

SCHEDULE

Article 3

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

The Nursing and Midwifery Council, having consulted in accordance with article 47(3) of the Nursing and Midwifery Order 2001(1), makes the following Rules 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 that Order.

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 28th July 2017.

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

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

3. In rule 2(3) (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(4) (initial consideration of allegations), for paragraph (2) substitute—

“(2) Where the Registrar considers that an allegation falls within article 22(1)(a)(5) 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(6) (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(7) (notice of fitness to practise allegations)—

- (a) in paragraph (1), for “2A(2)” substitute “2A(2)(a)”;
- (b) in paragraph (2)(b), before “invite the registrant” insert “inform the registrant of the actions the Case Examiners could take under rule 6C(8) and”.

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

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- (1) [S.I. 2002/253](#). The relevant amending instruments are [S.I. 2014/3272](#) and [2017/321](#).
 - (2) These Rules are set out in the Schedule to [S.I. 2004/1761](#).
 - (3) The definition of “sanction” was inserted by rule 3(1) of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2007 which are set out in the Schedule to [S.I. 2007/893](#).
 - (4) Rule 2A was inserted by rule 5 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in the Schedule to [S.I. 2015/52](#).
 - (5) Article 22(1)(a) was amended by section 81 of the Policing and Crime Act 2009 (c.26) and by article 37 of [S.I. 2015/806](#).
 - (6) Paragraph (3) of rule 3 was inserted by rule 6 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in the Schedule to [S.I. 2015/52](#).
 - (7) Rule 6A was inserted by rule 10 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in Schedule to [S.I. 2015/52](#).
 - (8) Rule 6C was inserted by rule 10 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in the Schedule to [S.I. 2015/52](#).

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- (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; and
 - (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 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; and
 - (b) the registrant—
 - (i) of the Case Examiners’ decision together with the reasons for it,
 - (ii) of the details of any warning issued or advice given,
 - (iii) of the period during which any warning issued will be published under article 22(9) of the Order, and
 - (iv) 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(9) (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) to (4), 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;

(9) Rule 6D was inserted by rule 10 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in the Schedule to [S.I. 2015/52](#), and amended by rule 4 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No.2) Rules 2015 which are set out in the Schedule to [S.I. 2015/1923](#).

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- (b) the Registrar must notify in writing both the registrant and the person making the allegation (if any) of the Investigating Committee’s determination 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.

(3) Where the Investigating Committee determines that there is no case to answer, the Registrar must notify in writing—

- (a) the person making the allegation (if any) of the Investigating Committee’s determination together with its reasons, including whether the registrant has been issued with a warning or given advice; and
- (b) the registrant—
 - (i) of the Investigating Committee’s determination together with the reasons for it,
 - (ii) of the details of any warning issued or advice given,
 - (iii) of the period during which any warning issued will be published under article 22(9) of the Order, and
 - (iv) 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 determination that there is no case to answer.”.

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”); and
- (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 of the Order ceases to have effect.

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(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;
- (b) invite the registrant to comply with the undertakings, varied as the Case Examiners consider 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 of the date of that invitation, or within such further period as allowed by the Registrar—

- (a) the Registrar may review, under rule 7A(10), the Case Examiners’ decision under rule 6C(2)(a)(ii) or the Investigating Committee’s determination under rule 6D(2)(a)(ii), as the case may be, to recommend undertakings to be agreed with the registrant; and
- (b) the undertakings 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 breached undertakings or varied undertakings the Registrar must refer the allegation which resulted in the undertakings to the Case Examiners, who may—

- (a) revoke those undertakings and refer that allegation to the Fitness to Practise Committee; or
- (b) make a decision under paragraph (5).”.

10. In rule 7(11) (reconsideration of allegation after a finding of no case to answer), in paragraph (2)(b) for “Conduct and Competence Committee or Health” substitute “Fitness to Practise”.

11. In rule 7A (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)—

(10) Rule 7A was inserted by rule 12 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in the Schedule to [S.I. 2015/52](#).

(11) Rule 7 was amended by rule 11 of the Nursing and Midwifery Council (Fitness to Practise)(Education, Registration and Registration Appeals)(Amendment) Rules 2014 which are set out the Schedule to [S.I. 2015/52](#).

- (a) a decision under rule 6C(1) or a determination under 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 a determination under rule 6D(2)(a)(ii) to recommend undertakings to be agreed with the registrant; and
 - (c) a direction under 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) where the reviewable decision falls under 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 any determination which 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 any determination which 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(12) (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”.

(12) Rule 8 was amended by rule 8 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to [S.I. 2012/17](#), and by rule 13 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment) Rules 2014 which are set out in the Schedule to [S.I. 2015/52](#).

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- 14.** In rule 9(**13**) (action upon referral of an allegation)—
- (a) in paragraph (1), for “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 Committee or the Health” substitute “Fitness to Practise”;
 - (ii) in sub-paragraph (a)(ii) and (iii), before “Committee” insert “Fitness to Practise”.
- 15.** In rule 10(**14**) (meetings and hearings)—
- (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(**15**) (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” in each place it occurs insert “Fitness to Practise”;

(13) Rule 9 was amended by rule 9 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to [S.I. 2012/17](#), and by rule 5 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No.2) Rules 2015 which are set out in the Schedule to [S.I. 2015/1923](#).

(14) Rule 10 was amended by rule 10 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to [S.I. 2012/17](#).

(15) Rule 11 was amended by rule 11 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to [S.I. 2012/17](#).

- (iii) in sub-paragraphs (e) and (j), before “Committee’s” insert “Fitness to Practise”,
- (iv) for sub-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(16) (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 Committee or the Health” substitute “Fitness to Practise”;
- (c) in paragraph (2), for “Conduct and Competence” substitute “Fitness to Practise”.

19. In rule 13(17) (notice of decision)—

- (a) in paragraph (1), for “Conduct and Competence Committee 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).

21. In rule 16(18) (application of Part 5) in paragraph (b), for “Conduct and Competence Committee 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.”

23. In rule 18(19) (preliminary meetings), in paragraph (5)—

- (a) in sub-paragraph (d), omit “and the case considered by the Health Committee”;
- (b) in sub-paragraph (j)(ii), for “Conduct and Competence” substitute “Fitness to Practise”.

24. In rule 19 (public and private hearings)—

- (a) for paragraph (2), substitute—

(16) Rule 11A was inserted by rule 12 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to [S.I. 2012/17](#).

(17) Rule 13 was amended by rule 13 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to [S.I. 2012/17](#).

(18) Rule 16 was amended by rule 14 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to [S.I. 2012/17](#).

(19) Rule 18 was amended by rule 6 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No.2) Rules 2015 which are set out in the Schedule to [S.I. 2015/1923](#).

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“(2) Subject to paragraph (2A), 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.”;

(b) after paragraph (2), insert—

“(2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—

(a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor,

is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.”.

25. In rule 23 (vulnerable witnesses) in paragraph (1), for “Conduct and Competence Committee or the Health” substitute “Fitness to Practise”.

26. In rule 24(20) (order of proceedings at initial hearing), in paragraph (13)—

(a) in sub-paragraph (d), at the end omit “and”;

(b) at the end of sub-paragraph (e), insert—

“; and

(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(21) (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(22) (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)(23), (6), (6A)(24) 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, “the unamended Rules” means the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 as in force immediately before 28th July 2017.

(2) Where, before 28th July 2017—

(20) Rule 24 was substituted by rule 3(2) of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2007 which are set out in the Schedule to [S.I. 2007/893](#).

(21) Rule 25A was inserted by rule 7 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No.2) Rules 2015 which are set out in the Schedule to [S.I. 2015/1923](#).

(22) Rule 28 was amended by rule 3(5) of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2007 which are set out in the Schedule to [S.I. 2007/893](#) and by rule 15 of the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 which are set out in the Schedule to [S.I. 2012/17](#).

(23) Paragraph (4A) was inserted by rule 8 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No.2) Rules which are set out in the Schedule to [S.I. 2015/1923](#).

(24) Paragraph (6A) was inserted by rule 8 of the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No.2) rules which are set out in the Schedule to [S.I. 2015/1923](#).

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

(b) the charge has been read out,

the unamended Rules are to apply for the purposes of considering the allegation and until the Conduct and Competence Committee or the Health Committee makes a decision in respect of that allegation under article 29(1), (4) or (5) of the Order⁽²⁵⁾.

Given under the official seal of the Nursing and Midwifery Council this 26th day of April 2017.



Dame Janet Finch
Chair
Jackie Smith
Chief Executive and Registrar

(25) Article 29 was amended by paragraph 11 of Schedule 1 to [S.I. 2017/321](#).