

THE NURSING AND MIDWIFERY COUNCIL
(FITNESS TO PRACTISE) (AMENDMENT) RULES 2017

[Reproduced from draft schedule to article 3 of the Nursing and Midwifery Order (Legal Assessors) (Amendment) and the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules Order of Council 2017]

The Nursing and Midwifery Council, in exercise of the powers conferred by articles 26(3) and (5B), 26A(1), 26B(2), 26C(1), 32(1) and (2) and 47(2) of the Nursing and Midwifery Order 2001^(a), in accordance with article 47(3) of that Order, after consultation with representatives of groups of persons who appear likely to be affected by the proposed rules, makes the following Rules.

Citation and commencement

1. These Rules may be cited as the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2017 and shall come into force on *** 2017.

Amendments to the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

2. The Nursing and Midwifery Council (Fitness to Practise) Rules 2004^(b), are amended in accordance with rules 3 to 31.

3. In rule 2^(c) (interpretation)—

- (a) in the definition of “review hearing”, for “Conduct and Competence Committee or the Health” substitute “Fitness to Practise”;
- (b) in the definition of “sanction” for “Health or Conduct and Competence” substitute “Fitness to Practise”.

4. In rule 2A^(d) (initial consideration of allegations), for paragraph (2) substitute—

“(2) Where the Registrar considers that an allegation falls within article 22(1)(a) of the Order, the Registrar must refer the allegation—

- (a) to the Case Examiners for consideration under rule 6C; or
- (b) to the Fitness to Practise Committee for consideration in accordance with Part 4.”.

5. In rule 3^(e) (notice of allegations of fraudulent or incorrect entries in the register), in paragraph (3)—

- (a) at the end of sub-paragraph (a), insert “and”;
- (b) omit sub-paragraphs (c) and (d).

6. In rule 6A^(f) (notice of fitness to practise allegations), in paragraph (1), for “2A(2)” substitute “2A(2)(a)”.

(a) S.I. 2002/253, relevant amendments to which were made by SI 2014/3272 and SI 2016/*** [Order amendment Order to be inserted together with further references].

(b)
(c)
(d)
(e)
(f)

7. In rule 6C^(a) (consideration of fitness to practise allegations by Case Examiners)—

(a) in paragraph (1), for “2A(2)” substitute “2A(2)(a)”;

(b) for paragraphs (2) and (3), substitute—

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

(a) the Case Examiners must either—

(i) refer the case to the Fitness to Practise Committee, or

(ii) recommend undertakings to be agreed with the registrant pursuant to rule 6E;

(b) the Registrar must notify in writing both the registrant and the person making the allegation (if any) of the Case Examiners’ decision and their reasons for it.

(2A) Paragraph (2)(a)(ii) does not apply where the Case Examiners consider that, if the allegation were referred to the Fitness to Practise Committee, there is a realistic prospect of that Committee making an order directing the Registrar to strike the registrant off the register.

(2B) Where the Case Examiners agree that there is no case to answer, they may give advice to the registrant or issue the registrant with a warning.

(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 Case Examiners’ decision together with their reasons, including whether the registrant has been issued with a warning or given advice;

(b) the registrant—

(i) of the details of any warning issued or advice given,

(ii) of the period during which any warning issued will be published under article 22(9) of the Order,

(iii) 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.”;

(c) in paragraph (5), for “the Investigating” substitute “a Practice”.

8. In rule 6D^(b) (consideration of fitness to practise allegations by the Investigating Committee)—

(a) in paragraph (1)(c) after “must consider,” insert “in private,”;

(b) for paragraphs (2) and (3), substitute—

“(2) Where the Investigating Committee determines that there is a case to answer—

(a) the Investigating Committee must either—

(i) refer the allegation to the Fitness to Practise Committee, or

(ii) recommend undertakings to be agreed with the registrant pursuant to rule 6E;

(b) the Registrar must notify in writing both the registrant and the person making the allegation (if any) of the Investigating Committee’s decision and its reasons for it.

(2A) Paragraph (2)(a)(ii) does not apply where the Investigating Committee considers that, if the allegation were referred to the Fitness to Practise Committee, there is a realistic prospect of that Committee making an order directing the Registrar to strike the registrant off the register.

(2B) Where the Investigating Committee determines that there is no case to answer, it may give advice to the registrant or issue the registrant with a warning.

(a)
(b)

(3) Where the Investigating 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 Investigating Committee's decision together with its reasons, including whether the registrant has been issued with a warning or given advice;
- (b) the registrant—
 - (i) of the details of any warning issued or advice given,
 - (ii) of the period during which any warning issued will be published under article 22(9) of the Order,
 - (iii) 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 Investigating Committee's decision that there is no case to answer.”;

(c) omit paragraph (4).

9. After rule 6D (consideration of fitness to practise allegations by the Investigating Committee), insert—

“Undertakings

6E.—(1) Where, under rule 6C(2)(a)(ii), the Case Examiners recommend undertakings to be agreed with the registrant, or the Investigating Committee makes such a recommendation under rule 6D(2)(a)(ii), the Registrar must write to the registrant—

- (a) inviting the registrant to confirm in writing, within 28 days of the date of that invitation, or within such further period allowed by the Registrar, that the registrant will comply with the undertakings recommended by the Case Examiners or by the Investigating Committee, as the case may be (referred to in this rule as “the undertakings”);
- (b) informing the registrant of the provisions of paragraph (4) of this rule.

(2) If, in accordance with paragraph (1), the registrant confirms in writing that the registrant will comply with the undertakings—

- (a) the Case Examiners or the Investigating Committee, as the case may be, must cease consideration of the allegation;
- (b) where the allegation has been referred to the Fitness to Practise Committee, the Fitness to Practise Committee must not consider the allegation; and
- (c) any interim order in place under article 31 shall cease to have effect.

(3) Where paragraph (2) applies the Registrar must notify the registrant and the maker of the allegation (if any) in writing that undertakings have been agreed and the date from which the undertakings have effect.

(4) Where the registrant does not confirm in accordance with paragraph (1) that the registrant will comply with the undertakings, the Registrar must—

- (a) refer the allegation to the Fitness to Practise Committee for consideration; and
- (b) notify the registrant and the maker of the allegation (if any) in writing of the referral.

(5) Where the registrant has agreed to comply with the undertakings and it appears to the Registrar that those undertakings should be varied or cease to apply, the Registrar must inform the Case Examiners and the Case Examiners may—

- (a) direct that the undertakings should continue; or
- (b) invite the registrant to comply with such varied undertakings as appear to the Case Examiners to be appropriate (“the varied undertakings”); or

- (c) direct that the undertakings should no longer apply and that the allegation should not be considered further, and the Registrar must notify the registrant and the person making the allegation (if any) in writing accordingly.

(6) Where the registrant is invited under paragraph (5)(b) to agree to comply with the varied undertakings and the registrant does not so agree in writing within 28 days or such further period as allowed by the Registrar—

- (a) the Registrar may review, under rule 7A, the Case Examiners' decision under rule 6C(2)(a)(ii) or the Investigating Committee's decision under rule 6D(2)(a)(ii), as the case may be, to recommend undertakings to be agreed with the registrant; and
- (b) the undertakings shall remain in effect until the conclusion of any review in accordance with rule 7A(7).

(7) Where it appears to the Registrar that the registrant has failed to observe an undertaking or a varied undertaking the Registrar must refer the allegation which resulted in the agreement of undertakings to the Case Examiners, who may—

- (a) revoke the undertakings or varied undertakings and refer the original allegation that resulted in the undertakings being agreed under this Rule to the Fitness to Practise Committee; or
- (b) make a decision under paragraph (5).”.

10. In rule 7^(a) (reconsideration of allegation after a finding of no case to answer) in paragraph (2)(b), for “Conduct and Competence or Health” substitute “Fitness to Practise”.

11. In rule 7A^(b) (review of decisions)—

- (a) for paragraphs (1) and (2), substitute—

“(1) All or part of a decision mentioned in paragraph (1A) may, if reached on or after 9th March 2015, be reviewed by the Registrar under this rule (a “reviewable decision”).

(1A) The following are reviewable decisions for the purpose of paragraph (1)—

- (a) a decision under rule 6C(1) or rule 6D(1)(c) that there is no case to answer (including where the registrant has been issued with a warning or advice);
- (b) a decision under rule 6C(2)(a)(ii) or rule 6D(2)(a)(ii) to recommend undertakings to be agreed with the registrant;
- (c) a decision under rule 6E(5)(c) that undertakings should no longer apply and that the allegation should not be considered further.

(2) The Registrar may carry out such a review if the Registrar has reason to believe that—

- (a) the reviewable decision may, in whole or in part and for any reason, be materially flawed and the Registrar considers that a review would be in the public interest or necessary to prevent injustice to the registrant; or
- (b) there is new information which may have led to a decision that is wholly or partly different from the reviewable decision and the Registrar considers that a review would be in the public interest or necessary to prevent injustice to the registrant.”;

- (b) in paragraphs (5), (8) and (10), for “no case to answer”, substitute “reviewable”;

- (c) in paragraph (6)—

- (i) for “no case to answer” substitute “reviewable”,
- (ii) after “public interest” in both places it occurs, insert “or is necessary to prevent injustice to the registrant”;

- (d) for paragraph (7), substitute—

“(7) Those decisions are—

(a)
(b)

- (a) where the reviewable decision falls within paragraph (1A)(a)—
 - (i) to refer to the Case Examiners for reconsideration by them under rule 6C, an allegation that a registrant's fitness to practise is impaired, or
 - (ii) to substitute, for all or part of the reviewable decision, any decision which the Case Examiners or the Investigating Committee could have made under Part 2 of these rules;
- (b) where the reviewable decision falls under paragraph (1A)(b), to substitute, for all or part of the reviewable decision, any decision which the Case Examiners or the Investigating Committee could have made under Part 2 of these rules; or
- (c) where the reviewable decision falls under paragraph (1A)(c), to recommend undertakings to be agreed with the registrant (and rule 6E applies in respect of undertakings agreed under this provision as it does to undertakings recommended under rule 6C(2)(a)(ii) or rule 6D(2)(a)(ii)).”.

12. In rule 8^(a) (notice and procedure)—

- (a) in paragraph (2), omit “and (9)”;
- (b) in paragraph (6), before “Committee is satisfied that” insert “Practice”.

13. After rule 8 for the heading of Part 4 substitute “Fitness to Practise Committee”.

14. In rule 9^(b) (action upon referral of an allegation)—

- (a) in paragraph (1), for “the Conduct and Competence Committee or to the Health” substitute “Fitness to Practise”;
- (b) in paragraph (2)—
 - (i) for sub-paragraph (b) substitute—

“(b) invite the registrant to submit written representations to the Fitness to Practise Committee and inform the registrant that any such representations must be sent to that Committee no later than 28 days after service of the notice;”,
 - (ii) in sub-paragraphs (d) and (e) before “Committee” insert “Fitness to Practise”,
 - (iii) in sub-paragraph (f) before “Committee’s” insert “Fitness to Practise”;
- (c) in paragraph (3)—
 - (i) at the end of sub-paragraph (a), insert “and”,
 - (ii) omit sub-paragraphs (c) and (d);
- (d) in paragraph (4)—
 - (i) for “Conduct and Competence Committee or the Health” substitute “Fitness to Practise”,
 - (ii) in sub-paragraphs (a) and (c), for “Conduct and Competence”, in each place it occurs, substitute “Fitness to Practise”,
 - (iii) in sub-paragraph (b) for “Health” substitute “Fitness to Practise”;
- (e) in paragraph (4A), for “Conduct and Competence” substitute “Fitness to Practise”;
- (f) in paragraph (5)—
 - (i) for “Conduct and Competence or the Health” substitute “Fitness to Practise”,
 - (ii) in sub-paragraphs (a)(ii) and (iii), before “Committee” insert “Fitness to Practise”.

15. In rule 10(c) (meetings and hearings)—

(a)
(b)
(c)

- (a) in paragraphs (1) and (2), for “Conduct and Competence Committee or Health”, substitute “Fitness to Practise”;
- (b) in paragraphs (3) and (4), for “Conduct and Competence Committee or the Health”, substitute “Fitness to Practise”.

16. In rule 11^(a) (notice of hearing)—

- (a) in paragraph (1), for “Conduct and Competence Committee or Health” substitute “Fitness to Practise”;
- (b) in paragraph (3)—
 - (i) in sub-paragraph (b), before “Committee is to consider”, insert “Fitness to Practise”,
 - (ii) in sub-paragraphs (c), (g), (k) and (l), before “Committee” insert “Fitness to Practise”,
 - (iii) in sub-paragraphs (e) and (j) before “Committee's” insert “Fitness to Practise”,
 - (iv) for paragraph (m), substitute—
 - “(m) where the allegation, previous order or application for restoration to be considered by the Fitness to Practise Committee relates solely to the registrant's physical or mental health, invite the registrant to inform the Fitness to Practise Committee if the registrant wishes the hearing, or part of the hearing to be conducted in public.”.

17. In rule 11A^(b) (notice of meeting), in paragraph (1), for “Conduct and Competence Committee or the Health” substitute “Fitness to Practise”.

18. In rule 12 (procedure of the Conduct and Competence Committee and the Health Committee)—

- (a) for the heading substitute “Procedure of the Fitness to Practise Committee”;
- (b) in paragraph (1), for “Conduct and Competence or the Health” substitute “Fitness to Practise”;
- (c) in paragraph (2), for “Conduct and Competence” substitute “Fitness to Practise”.

19. In rule 13^(c) (notice of decision)—

- (a) in paragraph (1), for “Conduct and Competence or the Health” substitute “Fitness to Practise”;
- (b) in paragraph (2)—
 - (i) in sub-paragraph (a), before “Committee” insert “Fitness to Practise”,
 - (ii) in sub-paragraph (b), before “Committee's” insert “Fitness to Practise”.

20. Omit rules 14 (referral of allegation from the Conduct and Competence Committee to the Health Committee) and 15 (referral of allegation from the Health Committee to the Conduct and Competence Committee)^(d).

21. In rule 16 (application of Part 5), in sub-paragraph (b), for “Conduct and Competence or the Health” substitute “Fitness to Practise”.

22. In rule 17 (interpretation)—

- (a) at the end of paragraph (a), insert “or”;
- (b) for paragraphs (b) and (c), substitute—
 - “(b) the Fitness to Practise Committee.”.

(a)
(b)
(c)
(d)

- 23.** In rule 18^(a) (preliminary meetings), in paragraph (5)—
- (a) in sub-paragraph (d), omit “and the case considered by the Health Committee”; and
 - (b) in sub-paragraph (j)(ii), for “Conduct and Competence” substitute “Fitness to Practise”.
- 24.** In rule 19 (public and private hearings), for paragraph (2) substitute—
- “(2) A hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private unless the Fitness to Practise Committee is satisfied—
- (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor,
- that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant, and require all or part of the hearing to be held in public.”.
- 25.** In rule 23 (vulnerable witnesses), in paragraph (1), for "Conduct and Competence or the Health" substitute "Fitness to Practise".
- 26.** In rule 24^(b) (order of proceedings at initial hearing), in paragraph (13)—
- (a) in sub-paragraph (d), at the end omit “and”;
 - (b) in sub-paragraph (e), for “.” substitute “; and”; and
 - (c) after sub-paragraph (e), insert—
- “(f) if the sanction is an order made under article 29(5)(b) or (c) of the Order, may issue a direction under article 29(8A) of the Order.”.
- 27.** In rule 25A^(c) (investigations prior to a review hearing), in paragraph (4), for "Conduct and Competence" substitute "Fitness to Practise".
- 28.** In rule 27 (notes and transcript of proceedings), in paragraph (3), for “any” substitute “either”.
- 29.** In rule 28^(d) (amendment of the charge), for “, the Health Committee or the Conduct and Competence” substitute “or the Fitness to Practise”.
- 30.** In rule 29 (joinder), for “Conduct and Competence”, in each place it occurs, substitute “Fitness to Practise”.
- 31.** In rule 31 (evidence)—
- (a) in paragraphs (4A), (6), (6A) and (7), for “Conduct and Competence” substitute “Fitness to Practise”;
 - (b) in paragraph (5), for “Health” substitute “Fitness to Practise”.

Transitional and saving provisions

- 32.** (1) In this rule—
- (a) “the appointed day” means the day on which the Nursing and Midwifery (Amendment) Order 2016 comes into force;
 - (b) “the Rules” means the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 as in force immediately prior to the appointed day; and

(a)
(b)
(c)
(d)

(c) “the amended Rules” means the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 as amended by these Rules.

(2) Except where paragraph (3) or (4) applies, where, before the appointed day, an allegation has been received in relation to a registrant, the amended Rules are to apply to consideration of the allegation.

(3) Where, before the appointed day—

(a) the initial hearing of an allegation has commenced under rule 24 of the Rules; and

(b) the charge has been read out;

the Rules are to apply for the purposes of that initial hearing.

(4) Where before the appointed day, a decision is referred to court under section 29(4) of the National Health Service Reform and Health Care Professions Act 2002 and after the appointed day, a court remits the case under section 29(8)(d) of that Act, the Rules are to apply to the disposal of the case in accordance with the directions of the court.”.

Given under the official seal of the Nursing and Midwifery Council this ****th day of *** 2017.



Dame Janet Finch
Chair
Jackie Smith
Chief Executive and Registrar

Explanatory Note

[Reproduced from draft Explanatory Note the Nursing and Midwifery Order (Legal Assessors) (Amendment) and the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules Order of Council 2017]

(This Note is not part of the Order)

This Order *[omitted, relevant only to Legal Assessors Amendment]* approves the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2017 (“the Rules”) which amend the Nursing and Midwifery Council (Fitness to Practise) Rules 2006 (S.I. 2004/1761) (“the Fitness to Practise Rules”).

[omitted, relevant only to Legal Assessors Amendment]

The Schedule to this Order amends the Fitness to Practise Rules. Rules 3, 10, 13, 14(a), (b) and (d) to (f) and 15 to 25 and 27 to 31 of the Rules amend the Fitness to Practise Rules as a consequence of the replacement of the Conduct and Competence Committee and the Health Committee by a Fitness to Practise Committee.

Rule 4 amends rule 2A of the Fitness to Practise Rules to enable the Registrar to refer allegations of impaired fitness to practise directly to the Fitness to Practise Committee, or to Case Examiners for consideration. Rules 6 and 7(a) makes consequential amendments to rules 6A and 6C of the Fitness to Practise Rules.

Rule 5 amends rule 3 of the Fitness to Practise Rules to remove the requirement for the Registrar to notify certain persons of the Registrar’s decision to refer an allegation of fraud or an incorrect entry in the register to the Investigating Committee. Rule 14(c) amends rule 9(3) of the Fitness to

Practise Rules to remove the requirement for the Registrar to make such notifications where an allegation is referred to the Fitness to Practise Committee.

Rule 7(b) substitutes paragraphs (2) and (3) of rule 6C of the Fitness to Practise Rules with new paragraphs (2), (2A), (2B) and (3). These amendments provide that where Case Examiners agree there is a case to answer they may either recommend that undertakings should be agreed with the registrant or refer the allegation to the Fitness to Practise Committee. New paragraph (2A) provides for the circumstances in which the Case Examiners must not agree undertakings. New paragraph (2B) enables the Case Examiners to be able to give advice to the registrant or issue the registrant with a warning where they do not consider that there is a case to answer. New paragraphs (2)(b) and (3) clarifies notification requirements. Rule 7(c) amends rule 6C(5) of the Fitness to Practise Rules to enable the Case Examiners to direct the Registrar to refer a case to either the Investigating Committee or the Fitness to Practise Committee to consider making an interim order.

Rule 8 makes similar amendments to rule 6D of the Fitness to Practise Rules in respect of the consideration of fitness to practise allegations by the Investigating Committee.

Rule 9 inserts rule 6E to the Fitness to Practise Rules which specifies the procedure to be followed if the Case Examiners or the Investigating Committee recommend that undertakings should be agreed with a registrant. It also specifies the process to be followed where it appears to the Registrar that undertakings should be varied or cease to apply. It provides for the consequences of the registrant not agreeing to comply with undertakings or varied undertakings and of the registrant failing to observe and undertaking or a varied undertaking.

Rule 11 substitutes paragraph (1) and (2) of rule 7A of the Fitness to Practise Rules. This enables the Registrar to review a decision by the Case Examiners or the Investigating Committee to recommend undertakings or that undertakings should no longer apply. This is in addition to the current power for the Registrar to review a no case to answer decision. Rule 11 also amends rule 7A to provide that the Registrar can carry out such reviews where the registrar has reason to believe that a decision may be materially flawed or that new information has come to light which might have led to a different decision and that a review is necessary in the public interest or is necessary to prevent injustice to the registrant.. Where the Registrar reviews a decision that undertakings should no longer apply, Rule 11 amends rule 7A to enable the Registrar to recommend undertakings to be agreed with the registrant.

Rule 12(a) amends rule 8 of the Fitness to Practise Rules to correct a cross reference and paragraph (b) of rule 12 clarifies that it is a Practice Committee that is referred to in paragraph (6) of rule 8.

Rule 26 amends rule 24 of the Fitness to Practise Rules to provide that if the Fitness to Practise Committee makes an order under article 29(5)(b) or (c) of the Nursing and Midwifery Order 2001, it may also issue a direction under article 29(8A) of that Order. The effect of this amendment is that where at the time of making an order under article 29(5)(b)(suspension order) or (c) (conditions of practice order), the Fitness to Practise Committee considers that on the expiry of that order it will not be necessary to extend, vary or replace the order with another order under article 29(5), it can direct that a review hearing of the suspension order or conditions of practice order will not be necessary.

Rule 32 of the Rules provides transitional and saving provisions.