

2015 No. 1923

HEALTH CARE AND ASSOCIATED PROFESSIONS

NURSES AND MIDWIVES

**The Nursing and Midwifery Council (Fitness to Practise)
(Education, Registration and Registration Appeals) (Amendment
No. 2) Rules Order of Council 2015**

<i>Made</i> - - - -	<i>19th November 2015</i>
<i>Laid before Parliament</i>	<i>23rd November 2015</i>
<i>Coming into force</i> - -	<i>19th January 2016</i>

At the Council Chamber, Whitehall, the 19th day of November 2015

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) (Education, Registration and Registration Appeals) (Amendment No. 2) Rules 2015, as set out in the Schedule to this Order, in exercise of the powers conferred by articles 7(1) and (2), 9(2), 26(3), 28A, 32(1) and (2), 37(4) 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 that Order(b) the 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) (Education, Registration and Registration Appeals) (Amendment No. 2) Rules Order of Council 2015 and comes into force on 19th January 2016.

Privy Council approval

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

(a) S.I. 2002/253. Article 9(2) was amended by S.I. 2014/1887, article 2(1), Schedule 1, Part 7, paragraphs 23 and 24 and by S.I. 2015/806, articles 32 and 34(1) and (2). Article 28A was inserted by S.I. 2015/806, article 38.
(b) Article 48 was amended by S.I. 2008/1485, article 2(1), Schedule 1, paragraph 7.

SCHEDULE

Article 2

The Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No. 2) Rules 2015

The Nursing and Midwifery Council makes the following Rules in exercise of the powers conferred under articles 7(1) and (2), 9(2), 26(3), 28A, 32(1) and (2), 37(4) and 47(2) of the Nursing and Midwifery Order 2001, having consulted in accordance with article 47(3) of that Order.

PART 1

Preliminaries

Citation and commencement

1. These Rules may be cited as the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No. 2) Rules 2015 and come into force on 19th January 2016.

PART 2

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

2. The Nursing and Midwifery Council (Fitness to Practise) Rules 2004(a) are amended as follows.

3. In rule 6B (investigation of Fitness to Practise allegations)(b), after paragraph (3) insert—

“(3A) Paragraphs (3B) to (3E) apply in the case of an allegation that the registrant’s fitness to practise is impaired by reason of not having the necessary knowledge of English.

(3B) The Registrar may direct the registrant to, within such period as the Registrar may specify in a notification referred to in paragraph (3D),—

- (a) undertake an examination or other assessment as specified in that notification; and
- (b) provide the Registrar with evidence of the result of that examination or other assessment in the form required by paragraph (3C).

(3C) The registrant must provide the evidence referred to in paragraph (3B)(b) in the form of a certificate or other document signed by an officer of the body providing that examination or other assessment.

(3D) Where the Registrar makes a direction pursuant to paragraph (3B), the Registrar must notify the registrant, in writing, of the direction and the notice must also inform the registrant of—

- (a) the name of the examination or other assessment that the registrant is directed to undertake;

(a) These rules are set out in the Schedule to S.I. 2004/1761.

(b) Rule 6B 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.

(b) the evidence to be provided in accordance with paragraph (3C); and

(c) the provisions of rule 31(6A).

(3E) The Registrar must provide the Case Examiners with the evidence provided by the registrant pursuant to paragraph (3C).”.

4. In rule 6D(1)(c) (consideration of fitness to practise allegations by the Investigating Committee)(a) for “rule 2A(4), 6B(1), (2) or (3)” substitute “rule 2A(4), 6B(1), (2), (3) or (3B)”.

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

(a) at the end of paragraph (4)(a) omit “ and”;

(b) in paragraph (4)(b) for “Council.” substitute “Council; and”;

(c) after paragraph (4)(b) add—

“(c) in the case of an allegation that the registrant’s fitness to practise is impaired by reason of not having the necessary knowledge of English, the Conduct and Competence Committee may direct the registrant to, within such period as it may specify in the notification referred to in paragraph (4A),—

(i) undertake an examination or other assessment of the registrant’s knowledge of English as specified in the notification referred to in paragraph (4A), and

(ii) provide the Conduct and Competence Committee with evidence of the result of that examination or other assessment in the form required by rule 6B(3C).”;

and

(d) after paragraph (4) insert—

“(4A) Where the Conduct and Competence Committee makes a direction pursuant to paragraph (4)(c), the Committee must notify the registrant of the direction and the notice must also inform the registrant of the matters set out in rule 6B(3D).”.

6. In rule 18 (preliminary meetings)—

(a) at the end of paragraph (5)(h) omit “and”;

(b) in paragraph (5)(i) for “held.” substitute “held; and”;

(c) after paragraph (5)(i) insert—

“(j) a direction that the registrant, within such period as the Chair may specify in the written confirmation referred to in paragraph (8),—

(i) undertake an examination or other assessment of the registrant’s knowledge of English as specified in the written confirmation referred to in paragraph (8), and

(ii) provide the Conduct and Competence Committee with evidence of the result of that examination or other assessment in the form required by rule 6B(3C).”;

(d) for paragraph (8) substitute—

“(8) The Chair of the preliminary meeting must—

(a) keep a record of the directions given;

(b) send written confirmation of such directions to the parties promptly; and

(c) where a direction is made pursuant to paragraph (5)(j), inform the registrant of the matters set out in rule 6B(3D).”.

7. After rule 25 (order of proceedings at a review or restoration hearing) insert—

(a) 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.

(b) Rule 9 was amended by rule 9 of the Nursing and Midwifery Committee (Fitness to Practise) (Amendment) Rules 2011 which are set out as a Schedule to S.I. 2012/17.

“Investigations prior to a review hearing

25A.—(1) This rule applies where a registrant’s fitness to practise has been found to be impaired by reason of not having the necessary knowledge of English.

(2) Prior to the opening of a review hearing, the Registrar may direct the registrant to, within such period as the Registrar may specify in the notification referred to in paragraph (3),—

- (a) undertake an examination or other assessment as specified in the notification referred to in paragraph (3); and
- (b) provide the Registrar with evidence of the result of that examination or other assessment in the form required by rule 6B(3C).

(3) Where the Registrar makes a direction pursuant to paragraph (2), the Registrar must notify the registrant of the direction and the notice must also inform the registrant of the matters set out in rule 6B(3D).

(4) The Registrar must provide the Conduct and Competence Committee with the evidence provided by the registrant in compliance with a direction made under paragraph (2).”.

8. In rule 31 (evidence)(a)—

(a) after paragraph (4) insert—

“(4A) Where under these Rules the registrant is directed by the Registrar or the Conduct and Competence Committee to undertake an examination or other assessment of the registrant’s knowledge of English, a certificate or other document stating the result achieved by the registrant in that examination or other assessment that is signed by an officer of the body providing the examination or other assessment shall be conclusive proof of the result achieved by the registrant in that examination or other assessment.”; and

(b) after paragraph (6) insert—

“(6A) In determining whether a registrant’s fitness to practise is impaired by reason of not having the necessary knowledge of English, the Conduct and Competence Committee may draw such inferences as seem appropriate to it if a registrant fails to undertake an examination or other assessment or to provide evidence of the result of that examination or other assessment in accordance with a direction made pursuant to these Rules.”.

PART 3

Amendment of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004

9. The Nursing and Midwifery (Education, Registration and Registration Appeals) Rules 2004**(b)** are amended as follows.

10. In rule 5 (application for admission to a part of the register)**(c)** after paragraph (2)(aa) insert—

“(ab) evidence that the applicant has the necessary knowledge of English for the purpose of complying with article 9(2)(ba) of the Order**(d)**;”

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- (a) Rule 31 was amended by S.I. 2009/1182, article 4(1), Schedule 4, Part 2, paragraph 22, by section 81(5) of the Policing and Crime Act 2009 (c. 26) and by article 34 of S.I. 2012/3006.
 - (b) These Rules are set out as a Schedule to S.I. 2004/1767.
 - (c) Rule 5 was amended by regulation 177(5) of S.I. 2007/3101 and by S.I. 2014/1887, article 2(1), Schedule 1, Part 7, paragraphs 30 and 31.
 - (d) Article 9(2) was amended by S.I. 2014/1887, article 2(1), Schedule 1, Part 7, paragraphs 23 and 24 and by S.I. 2015/806, articles 32 and 34(1) and (2).

11. Omit rule 9 (knowledge of English)(a).

12. In rule 15 (readmission to the register)(b)—

- (a) in paragraph (2) before “and (b)” insert “, (ab)”;
- (b) at the end of paragraph (4)(b) omit “and”;
- (c) in paragraph (4)(c) for “6(6).” substitute “6(6); and”;
- (d) after paragraph (4)(c) insert—

“(d) that the applicant has the necessary knowledge of English for the purposes of article 9(2)(ba) of the Order.”.

13. In rule 20 (period during which an appeal may be made)(c), in paragraph (a) for “sub-paragraph (a), (aa), (b) or (c)” substitute “sub-paragraph (za), (zb), (a), (aa), (b) or (c)”.

14. In rule 21 (notice of appeal)(d) in paragraph (2)(a)(iii) for “article 37(1)(a), (aa), (b) or (c)” substitute “article 37(1)(za), (zb), (a), (aa), (b) or (c)”.

Given under the common seal of the Nursing and Midwifery Council this 28th day of October 2015



Professor Dame Janet Finch
Chair
Jackie Smith
Chief Executive and Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

This Order approves 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 this Order. These Rules amend the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (S.I. 2004/1761) (“the Fitness to Practise Rules”) and the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 (S.I. 2004/1767) (“the Registration Rules”).

Part II of the Schedule amends the Fitness to Practise Rules.

Rule 3 amends rule 6B of the Fitness to Practise Rules to enable the Registrar to require a registrant to undertake an English language examination or assessment, and to provide evidence of the result of that examination or assessment to the Registrar in the required form. It also provides for the procedure to be followed by the Registrar when directing the registrant to undertake such an examination or assessment.

Rules 5 and 6 make similar amendments to rules 9 and 18 of the Fitness to Practise Rules enabling the Conduct and Competence Committee and the Chair of a preliminary meeting respectively to

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- (a) Rule 9 was amended by regulation 177(8) of S.I. 2007/3101.
 - (b) Rule 15 was amended by regulation 177(9) of S.I. 2007/3101, by rule 4 of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) (Amendment) Rules 2012 which are set out as a Schedule to S.I. 2012/2754 and by S.I. 2014/1887, article 2(1), Schedule 1, Part 7, paragraphs 30 and 33.
 - (c) Rule 20 was amended by regulation 177(10) of S.I. 2007/3101.
 - (d) Rule 21 was amended by regulation 177(11) of S.I. 2007/3101.

direct a registrant to undertake an examination or other assessment of the registrant's knowledge of English.

Rule 4 amends rule 6D(1) of the Fitness to Practise Rules to include within the information that the Investigating Committee must consider, any results of a registrant's knowledge of English examination or assessment.

Rule 7 inserts rule 25A to the Fitness to Practise Rules enabling the Registrar, prior to a review hearing, to require a registrant, whose fitness to practise was found to be impaired by reason of not having the necessary knowledge of English, to undertake an English language examination or assessment, and to provide evidence of the result of that examination or other assessment to the Registrar in the required form. It also specifies the procedure that the Registrar must follow when directing the registrant to undertake such an examination or assessment.

Rule 8 inserts paragraph (4A) to rule 31 of the Fitness to Practise Rules to provide that a document stating the results of a registrant's English language examination or assessment, that is signed by an officer of the awarding body shall be conclusive proof of those results. Rule 8 also inserts paragraph (6A) into rule 31 to provide that the Conduct and Competence Committee may draw such inferences as it deems appropriate if a registrant refuses to undertake or provide the results of an English language examination or assessment.

Part III of the Schedule amends the Registration Rules.

Rule 10 amends rule 5 of the Registration Rules to require an applicant for admission to the register to provide evidence that the applicant has the necessary knowledge of English.

Rule 11 removes rule 9 of the Registration Rules, which permitted the Registrar to require an applicant who was not an exempt person to provide evidence that they had sufficient knowledge of English to allow them to practise safely and competently as a nurse or midwife. This is now a requirement under article 9(2) of the Nursing and Midwifery Order 2001 (S.I. 2002/253) ("the Order").

Rule 12 amends rule 15(4) of the Registration Rules to enable the Registrar, when considering an application for readmission, to consider information about the registrant's fitness to practise for the purposes of determining whether the applicant has the necessary knowledge of English.

Rule 13 amends rule 20 of the Registration Rules to provide that appeals to the Council against the Registrar's decision taken under article 37(1)(za) or (zb) of the Order must be made within 28 days of the date of that decision. Rule 14 makes consequential amendments to rule 21 of the Registration Rules which provides for the procedure to be followed when making such an appeal.

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