

**2012 No. 17**

**HEALTH CARE AND ASSOCIATED PROFESSIONS**

**NURSES AND MIDWIVES**

**The Nursing and Midwifery Council (Fitness to Practise)  
(Amendment) Rules 2011 Order of Council 2012**

*Made* - - - - *5th January 2012*

*Laid before Parliament* *9th January 2012*

*Coming into force* - - *6th February 2012*

At the Council Chamber, Whitehall the 5th day of January 2012

By the Lords of Her Majesty's Most Honourable Privy Council

The Nursing and Midwifery Council has made the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 as set out in the Schedule to this Order, in exercise of the powers conferred by articles 26(3), 30(9), 32(1) and (2) and 47(2) of the Nursing and Midwifery Order 2001(a).

In accordance with article 47(3) of the Nursing and Midwifery Order 2001 the Nursing and Midwifery Council has consulted representatives of groups of persons who appear likely to be affected by the proposed rules.

In accordance with articles 47(1) and 48 of the Nursing and Midwifery Order 2001 such Rules shall not come into force until approved by order of the Privy Council.

**Citation and commencement**

1. This Order may be cited as the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 Order of Council 2012 and comes into force on 6th February 2012.

**Council approval**

2. Their Lordships, having taken the Rules contained in the Schedule into consideration, are pleased to and do approve them.

*Ceri King*  
Deputy Clerk of the Privy Council

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(a) SI 2002/253, relevant amendment to which was made by SI 2009/1182.

## SCHEDULE

### THE NURSING AND MIDWIFERY COUNCIL (FITNESS TO PRACTISE) (AMENDMENT) RULES 2011

The Nursing and Midwifery Council makes the following Rules in exercise of the powers conferred by articles 26(3), 30(9), 32(1) and (2) and 47(2) of the Nursing and Midwifery Order 2001(a).

In accordance with article 47(3) of that Order, the Nursing and Midwifery Council has consulted representatives of groups of persons who appear likely to be affected by the rules.

#### **Citation and commencement**

1. These Rules may be cited as the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 and shall come into force on 6th February 2012.

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

2. In the Nursing and Midwifery Council (Fitness to Practise) Rules 2004(b), the amendments in rules 3 to 17 have effect.

3. In rule 2 (interpretation) after “initial hearing”, insert—

““interim order” means an interim suspension order or an interim conditions of practice order;

“interim order notice” is the notice mentioned in rule 8(3);”.

4. In rule 3 (notice provisions), for paragraph (2), substitute—

“(2) The notice of referral shall—

- (a) be accompanied by any documents relating to the allegation that have not previously been disclosed to the registrant by the Council or a Practice Committee;
- (b) invite the registrant to make written representations, to be received by the Council no later than 28 days after the date of the notice;
- (c) unless the allegation is made by virtue of article 22(6) of the Order, inform the registrant that any representations or extracts of any representations received from her may be shown to the person making the allegation for comment; and
- (d) inform the registrant that further information may be sought from other persons in accordance with article 25(1) of the Order or investigations undertaken to assist the Investigating Committee in carrying out its functions.”.

5. In rule 4 (procedure of the Investigating Committee where the allegation relates to impairment of fitness to practise), for paragraph (2)(a), substitute—

“(a) shall send to the registrant any information or documents obtained by a person authorised by the Council under article 25(1) of the Order, or by the Committee under article 26(2)(c) of the Order;

(aa) shall invite the registrant to make written representations, to be received by the Committee no later than 28 days after the date of sending of the information or documents mentioned in sub-paragraph (a);

(ab) shall inform the registrant that any representations received from her may be shown to the maker of the allegation for comment;”.

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(a) SI 2002/253; relevant amendment to which was made by SI 2009/1182.

(b) SI 2004/1761; relevant amendment to which was made by Rules scheduled to SI 2007/893.

6. In rule 5 (procedure of the Investigating Committee where the allegation relates to a fraudulent or incorrect entry in the register), in paragraph (9), omit sub-paragraph (h).

7. In rule 6 (notice of decision), in paragraph (2), for “may inform the registrant” substitute “shall inform the registrant”.

8. In rule 8 (notice and procedure)—

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

“(1) Subject to paragraphs (2) and (6), following referral by the Council under article 22(5), no interim order may be made, varied, replaced or, in a case where article 31(5)(b) of the Order applies, confirmed by a Practice Committee unless it is satisfied that an interim order notice has been served by the Council.

(2) No interim order notice shall be required where a Practice Committee has served notice in accordance with rule 5(8) and (9), 11 or 11A has made an order under article 26(7) or 29(5)(a) to (c) of the Order and subsequently proposes to make an interim order under article 31(1)(b) or (c).”;

(b) in paragraph (3), in sub-paragraph (c), for “5(9)(a), (c) to (f) and (h)” substitute “5(9)(a) and (c) to (f)”;

(c) omit paragraph (5);

(d) for paragraph (6), substitute—

“(6) The Practice Committee may make an interim order notwithstanding the absence of the registrant or the absence of any written representations from the registrant on whether or not an interim order should be made, if the Committee is satisfied that—

(a) all reasonable efforts have been made, in accordance with these Rules, to serve the registrant with the interim order notice,

(b) in the case that no interim order notice has been served in accordance with paragraph (2), that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of meeting or hearing under rule 11 or rule 11A; or

(c) the registrant has informed the Council that she does not wish to appear and be heard on the question whether an interim order should be made.

(7) In paragraph (6), reference to the Practice Committee making an interim order includes reference to that Committee revoking, varying, confirming or replacing an interim order in accordance with article 31(7) of the Order.”.

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

(a) for paragraph (1), substitute—

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

(b) in paragraph (2)—

(i) for sub-paragraph (a), substitute—

“(a) be accompanied by any documents relating to the allegation that have not previously been disclosed to the registrant by the Council or a Practice Committee;”

(ii) at the end of sub-paragraph (c), omit “and”;

(iii) at the end of sub-paragraph (d), insert—

“(e) inform the registrant that further information or documents may be sought from other persons in accordance with article 25(1) of the Order to assist the Committee in carrying out its functions; and

(f) inform the registrant of the Committee’s power to make an interim order under article 31(1)(c) of the Order, and require the registrant to confirm, no later than 28

days after service of the notice, whether she wishes to appear and be heard on the question whether such an order should be made”.

**10.** In rule 10 (meetings and hearings), in paragraph (3), after sub-paragraph (c), for “at a meeting and the Conduct and Competence Committee or the Health Committee shall decide the procedure to be employed at that meeting” substitute—

“and may consider whether to make, vary, replace, revoke or confirm an interim order at a meeting.

(4) The Conduct and Competence Committee or the Health Committee shall determine the procedure to be employed at any meeting before it”.

**11.** In rule 11 (notice of hearing), in paragraph (3)—

(a) for sub-paragraph (b), substitute—

“(b) where the Committee is to consider an allegation at an initial hearing, contain a charge particularising the allegation, which shall set out any alleged facts on which it is based, and be accompanied by copies of any documents in support that have not previously been disclosed to the registrant by the Council or a Practice Committee;”;

(b) omit sub-paragraph (i);

(c) for sub-paragraph (1) substitute—

“(1) where the Committee is to consider an allegation at an initial hearing, invite the registrant to state in writing, no later than 28 days after service of the notice, whether any admissions are made in respect of the allegation, and inform her that any admissions made will be taken into account by the Committee; and”.

**12.** After rule 11 (notice of hearing), insert—

**“Notice of meeting**

**11A.**—(1) Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

(2) The notice of meeting shall—

(a) contain a charge particularising the allegation, which shall set out any alleged facts on which it is based, and be accompanied by copies of any documents in support that have not previously been disclosed to the registrant by the Council or a Practice Committee;

(b) where the Committee is to review an order previously made or consider an application for restoration to the register, contain a copy of the order or striking-off order previously made, and the Committee’s reasons for making that order;

(c) inform the registrant of the Committee’s power to make an interim order under article 31(2) of the Order;

(d) inform the registrant of the action the Committee may take under article 29 or 30 of the Order, as applicable; and

(e) invite the registrant to state in writing, no later than 28 days after service of the notice, whether any admissions are made in respect of the allegation, and inform her that any admissions made will be taken into account by the Committee.”.

**13.** In rule 13 (notice of decision), rule 14 (referral of allegation from the Conduct and Competence Committee to the Health Committee) and rule 15 (referral of allegation from the Health Committee to the Conduct and Competence Committee), on each occasion the words “the hearing” appear, substitute “the meeting or hearing”.

**14.** In rule 16 (application of Part 5)—

- (a) in each of sub-paragraphs (a) and (b), after “when considering”, insert “at a hearing”;
- (b) in each of sub-paragraphs (a)(i) and (b)(i), omit “at a hearing”.

15. In rule 28 (amendment of the charge), in paragraph (1), before “or the Conduct and Competence Committee”, insert “, the Health Committee”.

16. In rule 32 (postponements and adjournments), in paragraph (5), for “Before adjourning the proceedings”, substitute—

“Save where the proceedings relate to the consideration of an interim order, before adjourning the proceedings”.

17. For rule 34 (service of documents), substitute—

**“Service of documents**

34.—(1) Any notice of hearing required to be served upon the registrant shall be delivered by sending it by a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at—

- (a) her address in the register; or
- (b) where this differs from, and it appears to the Council more likely to reach her at, her last known address, the registrant’s last known address.

(2) If the registrant is represented by a solicitor, professional body or trade union, a copy of the notice served in accordance with paragraph (1) may also be—

- (a) sent or delivered to the solicitor’s practising address;
- (b) sent or delivered to the professional body or trade union’s business address; or
- (c) sent by electronic mail to an electronic mail address of the solicitor, professional body or trade union, where the address has been notified to the Council as an address for communications.

(3) Any other notice or document to be served on a person under these Rules may be sent by—

- (a) ordinary post; or
- (b) electronic mail to an electronic mail address that the person has notified to the Council as an address for communications.

(4) The service of any notice or document under these Rules may be proved by—

- (a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service;
- (b) a confirmation of receipt of the notice or document sent by electronic mail; or
- (c) a signed statement from the person sending by ordinary post or delivering the notice in accordance with this rule.

(5) Where any notice or document is sent or otherwise served under these Rules, it shall be treated as having been served—

- (a) on the day after it was sent by delivery service; or
- (b) where the notice has been left at an address or sent by electronic mail, on the day on which it was left or sent.

**Protection of third party information**

35. Nothing in these Rules shall prevent the Council from taking such steps as it thinks fit in order to prevent the disclosure of personal data within the meaning of section 1 of the

Data Protection Act 1998(a) which relates to individuals who are not a party to the proceedings.”.

Given under the official seal of the Nursing and Midwifery Council this 16th day of December 2011.



*Tony Hazell*  
Chair

*Jackie Smith*  
Acting Chief Executive and Registrar

### **EXPLANATORY NOTE**

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

This Order approves the Rules made by the Nursing and Midwifery Council exercising their powers under the Nursing and Midwifery Order 2001 (SI 2002/253) (“the Order”) in relation to the fitness to practise of nurses and midwives. The Rules come into force on 30th January 2012.

Rules 3 to 17 make amendments to the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (“the Fitness to Practise Rules”).

Rule 3 inserts new definitions into the Fitness to Practise Rules, and rule 4 makes amendments to the requirements for notice to be given to registrants following the referral of fitness to practise allegations to the Investigating Committee. The requirement to particularise the allegation is removed and a requirement to disclose any relevant documents not previously disclosed is substituted.

Rule 5 makes amendments to the procedure to be followed by the Investigating Committee prior to its reaching a decision on whether there is a case to answer, including a requirement to disclose documents to the registrant and invite representations from the registrant which must be received within 28 days.

Rule 6 removes the requirement to send the registrant a copy of the Fitness to Practise Rules with the notice of a hearing before the Investigating Committee where the allegation relates to a fraudulent or incorrect entry in the register.

Rule 7 makes it mandatory, following a determination by the Investigating Committee that there is no case to answer, for the notice of decision to inform the registrant that the allegation may be taken into account in the consideration of any further allegation about the registrant received in the subsequent three-year period.

Rule 8 makes amendments to the provisions relating to interim orders, reflecting the requirements of article 31(15) of the Order and providing that no interim order may be made, varied, etc, unless an interim order notice has been served by the Council. Rule 8(5) of the Fitness to Practise Rules, having become redundant in light of amendments to rule 16, has been removed. Consequential amendments have been made to the provisions permitting a Practice Committee to proceed in the absence of the registrant in the circumstances described in the substituted sub-paragraphs (a), (b) or (c) of rule 8(6) of the Fitness to Practise Rules.

Rule 9 makes amendments, corresponding to the amendments made in rule 4, to the requirements relating to notice which must be given to registrants following the referral of fitness to practise

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(a) 1998, c.29.

allegations to the Conduct and Competence Committee or Health Committee. In addition a requirement is introduced for the Council to notify the registrant of the Committee's powers to make an interim order and provides an opportunity for the registrant to request that she be heard on the matter.

Rule 10 provides that a Conduct and Competence Committee or Health Committee when sitting at a meeting, may consider whether to make, vary, replace, revoke or confirm an interim order.

Rule 11 makes amendments to the notice of hearing before a Conduct and Competence Committee or Health Committee, to remove the distinction between the particulars provided in respect of allegations relating to misconduct and criminal convictions and those based on other grounds so that in both cases a charge must particularise the allegation. Rule 11(b) removes the requirement for the Committee to send the registrant a copy of the Fitness to Practise Rules with the notice. Rule 12 inserts a new rule 11A to introduce notice provisions in respect of Conduct and Competence Committee and Health Committee meetings.

Rule 13 makes amendments consequential upon the new provisions relating to meetings, and rule 14 makes amendments to make more explicit that Part 5 of the Fitness to Practise Rules relates to decisions made at hearings before Practice Committees.

Rule 15 makes amendments to provide that charges at a hearing before the Health Committee may be amended.

Rule 16 introduces an explicit provision that the power afforded to a Practice Committee to make an interim order on adjourning proceedings does not apply to interim order hearings.

Rule 17 makes amendments to the rule relating to service of notices and documents, including provision for the sending of notices and documents, other than notices of hearing, by electronic mail. Rule 17 also introduces a new rule, rule 35, which provides that nothing in the Rules is to prevent the Council from taking steps to protect the personal data of third parties.

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STATUTORY INSTRUMENTS

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**NURSES AND MIDWIVES**

The Nursing and Midwifery Council (Fitness to Practise)  
(Amendment) Rules 2011 Order of Council 2012

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