STATUTORY INSTRUMENTS

1969 No. 1440

NURSES AND MIDWIVES

The Midwives (Disciplinary Committee) Rules Approval Instrument 1969

Made - - - 6th October 1969

Whereas the Central Midwives Board have, in pursuance of their powers under section 4 of the Midwives Act 1951(a), made rules amending the Midwives Rules 1955 to 1962(b) and the said rules are set out in the Schedule to this instrument;

And whereas the Executive Committee of the General Medical Council have not made any representations with respect to the said rules;

Now, therefore, the Secretary of State for Social Services, in exercise of his powers under section 30 of the Midwives Act 1951, and of all other powers enabling him in that behalf, hereby approves the said rules.

This instrument may be cited as the Midwives (Disciplinary Committee) Rules Approval Instrument 1969.

SCHEDULE

The Central Midwives Board, in exercise of the powers conferred on them by Sections 3 and 4 of the Midwives Act 1951, hereby make the following Rules:—

1. These Rules may be cited as the Midwives (Disciplinary Committee) Rules 1969 and shall come into operation on 1st November 1969.

2.—(1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:—

"the Act" means the Midwives Act 1951 and any statutory modification or amendment thereof in force from time to time and any statute or statutes substituted therefor, and references in these Rules to particular provisions of the Act shall be read as including references to those provisions as modified or amended from time to time and to any other statutory provisions substituted therefor.

"the Board" means the Central Midwives Board established by the Act.

"the Committee" means the Disciplinary Committee.

"local supervising authority" has the same meaning as in the Act.

"the Roll" means the roll of certified midwives kept by the Board in pursuance of the Act.

"Midwife" means a woman whose name is on the Roll.

"Secretary" means the Secretary of the Board.

(a) 1951 c. 53.
(b) S.I. 1955/120, 1959/162, 1960/1105, 1961/810, 1962/766 (1955 I, p. 1145; 1959 II, p. 1974; 1960 II, p. 2626; 1961 I, p. 1603; 1962 I, p. 764).

(2) The Interpretation Act 1889(a) applies to the interpretation of these Rules, as it applies to the interpretation of an Act of Parliament.

3. The Midwives Rules 1955(b) Section D. are hereby revoked and Section 38 of the Interpretation Act 1889 shall apply to this revocation as it applies to an Act of Parliament.

RULES REGULATING THE PROCEEDINGS OF THE BOARD ON COMPLAINTS MADE TO THE BOARD RELATING TO THE CONDUCT OF A MIDWIFE AND ON THE RESTORATION TO THE ROLL OF A NAME REMOVED.

4. There shall be the following Committees of the Board :—

(1) A Disciplinary Committee consisting (subject to the provisions of Rule 13(*a*) hereof) of the whole Board.

(2) A penal cases committee consisting of six members of the Board.

The penal cases committee shall be appointed annually at the first ordinary meeting of the Board in the month of April and shall hold office until their successors are appointed.

5.—(1) The Chairman of the Board shall be Chairman of the Committee.

(2) The Chairman of the penal cases committee shall be elected annually by the said committee and shall hold office until his successor is appointed.

(3) The quorum for a meeting of the Committee shall be four.

(4) The quorum for a meeting of the penal cases committee shall be three.

Procedure on complaints made to the Board relating to the conduct of a Midwife :—

6. When it is alleged to the Board that a midwife has disobeyed any of the Rules from time to time laid down under the Act by the Board or has otherwise been guilty of misconduct:—

(*a*) the Board shall, when such allegation is made by a person other than a local supervising authority, notify any local supervising authority which appears to be concerned; and

(*b*) if the case is one which the local supervising authority is required to investigate under section 17(1)(*b*) of the Act the Board shall refer it to that authority for investigation in accordance with the provisions of that section.

Such alleged disobedience or misconduct is hereinafter referred to as "the alleged offence".

7.—(*a*) The Secretary shall so soon as reasonably practicable lay before the Chairman of the penal cases committee all information in his possession relating to the alleged offence including any report of the local supervising authority which he may have received.

(*b*) The Chairman of the penal cases committee may, if he thinks fit, direct investigations to be made by the Secretary or by a Solicitor or by any other person and may inquire of the midwife what explanation she has to offer. If the Chairman of the penal cases committee so directs the results of any such investigation or inquiry shall be communicated to any local supervising authority concerned.

(a) 1889 c. 63.
(b) S.I. 1955/120 (1955 I, p. 1145) as amended by Schedules to S.I. 1960/1105, 1962/766 (1960 II, p. 2626; 1962 I, p. 764).

(*c*) The Secretary shall so soon as reasonably practicable lay before the penal cases committee the information referred to in paragraph (*a*) hereof and the results of any such investigation or inquiry as is referred to in paragraph (*b*) hereof.

(*d*) After consideration of the information referred to in paragraph (*a*) hereof and of the results of any such investigation or inquiry as is referred to in paragraph (*b*) hereof the penal cases committee shall decide whether the case is one in which the midwife shall be cited to appear before the Committee.

(*e*) In making such decision the penal cases committee may take into consideration matter which would not be admissible as evidence at the hearing before the Committee, but they may, if they think fit, decline to take into consideration matter not verified by statutory declaration.

(*f*) If the penal cases committee decides that proceedings shall not be commenced the case shall not proceed further.

(*g*) When it has been decided that proceedings shall not be commenced the Secretary shall notify the fact to the midwife and to any local supervising authority concerned and to any other person who has complained.

(*h*) If the Chairman of the penal cases committee is not available the duties imposed upon him under this Rule shall be performed by another member of the penal cases committee.

8.—(*a*) If the penal cases committee decides that proceedings shall be commenced in a case in which the alleged offence has been brought to the notice of the Board by some person or persons (hereinafter referred to as "the Complainant Person") other than a local supervising authority, the Secretary shall forthwith send to such Complainant Person a notice informing him that he may undertake the conduct of the case in accordance with the Rules and asking him whether he wishes to undertake the conduct of the case.

(*b*) If within 14 days after receipt of the notice referred to in paragraph (*a*) hereof or such further time as the penal cases committee may allow the Complainant Person gives written notice to the Secretary that he wishes so to do he shall undertake the conduct of the case.

(*c*) If the said Complainant Person referred to in paragraph (*a*) hereof does not give the written notice referred to in paragraph (*b*) hereof and the case is not one in which the local supervising authority has made a report pursuant to paragraph (*a*) of rule 7 of this section of the Rules the conduct of the case shall be undertaken by the Secretary or by such other person as the penal cases committee may direct.

(*d*) If the penal cases committee decides that proceedings shall be commenced in a case where:

(i) the alleged offence has been brought to the notice of the Board by a local supervising authority; or

(ii) a local supervising authority has made a report pursuant to paragraph (*a*) of rule 7 of this section of the Rules and the Complainant Person has not notified the Secretary of his wish to undertake the conduct of the case as provided by paragraph (*b*) hereof.

the Secretary shall forthwith send to the local supervising authority a notice asking whether the local supervising authority wishes to undertake the conduct of the case.

(*e*) If within 14 days after receipt of the notice referred to in paragraph (*d*) hereof or such further time as the penal cases committee may allow the local supervising authority gives written notice to the Secretary that it wishes so to do it shall undertake the conduct of the case.

(*f*) If the said local supervising authority referred to in paragraph (*e*) hereof does not give the written notice referred to in the said paragraph the conduct of the case shall be undertaken by the Secretary or by such other person as the penal cases committee may direct.

(*g*) Provided always that if a Complainant Person, having given notice as aforesaid of his wish to undertake the conduct of the case, shall subsequently at any stage in the proceedings decline to continue the conduct of the case the penal cases committee may either:

(i) in a case where the local supervising authority has made a report invite the said local supervising authority to undertake the continued conduct of the case and in the event of the local supervising authority's acceptance of such invitation the conduct of the case shall be continued by the local supervising authority as though the said Complainant Person has not originally undertaken the conduct thereof; or

(ii) direct that the Secretary or such other person as the penal cases committee may appoint shall conduct the case and in that event the conduct of the case shall be continued by the Secretary or by such other person as though the said Complainant Person had not originally undertaken the conduct thereof.

(*h*) Provided always also that if a local supervising authority, having given notice of its wish to undertake the conduct of the case or having accepted the invitation referred to in paragraph (*g*), sub-paragraph (*i*) hereof, shall subsequently at any stage in the proceedings decline to continue the conduct of the case the penal cases committee may direct that the Secretary or such other person as the penal cases committee may appoint shall conduct the case and in that event the conduct of the case shall be continued by the Secretary or by such other person as though the said local supervising authority had not originally undertaken the conduct thereof.

(*i*) The local supervising authority or person for the time being undertaking the conduct of the case is hereinafter referred to as the Complainant.

9.—(*a*) The Complainant shall forthwith furnish the Board with a statement specifying the nature and particulars of the alleged offence (hereinafter called "the charge") and shall send to the Board copies of any statutory declaration, any certificate of conviction or other documentary evidence intended to be tendered as evidence in the proceedings.

(*b*) The charge shall be prepared in a form suitable to be sent to the midwife, and so far as possible, in accordance with the directions and in the form contained in the Schedule to these Rules.

10.—(*a*) So soon as practicable the Board shall send to the midwife a notice which shall contain the following particulars:—

(i) It shall state the date (which shall be not less than 28 days from the date of despatch of the said notice) on which the Committee intends to hear the case and require her to attend before the Committee on such date.

(ii) It shall require her to send to the Secretary not less than 10 days before the day appointed for hearing the case her Certificate and such other documents kept or used by her in the course of her duties as may be specified in the notice.

(iii) It shall invite her to send to the Secretary not less than 10 days before the day appointed for hearing the case an answer in writing to the charge brought against her, together with a copy of any

statutory declaration or other documentary evidence which she intends to use in support of her answer.

(*b*) A copy of these Rules shall be enclosed with the notice, which shall call specific attention to Rules 14(*b*) and 15(*e*).

(*c*) There shall also be enclosed with the said notice a copy of the charge furnished under the last preceding Rule.

(*d*) There shall also be enclosed with the said notice copies of any statutory declaration, and certificate of conviction or other documentary evidence on which the Complainant intends to rely.

11. Immediately upon receipt of any written answer from the midwife to the charge the Secretary shall send to the Complainant a copy of such answer togther with copies of any statutory declaration or other documentary evidence on which the midwife intends to rely.

12. Where such answer makes an allegation against any local supervising authority such authority, if not the Complainant, shall be informed of the nature of the allegation and shali be given the name of the Complainant.

13.—(*a*) The case shall be heard by the Committee provided that there shall be disqualified for membership of the Committee any member who was a member of the penal cases committee which reached a decision upon the case.

The Committee shall sit in public provided that, where in the interests of justice the Committee considers that the public should be excluded from proceedings or any part thereof, it may direct that the public be so excluded ; but a direction under this paragraph shall not apply to the announcement in pursuance of any of these Rules of a determination of the Committee.

(*b*) The Secretary shall give to each member of the Committee and to the Complainant at least 4 days' notice in writing of the date, time and place of the hearing of the case by the Committee and the notice shall be accompanied by a copy of the charge and a copy of the midwife's answer if any.

14.—(*a*) The Complainant shall be represented at the hearing by a barrister or solicitor.

(*b*) The midwife may be represented or assisted at the hearing by a friend or adviser who may be a barrister or solicitor.

Procedure at the hearing of the case

15.—(*a*) The representative of the Complainant shall read the charge against the midwife and the Chairman shall ask the midwife concerning each fact alleged in the charge whether she admits it.

The representative of the Complainant shall then summarise the facts of the case and if the midwife does not appear, or has not admitted all the facts alleged in the charge shall adduce evidence of the facts not admitted.

(*b*) The midwife or her friend or adviser shall be entitled to cross-examine any witness called against her, which expression includes any person whose statutory declaration or other document is used as evidence against her and who is present at the hearing. Any person who is cross-examined as aforesaid may be re-examined by the representative of the Complainant.

(*c*) At the close of the case against her the midwife or her friend or adviser may make either or both of the following submissions, namely:

(i) that no sufficient evidence has been adduced upon which the Com-

mittee could find that the facts alleged in the charge have been proved.

(ii) that the facts alleged in the charge do not amount to disobedience of the Rules or misconduct;

and where such a submission is made the representative of the Complainant may reply thereto.

(*d*) If a submission is made under the last foregoing paragraph the Committee shall consider and determine whether it should be upheld; and if the Committee determines to uphold it it shall record and the Chairman shall announce its findings that, in relation to the matters to which the charge relates, the midwife is not guilty of disobedience or, as the case may be, of misconduct.

(*e*) The midwife or her friend or adviser may adduce evidence in answer to the charge and, whether such evidence is adduced or not, she or her friend or adviser may address the Committee.

(*f*) The representative of the Complainant shall be entitled to cross-examine any witness called for the midwife, which expression includes the midwife (if she gives evidence) and any person whose statutory declaration or other document is used as evidence by the midwife and who is present at the hearing. Any person who is cross-examined may be re-examined by the midwife or by her friend or adviser.

(*g*) With the leave of the Committee the representative of the Complainant may adduce evidence in rebuttal of any evidence given by or on behalf of the midwife. Provided that if such evidence in rebuttal is adduced by the representative of the Complainant the midwife or her friend or adviser shall be entitled further to address the Committee limited to the rebutting evidence.

(*h*) All evidence, whether for the Complainant or for the midwife, shall be given either orally or by a statutory declaration or by other documentary evidence of which advance notice has been given—

Provided that:

(i) where the midwife has been informed pursuant to Rule 10 paragraph (*d*) hereof or the Complainant has been informed pursuant to Rule 11 hereof that the other party intends to adduce evidence in the form of a statutory declaration or other document the party against whom such statutory declaration or other document is sought to be used may give to the other party and to the Secretary at least fourteen days before the day appointed for the hearing of the case written notice that he requires to cross-examine the declarant or the person who has compiled the other document at such hearing; and

(ii) if after giving of such written notice as is referred to in subparagraph (i) hereof such declarant or person who has compiled the other document is not available to be cross-examined at the hearing his statutory declaration or other document shall not be admissible in evidence unless such declarant or person who has compiled the other document is dead or is not reasonably available and the Committee are satisfied that it is desirable in the interests of justice that such statutory declaration or other document should be admitted in evidence.

(*i*) If there is adduced on behalf of the midwife evidence other than that of the midwife herself and other than evidence as to the character of the midwife the representative of the Complainant shall be entitled to address the Committee by way of a reply to the midwife's case.

At the conclusion of the address of the representative of the Complainant, the midwife, or her friend or adviser, may address the Committee by way of a final reply.

(*j*) The Committee or the representative of the Complainant or the midwife by herself or by her friend or adviser may, as part of the case, refer to any relevant matter contained in the midwife's register of cases or any other record kept by the midwife in the course of her duties.

(*k*) The witnesses called at the hearing of the case shall, if the Committee thinks fit, give evidence on oath or affirmation.

(*l*) The Committee shall have power to administer oaths to or to take the affirmation of the witnesses called at the hearing of the case.

(*m*) The Complainant or the midwife may sue out a writ of subpoena ad testificandum or of subpoena duces tecum but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

(*n*) The Committee may adjourn the hearing of the case from time to time as it may think fit, but at any adjournment (without prejudice to the power of the Committee then to adjourn the hearing of the case further) the hearing of the case shall not (without the consent of the parties) proceed unless there are present at least four members of the Committee who were present at the original hearing and no member of the Committee who was not present at the original hearing shall (without the consent of the parties) take part in any adjourned hearing of the case.

16. If the midwife does not attend either personally or by a friend or adviser the Committee may proceed to hear and decide upon the charge in her absence provided that upon a satisfactory explanation of her non-attendance being subsequently given the Committee may, if it thinks fit, reopen her case.

17. If a Complainant fails to comply with any of the Rules or fails in the opinion of the Committee to conduct the case with due diligence the Committee may direct that the same shall be conducted by the Secretary or such other person as the Committee may direct, or if it thinks fit, it may summarily dismiss the charge.

18.—(*a*) On the conclusion of proceedings, the Committee shall consider and determine in respect of each charge which remains outstanding whether the facts alleged therein have been proved to its satisfaction.

(*b*) If the Committee determines in relation to any charge either that none of the facts alleged in the charge has been proved to its satisfaction or that such facts as have been so proved would be insufficient to support a finding of disobedience to the Rules or misconduct as the case may be, the Committee shall record a finding that the midwife is not guilty of disobedience to the Rules or misconduct as the case may be in respect of the matters to which the charge relates and the Chairman shall announce the finding of the Committee.

(*c*) If the Committee determines in relation to any charge that such of the facts as have been proved to its satisfaction constitute disobedience to the Rules or misconduct:—

(i) the Committee may require the Secretary to report whether the midwife has previously been censured, cautioned, suspended, or had her name removed from the Roll or has been otherwise dealt with by the Committee;

(ii) the Committee may require any local supervising authority who

may be in a position to provide information to report upon the conduct of the midwife before the date of such determination ; and

(iii) the Chairman shall invite the midwife by herself or by her friend or adviser to address the Committee by way of mitigation.

(*d*) The Committee shall then consider and decide whether to postpone its finding upon the charge proved as aforesaid and if it decides so to do its finding shall stand postponed for such period, not exceeding six months, as the Committee may decide ; and the Chairman shall announce the decision of the Committee.

(*e*) The Committee may postpone its finding from time to time provided that no such postponement shall be for a period exceeding six months.

19. If the Committee decides not to postpone its finding it may censure or caution the midwife or direct that her name be removed from the Roll and her Certificate cancelled, either with or without prohibiting her from attending women in childbirth in any other capacity, or may suspend her from practice as a midwife for such period as it thinks fit.

20. If the Committee decides to postpone its finding the following shall be the procedure :—

(*a*) Not later than six weeks before the date fixed for the resumption of the proceedings the Secretary shall send to the midwife a notice which shall :

(i) specify the date, time and place of the resumed proceedings and invite her to attend ;

(ii) unless the Committee otherwise directs, invite the midwife to furnish the Secretary with the names and addresses of persons of standing from whom the Committee would be able to seek information in confidence as to the character or habits or conduct of the midwife since the date of the postponement of the Committee's finding ; and

(iii) invite the midwife to send to the Secretary any statement or statutory declaration, whether made by the midwife or by some other person, concerning the conduct of the midwife since the postponement or concerning any material facts which have arisen since such postponement.

(*b*) A copy of the notice and of any statement or statutory declaration sent in accordance with the provisions of paragraph (*a*), sub-paragraph (iii) hereof, shall be sent to any Complainant who had conduct of the case at the time of the postponement of the finding and such Complainant may send to the Secretary a statement or statutory declaration, whether made by himself or by some other person, concerning any matters raised by the midwife.

(*c*) Subject to the provisions of the next following paragraph at the resumed meeting the Chairman of the Committee shall first invite the Secretary to recall, for the information of the Committee, the position in which the case stands, and :

(i) the Committee may hear representations by or on behalf of the midwife or the Complainant to whom a notice has been sent under paragraph (*b*) of this rule ;

(ii) the Committee may receive such further oral or documentary evidence in relation to the case or to the conduct of the midwife since the postponement as it thinks fit ; and

(iii) the Chairman shall invite the midwife by herself or by her friend or adviser to address the Committee by way of mitigation.

(*d*) If since the postponement a new charge has been preferred against the midwife the Committee shall first proceed with such charges in accordance with the foregoing rules.

(*e*) The Committee shall next consider and determine whether it should further postpone its finding and thereafter Rule 19 and this rule shall apply.

(*f*) The validity of any resumed proceedings shall not be called into question by reason only that members of the Committee who were present at the former meeting were not present at the resumed meeting or that members present at the resumed meeting were not present at the former meeting.

21. Notice in writing of the decision of the Committee shall be sent by the Board by post in a recorded delivery letter to the midwife and to all local supervising authorities concerned.

22. Any notice or document required by these Rules to be sent to the midwife shall be sent by post in a recorded delivery letter to the last known address or to the enrolled address of the midwife.

23. The Committee may excuse non-compliance with any of these Rules in any case in which injustice will not be caused by so doing, and shall do so when the interests of justice so require.

24. Subject to the provisions of these Rules the Committee may adjourn and otherwise regulate its proceedings in such manner as it thinks proper.

Procedure on Restoration to the Roll of a Name Removed Under the Foregoing Provisions

25. Application for the restoration of a name to the Roll shall be made in writing addressed to the Secretary and signed by the Applicant, stating the grounds on which application is made. The Applicant may annex to her application any evidence in her possession which she may consider would assist her application.

26. The application shall be considered in the first instance by the penal cases committee, which shall, when such evidence has been obtained concerning the application as the penal cases committee may deem necessary, refer it to the Committee for decision.

27.—(*a*) When considering any application the penal cases committee may require the applicant to furnish statements or reports from local supervising authorities or others which may assist the penal cases committee or the Committee in deciding upon the application, and may require any such reports or statements to be verified by statutory declaration. The penal cases committee may require further evidence from the midwife from time to time and shall not be bound to refer the application to the Committee unless and until it is satisfied that all relevant evidence which can reasonably be required and which should be considered by the Committee has been obtained.

(*b*) When considering such application the penal cases committee and the Committee may from time to time require the Applicant to furnish to the Secretary the names and addresses of persons from whom information might be sought as to the conduct and habits of the Applicant but neither the penal cases committee nor the Committee shall be obliged to disclose such information to the Applicant.

28. After consideration of all the circumstances of the case as submitted to them in accordance with the provisions of these Rules the Committee may if it thinks fit direct the Secretary to restore the name of the Applicant to the Roll and to issue a new Certificate to her on payment of such fee as may from time to time be determined by the Committee with the approval of the Secretary of State for Health and Social Security. The Committee may adjourn the application or require further supporting evidence or explanations from the Applicant. It may also require her to undergo a period of approved midwifery training before the restoration of her name to the Roll.

29. The Committee shall not reject the application without affording to the Applicant an opportunity to appear before the Committee and to address the Committee herself or by her friend or adviser.

SCHEDULE

Directions as to the Statement to be furnished under Rule 9

1. The Statement should specify whether the alleged offence charged is disobedience to a Rule of the Central Midwives Board or is other misconduct, and in the case of disobedience to a Rule the particular Rule alleged to have been disobeyed should be referred to.

2. Full particulars should be given of:—
   (*a*) the nature of the alleged offence charged;
   (*b*) the relevant dates;
   (c) the name and address of patient concerned, if any;
   (*d*) any other relevant matter.

3. The Statement should be as nearly as possible in the following form:—

IN THE MATTER of the Midwives Act 1951(a).
and
IN THE MATTER of A..... B.....
State Certified Midwife, No.....

The following charge is made by the
County / County Borough } Council of.....
being the Local Supervising Authority for the district of.....
(OR by the Secretary of the Central Midwives Board) against you A.....
B.....
State Certified Midwife, No.....viz.

(Here insert charge. Separate charges should be set out under separate counts.)

Signed:
Clerk of the { County / County Borough } { Council of..... }
(Or Secretary of the Central Midwives Board)

(a) 1951 c. 53.

Given under the seal of the Central Midwives Board.

Humphrey Arthure,
Chairman.

(L.S.)

R. J. Fenney,
Secretary.

26th September 1969.

R. H. S. Crossman,
Secretary of State for Social Services.

6th October 1969.

EXPLANATORY NOTE

(*This Note is not part of the Instrument.*)

The Rules approved by this instrument supersede section (D) of the Midwives Rules 1955 which laid down procedure for the exercise of the disciplinary functions of the Central Midwives Board to remove from and restore to the Roll of Midwives the name of a midwife.

The new rules contain a more elaborate code of procedure and in particular—

(*a*) institute a disciplinary committee (in place of the Board) to hear and decide cases;

(*b*) give to the penal cases committee (in place of the Board) the final decision to proceed against a midwife on complaint;

(*c*) require the disciplinary committee, with certain exceptions, to hear cases in public;

(*d*) empowers the disciplinary committee to postpone its findings on a case for successive periods not exceeding 6 months.