

Proposed Changes to The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004

The new wording in the Rules to be amended is shown **in bold**. Please note that only the extracts where amendments have been made are shown, the rest of the rules remain unchanged.

Application for admission to a part of the register

5.—(1) An application for admission to a part of the register shall be—

- (a) made in writing using the personalised documentation provided by the Council which shall include a declaration by the applicant as to her good health and good character and the other information listed in Schedule 3;
- (b) signed by the applicant;
- (c) sent or delivered to the Registrar;
- (d) supported by payment of the appropriate fee prescribed in the Fees Rules;
- (e) accompanied by evidence of her qualification as referred to in paragraph (2) and a supporting declaration as described in rule 6.

(2) The applicant shall provide—

- (a) the following evidence of her qualification—
 - (i) where the applicant is relying on article 13(1)(a) of the Order, evidence that she has obtained an approved qualification of a type mentioned in the said article 13(1)(a),
 - (ii) where the applicant is relying on article 13(1)(b) of the Order, the certificate or other document issued by the competent authority of the relevant European State attesting to her qualification and, where appropriate, evidence that all the conditions imposed pursuant to article 14(2) of the Order have been met,
 - (iii) where the applicant is relying on article 13(1)(c) or (d) of the Order, evidence of her qualification and, where appropriate, such other evidence as the Council may reasonably require (such as a document that details her training and references) in order to satisfy the Council that she has met the requisite standard of proficiency for admission to the part of the register in respect of which she is applying, or

- (iv) where the applicant is relying on article 13(1)(e) or (f) of the Order, evidence of her qualification and details as to her training;
- (aa) evidence that there is in force in relation to the applicant, or will be as necessary for the purpose of complying with article 12A of the Order, appropriate cover under an indemnity arrangement;
- (ab) evidence that the applicant has the necessary knowledge of English for the purpose of complying with article 9(2)(ba) of the Order.**
- (b) such other documents, information or evidence as the Registrar may reasonably require for the purposes of verifying the information in and determining the application.

(3) If the applicant (“A”)—

- (a) is relying on article 13(1)(b) of the Order,
- (b) holds a diploma listed in Annex V, point 5.2.2 or point 5.5.2 of the Directive (as the case may be), and
- (c) has successfully completed training as a nurse or midwife that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 31 or 40 of the Directive (as the case may be),

A must also provide a certificate as mentioned in paragraph (4).

(4) The certificate—

- (a) must be a certificate issued by a competent authority in A’s attesting State (as defined by rule 6(1F)); and
- (b) must certify that the document provided by A under paragraph (2)(a)(ii) is a diploma listed in relation to that State in Annex V, point 5.2.2 or point 5.5.2 of the Directive (as the case may be).

Readmission to the register

15.—(1) Where a registrant’s registration has lapsed she may, subject to paragraph (3) below and in compliance with the Council’s requirements specified in rule 3(4), apply to the Registrar to be readmitted to the register.

- (2) Rules 5(1), (2)(aa), **(ab)** and (b) and 6(1) to (1E) shall apply to an application for readmission as they apply to an application for admission.
- (3) To allow the Council to take up references, the Council may require of the applicant the names and addresses of at least three referees—

- (a) two of whom shall have known her for at least one out of the previous three years;
 - (b) one of whom shall have worked with her during her most recent period of employment or self-employment, if any; and
 - (c) one of whom will, for an applicant mentioned in rule 6(1)(a) or (c), be required to provide a supporting declaration in accordance with rule 6(1)(a) or (c).
- (4) Where the Registrar receives an application for readmission in accordance with this rule and is or becomes aware of information (whether received before or after the applicant's registration lapsed or before or after the readmission application was made) which raises concerns that the registrant's fitness to practise may be impaired, the Registrar shall have regard to that information for the purposes of determining whether the applicant has satisfied the Registrar—
- (a) that the applicant is capable of safe and effective practice as a nurse or midwife in accordance with article 9(2)(b) of the Order;
 - (b) of the applicant's good health in accordance with rule 6(5);
 - (c) of the applicant's good character in accordance with rule 6(6); **and**
 - (d) that the applicant has the necessary knowledge of English in accordance with article 9(2)(ba) of the Order.**

Period during which an appeal may be made

20. The period within which a person may appeal to the Council under article 37(1) of the Order is

- (a) where the appeal is against a decision referred to in sub-paragraph **(za)**, **(zb)**, (a), (aa), (b) or (c) of that article, before the end of the period of 28 days beginning with the date of the decision letter; or
- (b) where the appeal is against a failure to issue a decision as referred to in sub-paragraph (d) of that article, before the end of the period of 28 days beginning with the day after the expiry of the period referred to in **[** article 9(5) of the Order.

Notice of appeal

21.—(1) An appeal shall be made by giving notice in writing in accordance with the following paragraphs.

- (2) The notice shall be addressed to the Registrar at the offices of the Council and shall
 - (a) include
 - (i) the name and address of the appellant,

- (ii) her personal identification number or her personal reference number,
 - (iii) where the appeal is against a decision referred to in article 37(1)(**za**), (**zb**), (a), (aa), (b) or (c) of the Order, the date, nature and other relevant details of the decision against which the appeal is brought,
 - (iv) where the appeal is against a failure to issue a decision as referred to in article 37(1)(d) of the Order, the date, nature and other relevant details of the application in respect of which there has been a failure to issue a decision,
 - (v) a concise statement of the grounds of the appeal, and
 - (vi) the name and address of the appellant's representative (if any) and a statement as to whether the Council should correspond with that representative concerning the appeal instead of with the appellant;
- (b) state that the notice is a notice of appeal; and
 - (c) be signed by or on behalf of the appellant.
- (3) The appellant shall attach to the notice of appeal a copy of any documents on which she proposes to rely for the purposes of her appeal.

Proposed Changes to The Nursing and Midwifery Council (Fitness to Practise) Rules 2004

The new wording in the Rules to be amended is shown **in bold**. Please note that only the extracts where amendments have been made are shown, the rest of the rules remain unchanged.

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.

(3A) The Registrar may, in the case of an allegation that the registrant's fitness to practise is impaired by reason of not having the necessary knowledge of English, direct the registrant to —

(a) undertake an examination or other assessment as specified in the notification referred to in paragraph (3C) ; and

(b) provide the Registrar with evidence of the result of that examination or other assessment in the form required by paragraph (3B);

within such period as the Registrar may specify in the notification referred to in paragraph (3C).

(3B) The registrant must provide evidence of the result of an examination or other assessment that he is required to undertake in the form of a certificate or other document stating the result achieved by the registrant in the examination or other assessment of that registrant's knowledge of English that is signed by an officer of the body providing the examination or other assessment.

(3C) Where the Registrar makes a direction pursuant to paragraph (3A), the Registrar must notify the registrant, in writing, of the direction and the notice must also inform the registrant of —

(a) the name of the examination or other assessment that the registrant is directed to undertake;

- (b) the evidence to be provided in accordance with paragraph (3B); and
- (c) the provisions of article 28A(4) of the Order.

(3D) The Registrar must provide the Case Examiners with the evidence provided by the registrant in compliance with a direction made under paragraph (3A).

- (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.

Action upon referral of an allegation

9.— (1) Upon referral of an allegation to the Conduct and Competence Committee or to the Health Committee, that Committee shall notify the registrant of the allegation by serving a notice of referral upon her.

(2) The notice of referral shall—

- (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 submit written representations to the Conduct and Competence Committee or the Health Committee and inform her that any such representations must be sent to the Committee no later than 28 days after service of the notice;
- (c) inform the registrant that any representations received from her may be shown to the maker of the allegation, for comment;
- (d) require the registrant to inform the Committee no later than 28 days after service of the notice, if she would like the allegation to be considered at a hearing;
- (e) inform the registrant that further information or documents may be sought from other persons in accordance with article 25(1) of the Order to assist the Committee in carrying out its functions; and
- (f) inform the registrant of the Committee's power to make an interim order under article 31(1)(c) of the Order, and require the registrant to confirm, no later than 28 days after service of the notice, whether she wishes to appear and be heard on the question whether such an order should be made.

(3) The Council shall give notice of the referral to—

- (a) where known, the employer of the registrant or any other person with whom she has an arrangement to provide professional services;
 - (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, her local supervising authority.
- (4) Upon referral of an allegation to the Conduct and Competence Committee or the Health Committee—
- (a) in the case of an allegation of lack of competence, the Conduct and Competence Committee, may invite the registrant to submit to assessment;
 - (b) in the case of an allegation that the practitioner's fitness to practise is impaired by reason of physical or mental health, the Health Committee may invite the registrant to submit to medical examination by a registered medical practitioner nominated by the Council; **and**
 - (c) **in the case of an allegation that the registrant's fitness to practise is impaired by reason of not having the necessary knowledge of English, the Conduct and Competence Committee may direct the registrant to —**
 - (i) **undertake an examination or other assessment as specified in the notification referred to in paragraph (4A), and**
 - (ii) **provide the Conduct and Competence Committee with evidence of the result of that examination or other assessment in the form required by rule 6B(3B),**

within such period as the Conduct and Competence Committee may specify in the notification referred to in paragraph (4A).

(4A) Where the Conduct and Competence Committee makes a direction pursuant to paragraph (4)(c), the Committee must notify the registrant of the direction and the notice must also inform the registrant of the matters set out in rule 6B(3C) .

- (5) Where any written representations are made to the Conduct and Competence Committee or the Health Committee under paragraph (2)(b), that Committee—
- (a) may, if it sees fit, send a notice to the maker of the allegation—
 - (i) notifying her of such representations,
 - (ii) inviting her to deal with any points raised by the Committee in respect of those representations, and

- (iii) requiring her to send any response to the Committee no later than 28 days after service of the notice upon her; and
- (b) shall take into account all representations received before making its decision in respect of the allegation.

Preliminary meetings

18.—(1) Before any allegation is considered by a Committee at a hearing in accordance with the provisions of this Part, that Committee or the Chair of the Committee may hold a preliminary meeting if such a meeting would, in its or her opinion, assist the Committee to perform its functions.

(2) A preliminary meeting referred to in paragraph (1) shall be—

- (a) chaired by the Chair of the Committee considering the allegation;
- (b) held with a legal assessor in attendance; and
- (c) held in private with the parties, their representatives and any person the Chair or Committee considers appropriate.

(3) The Chair of the preliminary meeting may give the directions mentioned in article 32(3) of the Order.

(4) The Chair of the preliminary meeting shall give the parties not less than 14 days notice of any preliminary meeting.

(5) Directions given by the Chair of the preliminary meeting may include, but shall not be limited to—

- (a) time limits for the service of evidence and disclosure of expert evidence (if any);
- (b) a requirement that each party provide an estimate as to the length of the hearing and any dates on which they or any witnesses would not be able to attend the hearing;
- (c) where facts are not in dispute, or the issue of misconduct is admitted, a requirement that the parties produce a statement of agreed facts;
- (d) save in the case of an allegation of a kind referred to in article 22(1)(a)(iv) of the Order, a requirement that the parties state whether or not the health of the practitioner will be raised as an issue in the proceedings, and if so, whether, in their view, medical reports should be obtained and the case considered by the Health Committee;
- (e) a requirement that a party call the author of any expert report;

- (f) where agreed between the parties, a direction that the witness statement of a witness shall stand as the evidence in chief of that witness;
- (g) where the Committee is considering—
 - (i) an allegation that the registrant’s fitness to practise is impaired by reason of her physical or mental health, or
 - (ii) whether to make, revoke, confirm, vary or replace an interim order, whether the proceedings should be held in public or private;
- (h) special measures to be put in place at the hearing for vulnerable witnesses;
- (i) a direction for an adjournment of the preliminary meeting or that a further preliminary meeting should be held; **and**
- (j) a direction that the registrant—**
 - (i) undertake an examination or other assessment of the registrant's knowledge of English as specified in the written confirmation referred to in paragraph (8), and**
 - (ii) provide the Conduct and Competence Committee with evidence of the result of that examination or other assessment in the form required by rule 6B(3B),**

within such period as the Chair may specify in the written confirmation referred to in paragraph (8) .

(6) At the preliminary meeting, the legal assessor may give a preliminary opinion for the purpose of resolving questions of law or admissibility of evidence.

(7) Notwithstanding paragraph (6), decisions as to whether or not any evidence is to be admitted at the hearing shall be taken by the Committee considering the allegation.

(8) The Chair of the preliminary meeting shall:

- (a) keep a record of the directions given;
- (b) send written confirmation of such directions to the parties promptly; **and**
- (c) where a direction is made pursuant to paragraph (5)(j), inform the registrant of the matters set out in rule 6B(3C).**

Investigations prior to a review hearing

25A. — (1) Prior to the opening of a review hearing, the Registrar may, in a case where the registrant was found not to have the necessary knowledge of English, direct the registrant to —

(a) undertake an examination or other assessment as specified in the notification referred to in paragraph (2); and

(b) provide the Registrar with evidence of the result of that examination or other assessment in the form required by rule 6B(3B);

within such period as the Registrar may specify in the notification referred to in paragraph (2).

(2) Where the Registrar makes a direction pursuant to paragraph (1), the Registrar must notify the registrant of the direction and the notice must also inform the registrant of the matters set out in rule 6B(3C)

(3) The Registrar must provide the Conduct and Competence Committee with the evidence provided by the registrant in compliance with a direction made under paragraph (1).

Evidence

31.—(1) Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).

(2) Where a registrant has been convicted of a criminal offence—

(a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and

(b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

(3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.

(3A) Where it is alleged that a registrant has been included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007) by the Independent Barring Board—

(a) information provided by the Secretary of State under the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 that attests to that inclusion shall be conclusive proof of that inclusion, unless the registrant can prove that they are not the person referred to in the information provided; and

- (b) a document from the Board, authenticated in whatever way the Council may approve, that provides a statement of the findings of fact made by the Board that led to that inclusion shall be conclusive proof of the facts found proved by the Board.

(3B) Where it is alleged that the Scottish Ministers have included a registrant in the children's list or the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007)—

- (a) information provided by the Scottish Ministers under the Protection of Vulnerable Groups (Scotland) Act 2007 that attests to that inclusion shall be conclusive proof of that inclusion, unless the registrant can prove that they are not the person referred to in the information provided; and
- (b) a document from the Scottish Ministers, authenticated in whatever way the Council may approve, that provides a statement of the findings of fact made by the Scottish Ministers that led to that inclusion shall be conclusive proof of the facts found proved by the Scottish Ministers.

(4) A certificate as to a determination about a registrant's fitness to practise made by—

- (a) a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession; or
- (b) a licensing body elsewhere,

signed by an officer authorised by the body to sign such certificates shall be admissible as prima facie evidence of the facts referred to in the determination.

(4A) Where under these rules the registrant is directed by the Registrar or the Conduct and Competence Committee to undertake an examination or other assessment of the person's knowledge of English, a certificate or other document stating the result achieved by the registrant in that examination or other assessment that is signed by an officer of the body providing the examination or other assessment shall be conclusive proof of the result achieved by the registrant in that examination or other assessment.

(5) In determining whether a registrant's fitness to practise is impaired by reason of physical or mental health, the Health Committee may take into account, amongst other matters—

- (a) a refusal by the registrant to submit to medical examination;
- (b) the registrant's current physical or mental condition;
- (c) any continuing or episodic condition suffered by the registrant; and
- (d) a condition suffered by the registrant which, although currently in remission, may be expected to cause a recurrence of the impairment of the practitioner's fitness to practise.

(6) In determining whether a registrant's fitness to practise is impaired by reason of lack of competence, the Conduct and Competence Committee may take into account any refusal by the registrant to submit to an assessment.

(6A) In determining whether a registrant's fitness to practise is impaired by reason of not having the necessary knowledge of English, the Conduct and Competence Committee may draw such inferences as seem appropriate to it if a registrant fails to undertake an examination or other assessment or to provide evidence of the result of that examination or other assessment in accordance with a direction made pursuant to these Rules.

(7) Where the Conduct and Competence Committee finds that a registrant has failed to comply with the standards established by the Council under article 21(1)(a) of the Order and set out in the Code, such failure—

- (a) may be taken into account by the Committee in determining whether or not that registrant's fitness to practise is impaired; and
- (b) shall not, of itself, be taken to establish that the registrant's fitness to practise is impaired.

(8) Where a party has—

- (a) failed to comply with any directions for service of evidence given at a preliminary meeting under rule 18, including service of expert reports;
- (b) shown no good cause for failure to comply with the directions given; and
- (c) seeks to adduce such evidence at the hearing,

a Practice Committee may refuse to allow that party to admit the evidence in question.