
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 142

NURSES, MIDWIVES AND HEALTH VISITORS

The Nurses, Midwives and Health Visitors
(Professional Conduct) (Amendment) (No. 2)
Rules 2002 Approval (Scotland) Order 2002

Made - - - - *19th March 2002*
Coming into force - - *31st March 2002*

The Scottish Ministers, in exercise of the powers conferred by section 19(5) of the Nurses, Midwives and Health Visitors Act 1997(1) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Nurses, Midwives and Health Visitors (Professional Conduct) (Amendment) (No. 2) Rules 2002 Approval (Scotland) Order 2002 and shall come into force on 31st March 2002.

(2) This Order extends to Scotland only.

Approval

2. The Nurses, Midwives and Health Visitors (Professional Conduct) (Amendment) (No. 2) Rules 2002, as set out in the Schedule to this Order, are hereby approved.

St Andrew's House,
Edinburgh
19th March 2002

MALCOLM CHISHOLM
A member of the Scottish Executive

(1) 1997 c. 24. The functions of the Lord Advocate were transferred to the Secretary of State by virtue of the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678), article 2(1) and the Schedule. The functions of Ministers of the Crown in or as regards Scotland were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1.

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SCHEDULE

Article 2

THE NURSES, MIDWIVES AND HEALTH VISITORS
(PROFESSIONAL CONDUCT) (AMENDMENT) (No. 2) RULES 2002

The United Kingdom Central Council for Nursing, Midwifery and Health Visiting, in exercise of the powers conferred on it by section 10 of the Nurses, Midwives and Health Visitors Act 1997(2), and after due consultation in accordance with section 19(3) thereof, hereby makes the following rules—

Citation and Interpretation

1.—(1) These rules may be cited as the Nurses, Midwives and Health Visitors (Professional Conduct) (Amendment) (No. 2) Rules 2002.

(2) For the purposes of these rules “the Professional Conduct rules” means The Nurses, Midwives and Health Visitors (Professional Conduct) Rules 1993(3).

Amendment of the Professional Conduct rules

2.—(1) The Professional Conduct rules shall be amended in accordance with the following paragraphs of this rule.

(2) In rule 31 (Information raising the question as to the fitness to practise of nurses, midwives or health visitors)—

(a) in paragraph (4)(b)—

(i) for the words “two medical examiners” there shall be substituted the words “a medical examiner”;

(ii) for the word “examiners” where it appears for the second time, there shall be substituted the word “examiner”; and

(iii) for the word “reports” there shall be substituted the words “a report”;

(b) in paragraph 4(c) for the words “other medical practitioners” there shall be substituted the words “another medical practitioner”;

(c) for paragraph (5) there shall be substituted the following—

“(5) All information received by the Registrar pursuant to paragraph (4)(b), (c) or (d) or paragraph (6) shall be forwarded to the professional screeners”;

(d) for paragraph (6) there shall be substituted the following—

“(6) If it appears necessary or desirable to the professional screeners, a second medical examiner may be chosen at the Council’s expense to report to the Registrar on the practitioner’s fitness to practise; and in the event of the two chosen medical examiners not being able to agree on the result of their respective examinations a third medical examiner may be chosen at the Council’s expense to report to the Registrar”.

(3) For rule 32 (Examination by medical examiners) there shall be substituted the following—

“32.—(1) If the practitioner—

(a) agrees to submit to medical examination in response to an invitation sent pursuant to rule 31(4)(b) or 31(6); or

(b) nominates a medical practitioner to examine her under rule 31(4)(c)

(2) 1997 c. 24. The whole Act is repealed by section 60(3) of and Schedule 5 to the Health Act 1999 (c. 8) from a date or dates to be appointed; in relation to section 10(5) and paragraph 7(4) of Schedule 1 this repeal has been commenced on 11th May 2001 by article 2(2)(a) of the Health Act 1999 (Commencement No. 11) Order 2001 (S.I. 2001/1985).

(3) S.I. 1993/893, as amended by S.S.I. 2001/54 and 2002/59, and to which there are other amendments not relevant to these rules.

the Registrar shall make arrangements for such examination.

(2) Any medical examiner chosen under rule 31(4)(b) or 31(6) shall be chosen by the professional screeners in accordance with the Second Schedule to these rules.

(3) The Registrar shall—

(a) send to any medical examiner chosen under rule 31(4)(b) or 31(6) and to any medical practitioner nominated under rule 31(4)(c) the information received by the Registrar and the professional screeners under rule 31(1), 31(2) or 31(4)(d); and

(b) ask each of them to—

- (i) report on the fitness of the practitioner to engage in practice, and
- (ii) recommend how her case should be managed.”.

(4) In rule 33 (Action following consideration of reports of medical examiners)—

(a) for paragraph (1) there shall be substituted the following—

“(1) The Registrar shall refer to the professional screeners each report received from a medical examiner chosen by the professional screeners or nominated by the practitioner. The professional screeners shall consider them and shall cause the Registrar to send copies of them to the practitioner.”.

(b) in paragraph (2)(a)—

- (i) for the words “If the medical examiners consider unanimously” there shall be substituted the words “If it is the view of the medical examiner or, if there is more than one medical examiner, the unanimous view of the medical examiners”;
- (ii) after the words “information received” there shall be inserted the words “under rule 31(1), 31(2) or 31(4)(d)”.

(5) In rule 34 (Provisions applying when a case has been referred to the professional screeners by the Preliminary Proceedings Committee, the President or the Conduct Committee)—

(a) in paragraph (1)(a) for the words “at least two medical examiners” there shall be substituted the words “a medical examiner”;

(b) in paragraph (1)(b) for the word “examiners” there shall be substituted the word “examiner”, and for the word “reports” there shall be substituted the words “a report”;

(c) in paragraph (1)(c) for the words “other medical practitioners” there shall be substituted the words “another medical practitioner”;

(d) for paragraph (2) there shall be substituted the following—

“(2) If it appears necessary or desirable to the professional screeners, a second medical examiner may be chosen at the Council’s expense to report to the Registrar on the practitioner’s fitness to practise; and in the event of the two chosen medical examiners not being able to agree on the result of their respective examinations a third medical examiner may be chosen at the Council’s expense to report to the Registrar. All such examiners shall be chosen by the professional screeners in accordance with the Second Schedule to these rules.”.

(e) for paragraph (3) there shall be substituted the following—

- (a) “(3) If the practitioner agrees to submit to medical examination under paragraph (1)(a), (1)(c) or (2), the Registrar shall make arrangements for such examination. Each medical examiner chosen under paragraph (1)(a) or (2) shall be chosen by the professional screeners in accordance with the Second Schedule to these rules.

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- (b) The Registrar shall send to each medical examiner chosen by the professional screeners and any medical practitioner nominated by the practitioner the information on which the Preliminary Proceedings Committee, the President or the Conduct Committee, as the case may be, decided to refer the case.”
- (f) there shall be inserted the following paragraph–
 - “(3A) “The Registrar shall refer to the professional screeners the information referred to in paragraph (3)(b) and any report received pursuant to paragraph (1) or (2).”;
- (g) in paragraph (4), for the words “paragraph (3)” there shall be substituted the words “paragraph (3A)”.
- (h) in paragraph (5)–
 - (i) for the words “rule 31(4)(b)” there shall be substituted the words “the foregoing rules”; and
 - (ii) for the words “rule 31(4)(c)” there shall be substituted the words “the foregoing rules”.
- (6) In rule 37 (Preliminary circulation of evidence) for the words “the medical examiners” there shall be substituted the words “each medical examiner”.
- (7) In rule 42 (Questions) for the words “the medical examiner” there shall be substituted the words “a medical examiner or a medical practitioner nominated by the practitioner”.
- (8) In rule 49 (Termination of suspension and restoration to the register)–
 - (a) in paragraph (5)–
 - (i) for the words “at least two medical examiners” there shall be substituted the words “a medical examiner”;
 - (ii) for the word “examiners” where it appears for the second time there shall be substituted the word “examiner”;
 - (iii) for the word “reports” there shall be substituted the words “a report”;
 - (b) for paragraph (6) there shall be substituted the following–
 - “(6) If it appears necessary or desirable to the professional screeners, a second medical examiner may be chosen at the Council’s expense to report to the Registrar on the practitioner’s fitness to practise; and in the event of the two chosen medical examiners not being able to agree on the result of their respective examinations a third medical examiner may be chosen at the Council’s expense to report to the Registrar. All such examiners shall be chosen by the professional screeners in accordance with the Second Schedule to these rules.”.
- (9) In the Second Schedule, in paragraph 1 for the words “Health Committee” there shall be substituted the word “Council”.

GIVEN under the Official Seal of the UNITED KINGDOM CENTRAL COUNCIL FOR NURSING, MIDWIFERY AND HEALTH VISITING this 8th day of March, 2002

Alison Norman
President
Sue Norman
Chief Executive/Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which extends to Scotland only, approves the Nurses, Midwives and Health Visitors (Professional Conduct) (Amendment) (No. 2) Rules 2002 (“the Amendment Rules”), which are set out in the Schedule.

The Amendment Rules amend rules 31, 32, 33, 34, 37, 42 and 49 of, and the Second Schedule to, the Nurses, Midwives and Health Visitors (Professional Conduct) Rules 1993 (“the Rules”) (as set out in the Schedule to S.I.1993/893 and amended as set out in the Schedules to S.S.I.s 2001/54 and 2002/59).

The Rules are made by the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (“the Council”).

A nurse, midwife or health visitor is referred to in this Explanatory Note as a “practitioner”.

Rule 31 provides for the submission of information received by the Registrar of the Council, raising a question as to the fitness to practise of a practitioner, to professional screeners. The screeners may appoint two medical examiners to examine the practitioner’s fitness to practise. The practitioner may also nominate medical practitioners to report on the practitioner’s fitness to practise. This rule is amended to allow one medical examiner to be appointed or nominated instead of two. The amendment allows for the appointment of two medical examiners where necessary or desirable. A third medical examiner may be appointed in the event of their failure to agree.

Rule 32 provides for the Registrar to make arrangements for the examination of a practitioner by medical examiner(s) and for any examination by a medical practitioner nominated by the practitioner. The rule requires that information received by the Registrar and the professional screeners be sent to the medical examiner(s). This rule is amended to take account of the amendments to rule 31 regarding the number of medical examiners and adds a requirement that the information received by the Registrar and the professional screeners be sent, in addition, to any medical practitioner nominated by the practitioner.

Rule 33 provides for the action to be taken following examination of a practitioner by medical examiner(s). This rule is amended to take account of the amendments to Rule 31 regarding the number of medical examiners and to clarify which information is to be referred to the Health Committee under rule 33(2)(a).

Rule 34 provides for the examination of a practitioner by medical examiner(s) where a case has been referred to the professional screeners by the Preliminary Proceedings Committee, the President

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or the Professional Conduct Committee of the Council. This rule is amended to allow one medical examiner to be appointed instead of two. The amendment allows for the appointment of two medical examiners where necessary or desirable. A third medical examiner may be appointed in the event of their failure to agree. The medical examiners are to be chosen by the professional screeners in accordance with the Second Schedule to the Rules.

Rule 37 provides for the preliminary circulation of evidence to the Health Committee of the Council. This rule is amended to take account of the amendments to Rule 31 regarding the number of medical examiners.

Rule 42 provides for questions being put in proceedings before the Health Committee. This rule is amended to allow questions to be put to a witness by a medical practitioner nominated by the practitioner.

Rule 49 provides for the termination of a suspension and restoration to the register. Part of the process is an examination as to the applicant's fitness to practise. This rule is amended to require that the examination be carried out by one medical examiner chosen by the professional screeners in accordance with the Second Schedule to the Rules. Two medical examiners may be appointed if necessary or desirable, and a third, in the event of their failure to agree.

The Second Schedule deals with the nomination of persons from a number of professional bodies to hold the position of "medical examiner" and on the role of such persons. Schedule 2 is amended to require the Council and not the Health Committee to choose from the persons nominated.