
STATUTORY INSTRUMENTS

2004 No. 1762

**The Nursing and Midwifery Order 2001
(Transitional Provisions) Order of Council 2004**

Judgments which immediately before 1st August 2004 stand postponed

7.—(1) Where, as regards a case relating to health or conduct, immediately before 1st August 2004 a judgment of the committee dealing with the case stands postponed, or further postponed, pursuant to rule 18(4), 20(1)(f), 43(c) or 51 of the Conduct Rules, the Council shall no later than 1st August 2005 or six weeks before the date fixed for resumption of the proceedings, whichever is sooner, send to the respondent a notice which shall—

- (a) specify the day, time and place at which the proceedings are to be resumed, and which committee is to deal with the case, and invite her to appear at the hearing;
- (b) unless the Chairman otherwise directs, invite the respondent—
 - (i) to furnish the Registrar with names and addresses of persons to whom reference may be made, confidentially or otherwise, concerning her employment, character, conduct or health since the decision to postpone or further postpone judgment was made,
 - (ii) in a case relating to health, to submit to medical examination by a registered medical practitioner nominated by the Council; and
- (c) invite the respondent to send to the Council, not less than three weeks before the date fixed for the resumption of proceedings, a statement or statutory declaration, whether made by the respondent or not—
 - (i) relating to her conduct or other relevant matters since the decision to postpone or further postpone judgment was made, and
 - (ii) setting out any material facts which have arisen since that decision was made.

(2) In a case relating to conduct, a copy of—

- (a) the notice sent by the Council in accordance with paragraph (1); and
- (b) any statement or statutory declaration sent to the Council by the respondent as a result of the invitation issued pursuant to paragraph (1)(c),

shall be sent to the person making the allegation that led to the case if any, and she may in turn, if she so desires, send to the Council a statement or statutory declaration, whether made by herself or not, concerning any matter raised by the respondent.

(3) At the hearing of the committee at which the proceedings are resumed, the Chairman shall first invite the Council's officer or the Solicitor to recall, for the information of the committee, the position in which the case stands, and the committee—

- (a) may then receive further oral or documentary evidence in relation to the case, or to the conduct or health of the respondent since the decision to postpone or further postpone judgment was made; and
- (b) shall hear any party to the proceedings who desires to be heard or her or its representative.

(4) The committee shall then consider the case and—

- (a) may not further postpone judgment pursuant to rule 20(1)(f), 43(c) or 51 of the Conduct Rules; and
- (b) if, but for sub-paragraph (a), the committee would have further postponed judgment, it shall act in accordance with article 29(4) or (5) of the Order, and—
 - (i) thereafter Part V and article 38 of the Order will apply to the decision or order of the committee as if it were a decision or order of a Committee under article 29(4) or (5) of the Order,
 - (ii) for these purposes, Part V and article 38 of the Order shall apply as if references to a Practice Committee (however made), except in article 38(3)(d) of the Order, were references to the committee dealing with the case, and
 - (iii) for these purposes, article 38(3)(d) of the Order shall apply as if for the words “Practice Committee concerned” there were substituted “such Practice Committee as the court or sheriff considers appropriate”.
- (5) Subject to the provisions of the Order, the validity of any resumed proceedings shall not be called into question by reason only that members of the Committee who were present at any former hearing are not present at the hearing of the committee at which the proceedings are resumed.
- (6) In this article—
 - “Chairman” means the person selected by the committee dealing with the case to preside at the resumed proceedings;
 - “Solicitor” means any solicitor appointed by the Council to present the case against the respondent; and
 - “party” means the respondent or the Council.