession;

(c) the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland; and

(d) where the registrant is a practising midwife, the midwife's local supervising authority.".

(**4**) Rule 3 was amended by rules 2 and 4 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to S.I. 2012/17.

**7.** Omit rule 4 (procedure of the Investigating Committee where the allegation relates to impairment of fitness to practise)(**5**).

**8.** For rule 5 (procedure of the Investigating Committee where the allegation relates to a fraudulent or incorrect entry in the register)(**6**) substitute—

"**Procedure of the Investigating Committee where the allegation relates to a fraudulent or incorrect entry in the register**

**5.**—(1) Where—

(a) the registrant asks for a hearing within the period specified in rule 3(2)(e); or

(b) the Registrar considers that a hearing is desirable,

the Investigating Committee must consider the allegation at a hearing.

(2) Where a hearing is to be held pursuant to paragraph (1), the Registrar must send a notice to the registrant no later than 28 days before the date fixed for the hearing.

(3) The notice of hearing must—

(a) inform the registrant of the date, time and venue of the hearing;

(b) contain a charge particularising the allegation, and the alleged facts upon which the allegation is based;

(c) inform the registrant of the registrant's right to attend, and to be represented at, the hearing in accordance with rule 20;

(d) inform the registrant of the Committee's power to proceed with the hearing in the registrant's absence;

(e) inform the registrant of the registrant's right to adduce evidence in accordance with rule 31;

(f) inform the registrant of the registrant's right to call witnesses, and to cross examine any witnesses called by the Council or by the Committee;

(g) require the registrant to inform the Council, within 14 days of receipt of the notice, whether the registrant intends to—

(i) attend the hearing,

(ii) be represented at the hearing;

(h) inform the registrant of the Committee's power to impose an interim order under article 26(11) of the Order; and

(i) inform the registrant of the action the Committee may take under article 26(2)(d)(ii), (7) and (8) of the Order.

(4) Where a hearing is to be held pursuant to paragraph (1), the Investigating Committee —

(a) may hold a preliminary meeting in accordance with rule 18; and

(b) must determine the matter in accordance with the procedure set out in Part 5 of these Rules, and must dispose of the matter in accordance with article 26(2)(d)(ii), (7), (8) and (11) of the Order.

(5) Where the registrant has not requested a hearing and the Registrar considers that no hearing is necessary—

(**5**) Rule 4 was amended by rules 2 and 5 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to S.I. 2012/17.

(**6**) Rule 5 was amended by rules 2 and 6 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to S.I. 2012/17.