
EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which is made under the Nursing and Midwifery Order 2001, approves Rules made by the Nursing and Midwifery Council which set out the procedures to be followed by the Investigating Committee, Health Committee and Conduct and Competence Committee (the “Practice Committees”) of the Council in investigating allegations made against a nurse or midwife that:

- (a) her fitness to practise is impaired by reason of misconduct, health, lack of competence, a conviction or caution for a criminal offence or a determination by another body which regulates a health or social care profession; or
- (b) an entry on the register relating to her is has been fraudulently procured or incorrectly made.

The rules also relate to the procedure to be followed by a Practice Committee which is: considering making an interim order to suspend a nurse or midwife or to impose conditions of practice on her; reviewing an order made by a Practice Committee; or dealing with an application for restoration to the register.

Part 1 relates to the date the Rules are to come into force and to interpretation of them; Part 2 relates to the Investigating Committee; Part 3 to interim orders; Part 4 to the Conduct and Competence Committee and Health Committee; Part 5 to procedure at hearings; and Part 6 contains general provisions.

Part 1

Rule 1 provides for the Rules to come into force on 1st August 2004.

Rule 2 sets out the definitions of terms used in the Rules.

Part 2

Rule 3 provides for notification of a registrant of any allegation made against her.

Rule 4 relates to the procedure of the Investigating Committee where the allegation relates to impairment of fitness to practise on the basis of misconduct, health etc. The Investigating Committee will meet in private, obtain as much information as possible in connection with the consideration of the allegation and offer the registrant the opportunity to comment on information received.

Rule 5 relates to the procedure of the Investigating Committee where the allegation relates to a fraudulent or incorrect entry in the register. The Investigating Committee will meet in private to give initial consideration to the allegation and shall obtain information in connection with the consideration of the allegation.

Where the registrant asks for a hearing or the Investigating Committee considers that a hearing is desirable it will refer the allegation to a differently constituted Investigating Committee for a hearing.

The rule provides for notice of the referral to be given to the registrant’s employer, other regulatory body by whom the registrant is authorised to practise and other specified persons. A notice of hearing is to be sent to the registrant setting out information specified in rule 5 such as the date, time and venue of the hearing, the Committee’s power to proceed with the hearing in the absence of the registrant and the registrant’s right to call witnesses. A preliminary meeting may be held where the Committee is of the opinion that it would assist it to perform its functions. Directions may be given.

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Where the registrant has not requested a hearing and the Committee does not consider that a hearing is necessary it may determine the matter on the basis of written representations in private.

Rule 6 provides for the Committee to give notice of its decision.

Rule 7 provides that, where the Investigating Committee decides that there is no case to answer, it may, if it receives a fresh allegation about the registrant within three years, take the earlier allegation into account in dealing with the later one.

Part 3

Rule 8 provides for notice to be served on a registrant where a Practice Committee proposes to consider whether to make, revoke, confirm, vary or replace an interim order under article 31 of the Nursing and Midwifery Order except where consideration is to be given at the same hearing at one at which an order has already been made under article 26(7) or article 29(5)(a) to (c) of the Nursing and Midwifery Order. The notice must inform the registrant of such matters as the date, time and venue of the hearing, her right to attend and be represented, her right to call witnesses and state the reasons why an interim order may be necessary. A Practice Committee must follow the procedure set out in Part 5 of the Rules in making its decision about an interim order.

Part 4

Rule 9 provides for notice of the referral of an allegation to the Conduct and Competence Committee or the Health Committee to be given to the registrant inviting her to submit written representations within 28 days and asking if she would like to have a hearing. The Council is required to give notice to persons specified in rule 9(3) including the registrant's employer and any other body by whom the registrant is authorised to practise a health or social care profession. The rule provides that a registrant may be invited to submit to assessment in the case of an allegation of lack of competence or to medical examination in a case where it is said that the registrant's fitness to practise is impaired by reason of physical or mental health. The Committee may notify the person who has made the allegation of the registrant's written representations and ask for comments on them.

Rule 10 provides that a hearing shall be held where the registrant asks for one within the specified time or the Committee considers that a hearing would be desirable. Where no hearing is to be held, the Committee may make a determination on an allegation at a meeting and the Committee shall decide the procedure to be followed.

Rule 11 provides for a notice of a hearing to be sent to the registrant informing her of the date, time and venue of the hearing, setting out the allegation, and, among other matters, informing the registrant of her right to attend and be represented at the hearing and of the Committee's power to proceed in her absence. Where the Committee is reviewing an order or dealing with an application for restoration, the notice must contain a copy of the relevant order.

Rule 12 provides for the Conduct and Competence Committee and the Health Committee in considering an allegation at a hearing to follow the procedure as set out in Part 5 of the Rules.

Rule 13 provides for the Committee to give notice of its decision to the registrant and to the person who has made the allegation.

Rules 14 and 15 provide for the Conduct and Competence Committee and Health Committee to refer to each other an allegation which it appears would be better dealt with by the other Committee.

Part 5

Part 5 relates to the procedure to be followed at hearings. Rule 16 provides that it applies to the Investigating Committee when it is considering an allegation which relates to a fraudulent or incorrect entry in the register or when its consideration relates to an interim order. It also applies to the Conduct and Competence Committee or the Health Committee when it is considering an allegation that a registrant's fitness to practice is impaired; when it is considering making, or it is reviewing, an interim order; when it is reviewing an order which it has made; or when it is considering an application for restoration to the register.

Rule 17 defines the meaning of “Committee” in Part 5.

Rule 18 enables a Committee to hold a preliminary meeting if, in its opinion, it would assist the Committee to perform its functions. It provides that the meeting will be chaired by the Chair of the Committee and will be held in private with the parties, representatives and any person the Chair or Committee considers appropriate. Directions may be given. Notice is to be given of a preliminary meeting.

Rule 18(5) sets out examples of the directions which may be given at a preliminary meeting which include time limits for the service of evidence and disclosure of expert evidence; a requirement that, where facts are not in dispute, or the issue of misconduct is admitted, the parties produce a statement of agreed facts; and directions relating to witnesses.

Rule 19 provides that hearings will be conducted in public except where, on the basis of criteria set out in paragraphs (2) or (3), the Committee is satisfied that it is appropriate to hold all or part of the hearing in private.

Rule 20 provides that a registrant may be represented and accompanied but that a person who accompanies the registrant shall not be called as a witness.

Rule 21 provides that, where the Committee is satisfied that notice of the hearing has been served, the hearing may proceed in the absence of the registrant. A hearing may be adjourned.

Rule 22 contains provisions relating to the examination of witnesses.

Rule 23 sets out provisions relating to vulnerable witness and to the adoption of the Committee of such measures as it considers necessary to enable it to receive evidence from a vulnerable witness including a witness under the age of 18 or a witness with a mental disorder. The rule also relates to cases where the allegation against a registrant is sexual in nature, a witness is the alleged victim and the registrant is not represented.

Rule 24 sets out, except where the Committee decides otherwise, the order of proceedings. Where the facts remain in dispute the Committee will hear evidence and then deliberate in private in order to make its findings on the facts. It will announce its findings. Once the facts are established, the Committee will go on to consider whether the registrant’s fitness to practise is impaired and, if it decides that it is, will make a decision on the sanction, if any, to be imposed. It may then consider whether it is appropriate to make an interim order pending the outcome of any appeal.

Rule 25 sets out the order of proceedings to be followed, unless the Committee determines otherwise, at a hearing to review an order which has already been made or whether to restore an applicant to the register.

Rule 26 sets out the order of proceedings to be followed where the Committee is considering whether to make, revoke, confirm, vary or replace an interim order except in circumstances covered by rule 24.

Rule 27 provides for hearings and preliminary meetings to be recorded and for parties, on application, to be furnished with a transcript.

Part 6

Rule 28 provides that a charge, or the facts set out in a charge, may be amended unless, having regard to the merits of the case and the fairness of the proceedings, the amendment cannot be made without injustice.

Rule 29 provides the circumstances in which the Conduct and Competence Committee may consider an allegation against two or more registrants at the same hearing or one or more categories of allegation against a registrant.

Rule 30 provides that where facts relating to an allegation are in dispute the burden of proving those facts rests on the Council.

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Rule 31 relates to the evidence which may be considered by a Practice Committee. Among other things it provides that a Health Committee may take into account a refusal by a registrant to submit to medical examination and any continuing or episodic conditions suffered by a registrant; and, where the Conduct and Competence Committee finds that a registrant has failed to comply with standards of conduct, performance and ethics, the Committee may take that failure into account in determining whether or not the registrant's fitness to practise is impaired.

Rule 32 provides that a Practice Committee may (having heard representations from the parties and taken advice from the Legal Assessor) adjourn proceedings on its own motion or on the application of a party provided that no injustice is caused to a party. The rule sets out what the Committee should consider in deciding whether to postpone or adjourn proceedings and that before adjourning proceedings it should consider whether or not to make an interim order.

Rule 33 provides that where an allegation has been referred to a Practice Committee for consideration at a hearing but the presenter considers that, on the evidence available, the hearing should not be held, the presenter shall give reasons for this opinion and the Practice Committee shall determine (at a preliminary meeting) whether to direct that the hearing should not be held and the matter closed.

Rule 34 relates to the method of service of documents.