

## SCHEDULE

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

## 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(1) are amended as follows.

3. In rule 2 (interpretation)(2) 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—

#### **“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;

(1) These Rules are set out in the Schedule to [S.I. 2004/1761](#).

(2) 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](#).

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- (c) the registrant’s fitness to practise; or
- (d) the registrant’s entry in the register.”.

6. In rule 3(3)—

- (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.”.

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

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

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(3) 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](#).

(4) 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](#).

(5) 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](#).

(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—

- (a) the Registrar must invite any person who, in the Registrar’s opinion, has an interest in the proceedings to submit written representations within such time as the Registrar may direct; and
- (b) the Investigating Committee shall meet in private and, notwithstanding the absence of any representations invited in accordance with sub-paragraph (a), dispose of the matter in accordance with article 26(2)(d)(ii), (7), (8) and (11) of the Order.

(6) The Registrar must notify, in writing, the registrant and the person making the allegation (if any) of the Investigating Committee’s decision together with its reasons.”.

**9.** Omit rule 6 (notice of decision)(6).

**10.** After rule 6 insert—

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(6) Rule 6 was amended by rules 2 and 7 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to [S.I. 2012/17](#).

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#### **“Notice of fitness to practise allegations**

**6A.**—(1) Where an allegation is referred to Case Examiners under rule 2A(2), the Registrar must notify the registrant of that allegation and referral by serving a notice of referral on the registrant.

(2) The notice of referral must—

- (a) be accompanied by any documents relating to the allegation that have not previously been disclosed to the registrant by the Council or a Practice Committee;
- (b) invite the registrant to make written representations, to be received by the Registrar no later than 28 days after the date of the notice;
- (c) unless the allegation is made by virtue of article 22(6) of the Order, inform the registrant that any representations or extracts of any representations received from the registrant may be shown to the person making the allegation for comment; and
- (d) inform the registrant that further information may be sought from other persons in accordance with article 25(1) of the Order or investigations undertaken to assist the Case Examiners in carrying out their functions.

#### **Investigation of Fitness to Practise allegations**

**6B.**—(1) The Registrar may carry out any investigations, whether or not any have been carried out under rule 2A(4), as in the Registrar’s opinion are appropriate to the consideration of the allegation by the Case Examiners.

(2) The Registrar may, in the case of an allegation that the registrant’s fitness to practise is impaired by reason of lack of competence, invite the registrant to submit to an assessment.

(3) The Registrar may, in the case of an allegation that the registrant’s fitness to practise is impaired by reason of the registrant’s physical or mental health, invite the registrant to submit to a medical examination by experts appointed by the Council.

(4) Before any decision is made by the Case Examiners as to whether or not there is a case to answer in respect of an allegation that the registrant’s fitness to practise is impaired, the Registrar must send any information or documents obtained pursuant to this rule to the registrant and invite the registrant to make written representations to be received by the Registrar no later than 28 days after the date on which such documents are sent.

#### **Consideration of fitness to practise allegations by Case Examiners**

**6C.**—(1) Where an allegation is referred under rule 2A(2), the Case Examiners must consider, in the light of the information which the Council has been able to obtain and any representations or other observations made to it under rule 6A(2) or under rule 6B(4), whether there is a case to answer.

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

- (a) the Case Examiners must refer the case to—
  - (i) the Health Committee in the case of an allegation of a kind mentioned in article 22(1)(a)(iv) of the Order, or
  - (ii) the Conduct and Competence Committee, in the case of an allegation of any other kind mentioned in article 22(1)(a) of the Order; and
- (b) the Registrar must notify in writing both the registrant and the person making the allegation (if any) of the decision of the Case Examiners together with their reasons.

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

- (a) the registrant and the person making the allegation (if any) of the decision of the Case Examiners together with their reasons;
- (b) the registrant, 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.

(4) Where the Case Examiners fail to agree whether there is a case to answer, they must notify the Registrar accordingly, and the Registrar must refer the allegation to the Investigating Committee for consideration under rule 6D.

(5) If, during their consideration of the allegation, one or both of the Case Examiners is of the opinion that the Investigating Committee should consider making an interim order in relation to the registrant, the Case Examiners must direct the Registrar accordingly.

### **Consideration of fitness to practise allegations by the Investigating Committee**

**6D.**—(1) Where an allegation has been referred to the Investigating Committee under rule 6C(4), the Committee—

- (a) may direct the Registrar to carry out any investigations as the Committee considers appropriate to the consideration of the allegation;
- (b) must direct the Registrar to send any information or documents obtained pursuant to this rule to the registrant and invite the registrant to make written representations to be received by the Registrar no later than 28 days after the date on which these documents are sent;
- (c) must consider, in the light of the information which the Registrar has been able to obtain under this rule or rule 2A(4), 6B(1), (2) or (3) and any representations or other observations made to it under rule 6A(2) or 6B(4), whether there is a case to answer.

(2) Upon consideration of an allegation under paragraph (1), the Committee may—

- (a) determine that there is no case to answer and that the allegation should not proceed further; or
- (b) refer the case to—
  - (i) the Health Committee in the case of an allegation of a kind mentioned in article 22(1)(a)(iv), or
  - (ii) the Conduct and Competence Committee in the case of an allegation of any other kind mentioned in article 22(1)(a) of the Order.

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

- (a) the registrant and the person making the allegation (if any) of the decision of the Committee together with its reasons;
- (b) the registrant, 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 Committee's decision that there is no case to answer.

(4) The Investigating Committee shall meet in private to consider an allegation referred to it under this rule.”.

**11.** In rule 7 (reconsideration of allegation after a finding of no case to answer)—

- (a) in paragraph (1) for sub-paragraph (a) substitute—

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- “(a) the Case Examiners or the Investigating Committee have considered an allegation that the registrant’s fitness to practise is impaired and decided that there is no case to answer in respect of that allegation; and”;
- (b) in paragraph (2) immediately before “the Investigating Committee” insert “the Case Examiners or”.

**12.** After rule 7 insert—

**“Review of decisions**

**7A.—**(1) All or part of a decision by the Case Examiners or the Investigating Committee that there is no case to answer in respect of an allegation that a registrant’s fitness to practise is impaired (a “no case to answer decision”) may, if reached on or after 9th March 2015, be reviewed by the Registrar under this rule.

(2) The Registrar may carry out such a review if the Registrar—

- (a) has reason to believe that the no case to answer decision may, in whole or in part and for any reason, be materially flawed and considers that a review would be in the public interest; or
- (b) has reason to believe that there is new information which may have led to a decision that is wholly or partly different from the no case to answer decision and considers that a review would be in the public interest.

(3) Where the Registrar decides to carry out such a review, the Registrar must—

- (a) notify the registrant, the maker of the allegation (if any) and any other person who, in the opinion of the Registrar has an interest in it, of that decision;
- (b) notify the registrant, the maker of the allegation (if any) and any other person who, in the opinion of the Registrar, has an interest in the no case to answer decision of any new information and where appropriate, provide them with that information; and
- (c) seek representations from those persons.

(4) The notification referred to in sub-paragraphs (a) and (b) of paragraph (3) must be in writing and, in the case of the notification referred to in sub-paragraph (a), must give reasons for the Registrar’s decision.

(5) As part of such a review, the Registrar may carry out any investigations which the Registrar considers appropriate for the purposes of making a decision on the review of the no case to answer decision.

(6) Where, as a result of the review, taking into account any information or representations referred to in paragraph (3) and such other matters as the Registrar considers appropriate, the Registrar decides that—

- (a) all or part of the no case to answer decision was materially flawed and that a fresh decision is required in the public interest; or
- (b) the new information referred to in paragraph (2)(b) would have probably led wholly or partly to a different decision and that a fresh decision is required in the public interest,

the Registrar must take one of the decisions referred to in paragraph (7).

(7) Those decisions are—

- (a) to substitute, for all or part of the no case to answer decision, any decision which the Case Examiners or the Investigating Committee could have made under Part 2 of these rules; or

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(b) to refer to the Case Examiners for reconsideration by them under rule 6C, an allegation that a registrant’s fitness to practise is impaired.

(8) Where, following the review, the Registrar decides otherwise than in paragraph (6), the Registrar must confirm the no case to answer decision.

(9) Having taken one of the decisions referred to in paragraph (7) or having decided in accordance with paragraph (8), the Registrar must, as soon as reasonably practicable after having done so and in writing, notify—

- (a) the registrant;
- (b) the maker of the allegation (if any); and
- (c) any other person who, in the opinion of the Registrar, has an interest in receiving the notification,

of the decision taken and the reasons for it.

(10) Save in exceptional circumstances, the Registrar must not commence a review of a no case to answer decision more than one year after the date of that decision.”.

**13.** In rule 8 (notice and procedure)(7)—

- (a) in paragraph (2), for “rule 5(8)” substitute “rule 5(2)”;
- (b) in paragraph (3)(c) for “rule 5(9)(a) and (c) to (f)” substitute “rule 5(3)(a) and (c) to (f)”.

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(7) Rule 8 was amended by rules 2 and 8 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to [S.I. 2012/17](#).