

Exceptional cases: changing orders with immediate effect at a standard review

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Sometimes, during the course of a standard review of a substantive order new information comes to light that indicates a significant and immediate risk to the public, or a need to act to protect the interests of the nurse, midwife or nursing associate. In these circumstances, a panel may consider replacing the existing order with a different one that starts immediately, rather than when the current order expires. While this is a course of action that a panel may take, it is only appropriate in exceptional cases.

This guidance explains when it is appropriate to change an order with immediate effect, and the powers available to a panel in such circumstances.

Cases that could require immediate action

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Exceptional cases will involve a **significant** and **immediate** risk to the public, or it will be proportionate to act in the interests of the nurse, midwife or nursing associate. For example:

- A nurse, midwife or nursing associate, states that they have been practising in breach of conditions, or their insight into former behaviour has drastically deteriorated.
- A nurse, midwife or nursing associate, who had previously been suspended, demonstrates to the panel that they are now able to practice with restriction. They have been offered a job to start the next day, but cannot accept employment while their registration is suspended.

If a nurse, midwife or nursing associate's concern is that the current order is too restrictive, the panel should consider the public interest in allowing the order to reach an end, to properly mark the misconduct, or to address the risks identified.

Where a panel has identified significant public protection concerns, it should assess what the real and immediate risk is, and whether the public is adequately protected for the few weeks left to run. For example, where a nurse, midwife or nursing associate is on a conditions of practice order, but the public is adequately protected because the nurse, midwife or nursing associate is not currently employed and is subject to stringent conditions, such as direct supervision, there is no need for an immediate change to a suspension order.

A panel's powers

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Given that exceptional cases begin as standard reviews, there will only be a short period of time left on the order before it expires, as we will usually schedule standard reviews before expiry within eight weeks of the date of expiry of the order. Any change to the order will take effect immediately. However, the change will only apply to the remainder of time left on the order being reviewed. This is why the power to change orders with immediate effect is generally limited to an early review, where the remainder of the term is long enough for the change of order to have an impact.

In the majority of exceptional cases, a significant and immediate risk to the public will have been identified, and given this, a panel may want the new order to continue for longer than the remainder of time left on the order. In

these circumstances a panel has the following powers:

- change any condition imposed by the order¹ and extend, or further extend the period for which the order is in place under its **powers of early review**²
- replace the order with a caution order, a conditions of practice order, a suspension order or a striking-off order.³ Then, extend the order using its **powers under the standard review procedure**.⁴

Under the powers of an early review a panel may change any conditions of an existing order and then extend the life of that order. In an early review, a panel may also decide to replace the existing order with a completely new one. However, any new order imposed at an early review will only be effective for the remaining length of time of the original order and it cannot be extended beyond this time using the powers of early review.⁵

To extend the order, a panel should then use its powers under the standard review procedure. By using its powers this way a panel can make sure that a nurse, midwife or nursing associate is not placed on an order for longer than allowed. If a panel used its powers of early review to replace the existing order with a new one and then extend the order for the maximum period using its powers of early review, the order would run for longer than intended or allowed. This is because substantive orders are not reviewed on the day they are due to expire, they are normally reviewed six weeks before they expire. The time left before the order expires would be added on to the length of the new order.⁶

If a panel decides to use its powers of early review during a standard review hearing, that is to take immediate action, it should:

- begin by noting that the review hearing was started as a standard review before expiry
- decide, and explain clearly, the exceptional circumstances which require them to take immediate action using their powers of early review
- produce a clear record of its reasoning to be available as part of the written decision.

1 Article 30(4)(f) of the Order

2 Article 30(4)(b) of the Order

3 Article 30(4)(d) of the Order

4 Article 30(1)(a) of the Order

5 See Article 30(4)(d) of the Order: shall have effect for the remainder of the term of the order it replaces.

6 Also, in such circumstances, the next reviewing panel may question whether the order is still in force, as the wording of article 30(2)(4)(d) states that any replacement order shall only have effect for the remainder of the term of the order it replaces. In such cases panels should still conduct a review of the substantive order where it is clear that the intention of the previous panel was for the replacement order to run for longer than the period left before the expiry of the original order.