

## Interim order review meetings

### Information about the legal framework

#### Introduction

1. On 6 February 2012, the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (SI 2004/1761) were amended<sup>1</sup>. As a result of these amendments, there is no need to give the registrant the opportunity attend a hearing where it is proposed that the interim order will be confirmed or revoked.
2. Before the rules were amended, there was a full public consultation. The representative bodies supported the implementation of interim order review meetings. The proposed rules were also subject to intense scrutiny by CHRE and the Department of Health.

#### The order

3. Article 31 of the Nursing and Midwifery Order 2001 (SI 2002/253) sets out the NMC's statutory powers relating to interim orders.
4. Article 31(6) of the Nursing and Midwifery Order (NMO) 2001 provides that:

*The Committee which made the order or, if the matter has been referred to another Practice Committee, that Committee, shall, in a case coming within paragraph (1)(a), review an order made under paragraph (2)—*

*(a) within the period of six months beginning on the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it before the end of the period of three months beginning on the date of the decision of the immediately preceding review;*

*(b) where new evidence relevant to the order has become available after the making of the order.*

5. On a review, Article 31(7) provides that:

*Where an interim suspension order or an interim conditions of practice order has been made under this article (including this paragraph) the Practice Committee which made the order or, where the case has been referred to another Practice Committee, that Committee, may, subject to paragraph (15)—*

*(a) revoke the order or revoke any condition imposed by the order;*

*(b) confirm the order;*

*(c) vary any condition imposed by the order;*

---

<sup>1</sup> The Nursing and Midwifery Council (Fitness to Practise and Education, Registration and Registration Appeals) (Amendment) Rules Order of Council 2011 SI 2012/17

*(d) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim conditions of practice order with an interim suspension order having effect for the remainder of the term of the former;*

*(e) if satisfied that the public interest, including the protection of members of the public, or the interests of the person concerned would be adequately served by an interim conditions of practice order, replace an interim suspension order with an interim conditions of practice order having effect for the remainder of the term of the former.*

6. Article 31(15) provides that a practice committee may not make an interim order, vary any condition imposed by it, or replace an interim conditions of practice order with an interim suspension order (and *vice versa*) without giving the person concerned an opportunity of being heard.
7. This requirement does not apply where the practice committee revokes or confirms the order.

### **The rules prior to 6 February 2012**

8. Before amendment of the rules, rule 8 required that the registrant be given an opportunity to attend all interim order reviews, not only those where an order might be made, varied or replaced with another. This went beyond the requirements of Article 31(15).

### **The amended rules**

9. This anomaly has been corrected in the revised rule 8. It has removed the requirement that a person be given an opportunity to be heard before an interim order can be revoked or confirmed (amendment rule 8(b)), and it has also removed the requirement for all interim order reviews to follow the procedures for hearings set out in Part V of the FTP Rules 2004 (amendment rule 8(c)).
10. This means that a practice committee does not have to hold a hearing to confirm or revoke an interim order. However, the obligation to review the order still rests with the practice committee.
11. Accordingly, in cases where no interim order hearing is to be held because it is proposed to confirm or revoke the order, the panel of the practice committee will need to review the order at an administrative meeting. Practice committees hold administrative meetings when making other decisions, for example, when deciding whether a case should be determined at a substantive hearing or a meeting.
12. It should be noted that interim order meetings are not covered by rules 10(3) and 11A of the amended rules, as these apply to substantive meetings, substantive order review meetings, and restoration meetings.

### **Notice and procedure**

13. As noted, under rule 8 there is no requirement to serve formal notice of an interim order review meeting.

14. The procedure adopted to ensure fairness to the registrant is as follows:

- a. Approximately six weeks before the interim order review is required, the NMC officer will conduct an assessment to determine whether the interim order is suitable to be reviewed at a meeting.
- b. A decision that the interim order is suitable to be reviewed at a meeting will not be made where:
  - i. There has been a material change of circumstance since the interim order was made/last reviewed
  - ii. The order is an interim conditions of practice order, and the conditions require the registrant to provide evidence of compliance to the panel.
- c. A letter is then sent to the registrant explaining that the case has been assessed as suitable for an interim order review meeting, and inviting her to indicate within 7 days whether she wants the interim order to be reviewed at a hearing. If the registrant does not respond, the interim order will be reviewed at a meeting.
- d. If the registrant requests a hearing, a hearing will be arranged.

15. At this stage, it is envisaged that the only cases that will be reviewed at interim order meetings are those where the panel will confirm the order.

16. As the review takes place at an administrative meeting, there is no need for a legal assessor or shorthand writer to be present.