

*Draft Order in Council laid before Parliament under section 62(9) of the Health Act 1999, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2017 No.**

**HEALTH CARE AND ASSOCIATED PROFESSIONS**

**NURSES AND MIDWIVES**

**The Nursing and Midwifery (Amendment) Order 2017**

*Made* - - - - *xxx2017*

*Coming into force in accordance with article 1*

At the Court at Buckingham Palace, the xx day of xx 2017

Present,

The Queen's Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 60 and 62(4) and (4A) of, and Schedule 3 to, the Health Act 1999(a).

The Secretary of State published a draft Order and invited representations as required by paragraph 9(1) of Schedule 3 to that Act.

The period of three months mentioned in paragraph 9(2) of that Schedule expired before a draft of this Order in Council, together with a report about consultation, was laid before Parliament.

A draft of this Order in Council has been laid before, and approved by resolution of, each House of Parliament in accordance with section 62(9) of that Act.

Accordingly, Her Majesty is pleased by and with the advice of Her Privy Council, to make the following Order in Council.

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(a) 1999 c.8. Section 60 was amended by paragraph 16 of Schedule 5 to the Nursing and Midwifery Order 2001 (S.I. 2002/253); section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c.17); paragraph 1 of Schedule 8 to the Health and Social Care Act 2008 (c.14); sections 209, 210 and 213 of, and paragraphs 60 and 72 of, Schedule 15 to the Health and Social Care Act 2012 (c.7); paragraph 7 of Schedule 4 to the Pharmacy Order 2010 (S.I. 2010/231); paragraph 43 of Schedule 34 to the Human Medicines Regulations 2012 (S.I. 2012/1916). Section 62 was amended by paragraph 1 of Schedule 4 to the National Health Service (Consequential Provisions) Act 2006 (c.43); and paragraph 2 of Schedule 8 to the Health and Social Care Act 2008. Subsections (4) and (4A) were substituted in section 62 by paragraph 11 of Schedule 10 to the Health and Social Care Act 2008. Schedule 3 was amended by section 26(10) of the National Health Service Reform and Health Care Professions Act 2002 (c.17); paragraph 8(b) of Schedule 4 to the Health and Social Work Professions Order 2002 (S.I. 2002/254); paragraph 67 of Schedule 11, and paragraph 1 of Schedule 14, to the Health and Social Care (Community Health and Standards) Act 2003 (c.43); sections 33 and 80 of, and Schedule 9 to, the Health Act 2006 (c.28); paragraphs 4 to 10 of Schedule 8, and paragraph 1 of Schedule 15, to the Health and Social Care Act 2008; section 211 of, and paragraphs 61 and 72 of Schedule 15 to, the Health and Social Care Act 2012.

## **Citation and commencement**

- 1.**—(1) This Order may be cited as the Nursing and Midwifery (Amendment) Order 2017.
- (2) The following provisions come into force on 31st March 2017—
- (a) this article and article 2;
  - (b) paragraphs 1, 2(b), 13(d)(ii), (f), (g) and (h), 16(b), 18, 19(a), (d) and (e), 20 and 21(b) of Schedule 1;
  - (c) Schedule 2 (except for paragraph 7(b)).
- (3) Paragraph 4(b) and paragraph 6 of Schedule 1 come into force on 31st March 2017 for the purposes of making rules.
- (4) The remaining provisions come into force on 28th July 2017.

## **Amendments**

- 2.**—(1) Schedule 1 (amendments to the Nursing and Midwifery Order 2001)(a) has effect.
- (2) Schedule 2 (amendments to and revocation of subordinate legislation) has effect.

## **Transitional Provision**

- 3.**—(1) A reference in Part V and Part VI of the Nursing and Midwifery Order 2001 (“the 2001 Order”) to a decision or order of the Fitness to Practise Committee or a Practice Committee includes where appropriate a reference to a decision or order of the Health Committee or Conduct and Competence Committee made before 28th July 2017.
- (2) A reference in Part V of the 2001 Order to the referral of a matter to the Fitness to Practise Committee includes a referral before 28th July 2017 of a matter to the Health Committee or to the Conduct and Competence Committee.
- (3) A decision by the Health Committee or the Conduct and Competence Committee made before 28th July 2017 continues to have effect on and after that date as if made by the Fitness to Practise Committee.
- (4) A person who immediately before 28th July 2017 is a member of the Health Committee or the Conduct and Competence Committee will on and after that date become a member of the Fitness to Practise Committee for the remainder of the term for which that person was appointed to the Health Committee or to the Conduct and Competence Committee or until that person’s membership of the Fitness to Practise Committee is terminated by the Nursing and Midwifery Council (“the Council”), whichever is the earlier.
- (5) Where before 28th July 2017, an allegation has been referred to the Health Committee or to the Conduct and Competence Committee and no decision has been reached on that allegation before that date, that Committee will continue to exist for the purposes of considering the allegation and until the Committee makes a decision in respect of that allegation under article 29(1), (4) or (5) of the 2001 Order.

Clerk of the Privy Council

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(a) S.I. 2002/253.

## SCHEDULE 1

Article 2(1)

### Amendments to the Nursing and Midwifery Order 2001

#### Amendments to article 3

- 1.—(1) In article 3 (the Nursing and Midwifery Council and its Committees)(a)—
- (a) for paragraph (9) substitute—

“(9) There shall be two committees of the Council, to be known as—

    - (a) the Investigating Committee; and
    - (b) the Fitness to Practise Committee.”.
    - (b) for paragraph (10) substitute—

“(10) The two committees mentioned in paragraph (9) are referred to in this Order as “the Practice Committees”.”;
    - (c) in paragraphs (11) and (17) for “statutory committees” substitute “Practice Committees”.

(2) Before 28th July 2017 paragraphs (9) and (10) of article 3 are to have effect without the amendments made by paragraph 1(1) and—

    - (a) in paragraph (9) as if the reference to—
      - (i) “four committees” was to “three committees”,
      - (ii) “the Midwifery Committee” was omitted; and
    - (b) in paragraph (10), as if the reference to “four committees” was to “three committees”.

#### Amendments to article 22

2. In article 22 (allegations)(b)—
- (a) in paragraph (4) for “a Practice Committee” substitute “the Fitness to Practise Committee”;
  - (b) omit paragraph (7);
  - (c) in paragraph (9)—
    - (i) for “26(7) or (11)” substitute “26(5A), (7) or (12)”,
    - (ii) after “33” insert “and of any warning issued under article 26(7A)(a)”;
  - (d) after paragraph (11) insert—

“(12) The Council may withhold from publication under paragraph (9), information concerning the physical or mental health of a person which the Council considers to be confidential.”.

#### Amendments to article 24

3. In article 24 (Screeners: supplementary provisions) in paragraph (3)(d)—
- (a) for “any Practice Committee” substitute “a Practice Committee”;
  - (b) for “Health Committee or Conduct and Competence Committee, as the case may be,” substitute “Fitness to Practise Committee”.

#### Amendments to article 26

4. In article 26 (the Investigating Committee)(c)—

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- (a) Article 3 was amended by S.I. 2008/1485, article 2(1), Schedule 1, paragraph 1.
  - (b) Article 22 was amended by S.I. 2015/806, articles 32 and 37.
  - (c) Article 26 was amended by S.I. 2014/3272, articles 2 and 5.

- (a) in paragraph (2)(a), (b), (c) and (d) before “Committee”, wherever it appears, insert “Investigating”;
- (b) after paragraph (5) insert—
  - “(5A) Where the Investigating Committee has concluded under paragraph (2)(d)(i) that there is a case to answer, it may, at any time until the allegation is considered by the Fitness to Practise Committee, agree with the person concerned that that person is to comply with such undertakings as the Investigating Committee considers appropriate.
  - (5B) Rules may make provision in connection with undertakings agreed under paragraph (5A) (including provision as to the actions which may be taken as a consequence of an undertaking being breached).”;
- (c) for paragraph (6) substitute—
  - “(6) Where the Investigating Committee concludes under paragraph (2)(d)(i) that there is a case to answer but it does not agree undertakings under paragraph (5A), it must—
    - (a) undertake mediation; or
    - (b) refer the case—
      - (i) to Screeners for them to undertake mediation, or
      - (ii) to the Fitness to Practise Committee.”;
- (d) in paragraph (6A) for “paragraph (6)(a) or (b)(i)” substitute “paragraph (5A), (6)(a) or (b)(i)”;
- (e) after paragraph (7) insert—
  - “(7A) If the Investigating Committee concludes under paragraph (2)(d)(i) that there is no case to answer, it may—
    - (a) issue a warning to the person concerned; or
    - (b) give advice to that person in connection with any matter arising during the investigation of the allegation.
  - (7B) If the Investigating Committee issues a warning or gives advice under paragraph (7A), it must include in the notification referred to in paragraph (5)—
    - (a) details of that warning or advice;
    - (b) its reasons for issuing the warning or giving the advice;
    - (c) the period for which any warning will be published by the Council under article 22(9).”;
- (f) in paragraph (11) for “Health Committee or Conduct and Competence Committee”, wherever it appears, substitute “Fitness to Practise Committee”.

#### **Amendments to article 26A**

**5.** In article 26A (exercise of Investigating Committee functions by the Registrar or officers of the Council)(a)—

- (a) in paragraph (1) for “paragraphs (1), (2)(b) to (d), (5), (6) and (8)” substitute “paragraphs (1), (2)(b) to (d), (5), (5A), (6), (7A) and (8)”;
- (b) in paragraph (2)—
  - (i) omit “or (iii)”,
  - (ii) for “Health Committee or to the Conduct and Competence Committee” substitute “Fitness to Practise Committee”.

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(a) Article 26A was inserted by S.I. 2014/3272, articles 2 and 6.

### **Substitution of article 26B**

**6.** For article 26B (review of decisions by the Council)(a) substitute—

“**26B.**—(1) The Council may review a decision—

- (a) that there is no case to answer made by the Investigating Committee under article 26(2)(d)(i);
- (b) that there is no case to answer made by the Registrar or any other officer of the Council pursuant to rules made under article 26A;
- (c) to agree undertakings with the person concerned made by the Investigating Committee under article 26(5A);
- (d) to agree undertakings with the person concerned made by the Registrar or any other officer of the Council pursuant to rules made under article 26A;
- (e) made pursuant to rules made under article 26(5B) that undertakings no longer apply and that the allegation must not be considered further.

(2) The Council may make rules in connection with carrying out reviews under paragraph (1).”.

### **Amendments to article 26C**

**7.** In article 26C (exercise of Council functions by the Registrar or officers of the Council)(b)—

- (a) in paragraph (1) for “26B(a)” substitute “26B(1)”;
- (b) in paragraph (2) for “Conduct and Competence Committee or to the Health Committee” substitute “Fitness to Practise Committee”.

### **Insertion of new article 26D**

**8.** After article 26C (exercise of Council functions by the Registrar or officers of the Council) insert—

#### **“The Fitness to Practise Committee**

**26D.** The Fitness to Practise Committee must consider—

- (a) an allegation referred to it by the Council, Screeners or the Investigating Committee; and
- (b) an application for restoration referred to it by the Registrar.”.

### **Revocation of articles 27 and 28**

**9.** Omit article 27 (the Conduct and Competence Committee)(c) and article 28 (the Health Committee).

### **Amendment to article 28A**

**10.** In paragraph (4) of article 28A (assessment of necessary knowledge of English)(d), for “Conduct and Competence Committee or the Health Committee” substitute “Fitness to Practise Committee”.

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(a) Article 26B was inserted by S.I. 2014/3272, articles 2 and 6.

(b) Article 26C was inserted by S.I. 2014/3272, articles 2 and 6.

(c) Article 27 was amended by S.I. 2009/1182, article 4(1), Schedule 4, Part 6, paragraph 38(e).

(d) Article 28A was inserted by S.I. 2015/806, articles 32 and 38.

## **Amendments to article 29**

**11.** In article 29 (orders of the Health Committee and the Conduct and Competence Committee)(a)—

- (a) for the heading substitute “Orders of the Fitness to Practise Committee”;
- (b) in paragraphs (1) and (3) for “Health Committee or the Conduct and Competence Committee, as the case may be,” substitute “the Fitness to Practise Committee”;
- (c) after paragraph (8) insert—

“(8A) If, at the time of making an order under paragraph (5)(b) or (c), the Fitness to Practise Committee is satisfied that, with effect from the date of the expiry of that order, it will not be necessary to—

  - (a) extend the period of the order;
  - (b) vary the order; or
  - (c) make any other order falling within article 29(5),

the Committee may decide that article 30(1) does not apply to that order.”.

## **Amendments to article 30**

**12.** In article 30 (review of orders by the Health Committee and the Conduct and Competence Committee)(b)—

- (a) for the heading substitute “Review of orders by the Fitness to Practise Committee”;
- (b) in paragraph (1)—
  - (i) at the beginning insert “Except where article 29(8A) applies,”;
  - (ii) for “by the Conduct and Competence Committee or the Health Committee, the Committee which made the order or, if the matter has been referred to the other Committee, that Committee,” substitute “, the Fitness to Practise Committee”;
- (c) for paragraph (2) substitute—

“(2) On the application of the person concerned or otherwise, at any time an order made by the Fitness to Practise Committee under article 29(5)(b) to (d) is in force, the Fitness to Practise Committee may review the order and may take any of the steps referred to in paragraph (4).”;
- (d) in paragraph (7) for “Committee which made the order or, where appropriate, the Committee mentioned in article 33(3)(b)” substitute “Fitness to Practise Committee”;
- (e) in paragraph (8) for “Committee which made the order appealed from” substitute “Fitness to Practise Committee”;
- (f) in paragraph (9) for “a Practice Committee” substitute “the Fitness to Practise Committee”.

## **Amendments to article 31**

**13.** In article 31 (interim orders by a Practice Committee)(c)—

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

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(a) Article 29 was amended by S.I. 2015/806, articles 32 and 39.

(b) Article 30 was amended by S.I. 2014/3272, articles 2 and 7.

(c) Article 31 was amended by S.I. 2014/3272, articles 2 and 8.

- (iii) in sub-paragraph (c) for “Conduct and Competence Committee or the Health Committee” substitute “Fitness to Practise Committee”;
- (b) in paragraph (2) before “Committee” insert “Practice”;
- (c) for paragraph (5)(a) substitute—
  - “(a) in a case falling within paragraph (1)(a)—
    - (i) when the Investigating Committee reaches a decision under article 26(2)(d)(i) that there is no case to answer,
    - (ii) when the Investigating Committee agrees undertakings with the person concerned under article 26(5A),
    - (iii) where in respect of an allegation mentioned in article 22(1)(b), the Investigating Committee reaches a decision in respect of the allegation,
    - (iv) when the Fitness to Practise Committee reaches a decision in respect of the allegation in question;”;
- (d) in paragraph (6)—
  - (i) for “any Practice Committee to which the matter has been referred” substitute “where the matter has been referred to the Fitness to Practise Committee by the Investigating Committee pursuant to article 26(6)(b)(ii), by the Fitness to Practise Committee”;
  - (ii) in sub-paragraph (a) for “three months” substitute “six months”;
- (e) in paragraph (7) for “or any Practice Committee to which the matter has been referred” substitute “or, if the matter has been referred to the Fitness to Practise Committee by the Investigating Committee pursuant to article 26(6)(b)(ii), the Fitness to Practise Committee”;
- (f) for paragraph (9) substitute—
  - “(9) On such an application the court may—
    - (a) extend (or further extend) for up to 12 months the period for which the order has effect;
    - (b) replace an interim conditions of practice order with an interim suspension order having effect for the remainder of the term of the order as extended;
    - (c) replace an interim suspension order with an interim conditions of practice order having effect for the remainder of the term of the order as extended.”;
- (g) for paragraph (11) substitute—
  - “(11) For the purposes of paragraph (6), the first review—
    - (a) after the extension of an order by the court pursuant to paragraph (9)(a) or after the replacement of an order by the court pursuant to paragraph (9)(b) or (c), must take place within the period of 6 months beginning with the date on which the court extended that order or replaced the order, as the case may be;
    - (b) after the replacement of an interim conditions of practice order or an interim suspension order by a Practice Committee pursuant to paragraph (7)(d) or, as the case may be, paragraph (7)(e), must take place within the period of 6 months beginning with the date on which the replacement order was made.”;
- (h) for paragraph (12) substitute—
  - “(12) Where an order has effect under paragraph (2), (7) or (9), the court may, on an application being made by the person concerned—
    - (a) in the case of an interim suspension order—
      - (i) terminate the suspension,
      - (ii) replace the interim suspension order with an interim conditions of practice order;
    - (b) in the case of an interim conditions of practice order—

- (i) revoke or vary any condition imposed by the order,
  - (ii) replace the interim conditions of practice order with an interim suspension order;
  - (c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when it was made (or in the order extending it),
- and the decision of the court under any application under this paragraph shall be final.”.
- (i) in paragraphs (14) and (17) insert “Practice” before “Committee”;
  - (j) in paragraph (15) for “any Practice Committee” substitute “a Practice Committee”.

## **Amendments to article 32**

### **14. In article 32 (investigation of allegations: procedural rules)(a)—**

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

“(h) where an allegation is referred by the Council, Screeners or the Investigating Committee to the Fitness to Practise Committee, for the Council to give notice of that referral to, where they are known, any person referred to in article 25(2);”,
  - (iv) in sub-paragraph (j) for “a Committee” substitute “the Fitness to Practise Committee”;
- (c) in paragraph (3) for “Committee concerned” substitute “Fitness to Practise Committee”;
- (d) in paragraph (4) before “Committee” where it first appears insert “Fitness to Practise”.

## **Amendments to article 33**

### **15. In article 33 (restoration to the register of persons who have been struck off)(b)—**

- (a) for paragraph (1) substitute—
 

“(1) Where a person has been struck off the register by virtue of an order made under article 29(5)(a), 30(1)(b) or 38(3)(c) and the person wishes to be restored to the register, that person must make an application for restoration to the Registrar.”;
- (b) in paragraph (2)(a) for “article 29, 30 or 38” substitute “article 29(5)(a), 30(1)(b) or 38(3)(c);
- (c) for paragraph (3) substitute—
 

“(3) An application for restoration must be referred by the Registrar to the Fitness to Practise Committee for determination.”;
- (d) in paragraph (9) for “Committee which determined that application” substitute “Fitness to Practise Committee”;
- (e) in paragraph (11) for “Committee which made the direction under paragraph (9)” substitute “Fitness to Practise Committee for determination”.

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(a) Article 32 was amended by S.I. 2008/1485, articles 2(1), Schedule 1, paragraph 5.

(b) Article 33 was amended by S.I. 2014/1887, article 2(1), Schedule 1, Part 7, paragraphs 23 and 27 and by S.I. 2015/806, articles 32 and 40.



### **Amendment to article 37**

**16.** In article 37 (appeals against Registrar’s decisions)(a)—

- (a) in paragraph (6) for “the Committee concerned” substitute “the Fitness to Practise Committee”;
- (b) omit paragraph (8).

### **Amendment to article 38**

**17.** In article 38 (appeals)(b)—

- (a) in paragraph (1)(a) for “Health Committee or the Conduct and Competence Committee” substitute “Fitness to Practise Committee”;
- (b) in sub-paragraphs (c) and (d) of paragraph (3) for “Practice Committee concerned” substitute “Fitness to Practise Committee”.

### **Revocation of Part 8**

**18.** Omit Part 8 (Midwifery).

### **Amendments to Schedule 1**

**19.** In Schedule 1 (the Nursing and Midwifery Council and Committees)(c)—

- (a) in paragraph 12(1)(c) omit “and the Midwifery Committee”;
- (b) in paragraph 15—
  - (i) in sub-paragraph (2)(h) for “statutory committee” substitute “Practice Committee”,
  - (ii) in sub-paragraph (4) for “any statutory committee” substitute “a Practice Committee”;
- (c) for the heading of Part II substitute “The Practice Committees”;
- (d) omit paragraph 16;
- (e) in paragraph 17(1)(a) omit “size and”;
- (f) in paragraph 18—
  - (i) for sub-paragraph (10A) substitute—

“(10A) In exercising a function under article 26D, 29, 30 or 33, the Fitness to Practise Committee (or any panel by which the function is exercisable as mentioned in paragraph 17(1A) of this Schedule) must have regard to the over-arching objective.”,
  - (ii) omit sub-paragraph (10B),
  - (iii) in sub-paragraph (10C) for “sub-paragraphs (10A) and (10B) to the over-arching objective are” substitute “sub-paragraph (10A) to the over-arching objective is”.

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- (a) Article 37 was amended by S.I. 2007/3101, regulations 155 and 166, S.I. 2008/1485, article 2(1), Schedule 1, paragraph 6, S.I. 2009/1182, article 4(1), Schedule 4, Part 6, paragraph 38(f), S.I. 2014/1887, article 2(1), Schedule 1, Part 7, paragraphs 23 and 28, S.I. 2014/3272, articles 2 and 9 and by S.I. 2015/806, articles 32 and 41.
  - (b) Article 38 was amended by S.I. 2007/3101, regulations 155 and 167.
  - (c) Schedule 1 was amended by the Health and Social Care (Community Health and Standards) Act 2003 (c.43), section 187(8), Schedule 12, paragraph 7, by the Health Act 2006 (c.28), section 80(1) and (2), Schedule 8, paragraph 47 and Schedule 9 and by the Health and Social Care (Safety and Quality) Act 2015 (c. 28), section 5(2), Schedule, paragraph (5). It was also amended by S.I. 2008/1485, article 2(1), Schedule 1, paragraph 10; S.I. 2009/1182, article 4(1), Schedule 4, Part 6, paragraph 38(g) and by S.I. 2013/235, article 11, Schedule 2, Part 1, paragraph 51(1) and (2).

## **Amendment to Schedule 2**

**20.** In Schedule 2 (transitional provisions)(a) omit paragraph 18.

## **Amendments to Schedule 4**

**21.** In Schedule 4 (interpretation)—

- (a) in the definition of “lay member” for “statutory committee” substitute “Practice Committee”;
- (b) omit the definition of “local supervising authority”;
- (c) for the definition of “Practice Committees” substitute—  
““Practice Committees” has the meaning given to it in article 3(10);”;
- (d) omit the definition of “statutory committees”.

# **SCHEDULE 2**

Article 2(2)

## **Amendments to and revocation of subordinate legislation**

### **Revocation of the Nursing and Midwifery Council (Midwives) Rules Order of Council 2012**

**1.** The Nursing and Midwifery Council (Midwives) Rules Order of Council 2012(b), and the Rules contained in the Schedule to that order, are revoked.

### **Amendment of the Schedule to the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008**

**2.** The Schedule to the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008(c) is amended as follows.

**3.** For the title to the Rules and in rule 1 (citation and commencement) for “Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules 2008”, substitute “Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008”.

**4.** In rule 2 (interpretation)—

- (a) in the definition of “member” omit “the Midwifery Committee or”;
- (b) omit the definition of “practising midwife”.

**5.** For the heading of Part 2 substitute “The Practice Committees”.

**6.** Omit rule 4 (Midwifery Committee) and rule 5 (chair and deputy chair of the Midwifery Committee).

**7.** In rule 6 (the Practice Committees)—

- (a) for paragraph (1)(d) substitute—  
“(1) The members of each Practice Committee shall be appointed by the Council.”;

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(a) Schedule 2 was amended by S.I. 2002/2469, regulation 4, Schedule 1, Part 2, paragraph 100 and by S.I. 2008/1485, article 2(1), Schedule 1, paragraph 12(2).  
(b) S.I. 2012/3025.  
(c) S.I. 2008/3148. The Schedule to this order contains the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules 2008.  
(d) Rule 6(1)(a) was amended by rule 2 of the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) (Amendment) Rules 2009 as set out in the Schedule to S.I. 2009/2894.

- (b) in paragraph (2) for “any other Practice Committee” substitute “the Fitness to Practise Committee”.

8. In rule 9 (termination of committee membership) omit paragraphs (1)(b)(ii) and (4).

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Nursing and Midwifery Order 2001 (S.I. 2002/253) (“the 2001 Order”) to remove provisions relating to the Midwifery Committee and to the local supervision of midwives and to make consequential amendments in that regard. It also amends Part V of the 2001 Order in respect of certain fitness to practise functions of the Nursing and Midwifery Council (“the Council”). Article 3 of this Order makes transitional provision.

Paragraph 18 of Schedule 1 to this Order revokes Part 8 of the 2001 Order thereby removing the provisions relating to the supervision of midwives which will in future be carried out in accordance with new non statutory procedures. Article 3(9) of the 2001 Order is amended by paragraph 1(a) of Schedule 1 to this Order which removes the Midwifery Committee as a committee of the Council. Paragraphs 19(a), 20 and 21 of Schedule 1 to this Order make consequential amendments to the 2001 Order.

Article 3(9) of the 2001 Order is amended by paragraph 1 of Schedule 1 to this Order to replace the Health Committee and the Conduct and Competence Committee with a single Fitness to Practise Committee. Paragraphs 1(c), 2(a), 3, 4(a) and (f), 5(b), 7(b), 8, 9, 10, 11(a) and (b), 12(a), (b)(ii) and (c)-(f), 13(a)-(d)(i), (e), (i) and (j), 14(a), (b)(i) and (ii) and (iv), (c) and (d), 15, 16(a), 17, 19(c) and (f) of Schedule 1 to this Order make consequential amendments to the 2001 Order.

Paragraph 4(b) of Schedule 1 to this Order amends article 26 of the 2001 Order to introduce a power for the Investigating Committee to agree undertakings with a registrant at the end of the investigation stage of fitness to practise proceedings. It also introduces a rule making power in this regard. Paragraphs 2(c) and (d), 4(c) and (d) and 5(a) make consequential amendments to the 2001 Order.

Paragraph 6 of Schedule 1 to this Order substitutes article 26B of the 2001 Order to extend the Council’s power to review decisions to include a power to review a decision of the Investigating Committee or the Case Examiners to agree undertakings with a registrant and to review a decision, made pursuant to rules made under new article 26(5B) (inserted by paragraph 4(b) of Schedule 1 to this Order) that undertakings no longer apply. Paragraph 7(a) of Schedule 1 to this Order makes a consequential amendment to article 26C(1) of the 2001 Order.

Paragraph 4(e) of Schedule 1 to this Order inserts paragraphs (7A) and (7B) to article 26 of the 2001 Order to provide that, in cases where the Investigating Committee concludes that there is no case to answer in respect of an allegation, it may issue a warning to the registrant or give advice to the registrant in connection with the registrant’s practise and where it does, it must give details of the warning or advice to the registrant and give its reasons for issuing such.

Paragraph 11(c) of Schedule 1 to this Order inserts paragraph (8A) to article 29 of the 2001 Order to provide that where the Fitness to Practise Committee considers at the time of making a suspension order or a conditions of practice order that, with effect from the expiry of that order, it will not need to vary or extend the order or make any other order, it can direct the Registrar that the order need not be reviewed under article 30 of the 2001 Order. Paragraph 12(b)(i) of Schedule 1 to this Order makes a consequential amendment to article 30(1) of the 2001 Order.

Paragraph 13(d)(ii) of Schedule 1 to this Order amends article 31(6) of the 2001 Order to extend the period in which a second and subsequent review of an interim order must take place from three months to six months. Paragraph 13(g) substitutes paragraph (11) of article 31 of the 2001 Order to provide that the first review after the court’s extension of an interim order, or the substitution by a Practice Committee of an interim suspension order with an interim conditions of practice order must, in all cases, take place within six months beginning with date on which the court ordered the extension or the date on which the replacement order was made.

Paragraph 2(b) of Schedule 1 to this Order amends article 22 of the 2001 Order to remove the requirement that hearings of a Practice Committee at which a registrant is entitled to be present or represented at, must be held in the United Kingdom country of the registrant's registered address. A similar amendment is made to article 37(8) of the 2001 Order by paragraph 16(b) of Schedule 1 to this Order in connection with appeal hearings against the Registrar's decisions. This will allow such meetings to be held where it is most convenient for all parties to that hearing.

Article 31 of the 2001 Order is amended by paragraph 13(f) of Schedule 1 to this Order to enable the court, on an application by the Council to extend an interim order, to either extend that order or where appropriate, to replace an interim suspension order with an interim conditions of practice order or to replace an interim conditions of practice order with an interim suspension order. Paragraph 13(h) amends article 31(12) to provide the court with the same power when it considers an application by a registrant against the imposition of an interim order.

Paragraph 14(b)(iii) of Schedule 1 to this Order amends article 32(2)(h) of the 2001 Order to remove the requirement that rules must make provisions for the Council to give notice of a referral to the Fitness to Practise Committee to specified persons, including the Secretary of State and the Devolved Administrations. There will continue to be a requirement that rules must provide that such a notification is given to a registrant's employer, where known.

Paragraph 19(e) of Schedule 1 to this Order amends paragraph 17(1)(a) of Schedule 1 to the 2001 Order to remove the requirement for the Council to specify in rules the size of its Practice Committees.

Schedule 2 of this Order revokes the Nursing and Midwifery Council (Midwives) Rules Order of Council 2012 (S.I. 2012/3025) and the rules approved by that order as a consequence of the amendments to the 2001 Order which revoke the provisions relating to the local supervision of midwives. It also amends the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules 2008 (S.I. 2008/3148) as a consequence of the abolition of the Midwifery Committee.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business, the voluntary and the public sector, together with a report on the Consultation in relation to the Secretary of State's proposals to make this Order, is available at <https://www.gov.uk/government/consultations/changes-to-nursing-and-midwifery-council-governing-legislation> hard copies of which can be obtained by writing to the Department of Health, Professional Standards Division, Quarry House, Quarry Hill, Leeds, LS2 7UE.

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£6.00

UK201701122 01/2017 19585

<http://www.legislation.gov.uk/id/ukdsi/2017/9780111153123>

ISBN 978-0-11-115312-3



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