

EXPLANATORY MEMORANDUM

The Health Act 1999 (Consequential Amendments) (Nursing and Midwifery) Order of Council 2004

SI 2004 No 1771

This explanatory memorandum is laid before Parliament by Command of Her Majesty

The responsible Department is the Department of Health.

Description

1. This Instrument is an Order made by authority of the Secretary of State under section 63 of the Health Act 1999. It makes a number of amendments to primary and secondary legislation consequential on the implementation of the Nursing and Midwifery Order 2001 (S.I.2002 No.253) and the repeal of parts of the Nurses, Midwives and Health Visitors Act 1997. One of its principal effects is to reflect the changes in the structure of the register of nurses and midwives and to replace references in legislation to health visitors who will now be registered as specialist community public health nurses. The reasons are that a qualification in health visiting is awarded to someone who is already a registered nurse or midwife and there are other post-registration qualifications which have not led to identification for separate registration. Developments are taking place which mean that a broader, more flexible approach is needed in respect of persons who hold qualifications in related areas such as family nursing and school nursing who will also be eligible, along with health visitors, for registration as specialist community public health nurses.

Matters of special interest to the Joint Committee on Statutory Instruments

2. There are none.

Legislative background

3. Following an independent review of the regulation of the nursing and midwifery professions, the Nurses, Midwives and Health Visitors Act 1997 (which was a consolidation) was replaced by the Nursing and Midwifery Order 2001 ("the NM Order") which was made under section 60 of the Health Act 1999. The regulatory body, the United Kingdom Central Council for Nursing, Midwifery and Health Visiting, and its Boards were replaced by the Nursing and Midwifery Council ("NMC") which is a UK-wide body. The NMC was established in April 2002 by the NM Order.

4. This Instrument together with five sets of Rules and a number of Orders of Council made by the Privy Council implement the requirements of the NM Order.

The other instruments are the:

Nursing and Midwifery Council (Practice Committees) (Interim Constitution) Rules Order of Council 2003 (S.I. 2003/1738);

Nursing and Midwifery Council (Fees) Rules Order of Council 2004;

Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004;

Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004;

Nursing and Midwifery Council (Midwives) Rules Order of Council 2004;

Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004;

Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004;

European Nursing and Midwifery Qualifications Designation Order of Council 2004; and

Nursing and Midwifery Order 2001 (Transitional Provisions) Order of Council 2004 (this is not subject to Parliamentary procedure).

5. The Health Professions Order (S.I. 2002/254) which is in very similar terms to the NM Order was implemented in 2003 by a range of rules and Orders such as S.I. 2003/1572, 2003/1574 and 2003/1590.

Extent

6. This Instrument applies to all countries of the United Kingdom, as does the NM Order.

European Convention on Human Rights

7. This Instrument amends primary legislation. It is the Minister's view that it is compatible with Convention rights.

Policy Background

8. The policy background to the NM Order and to these related Instruments is to strengthen public protection by establishing a statutory regulatory framework which provides the regulator with a comprehensive range of powers, sanctions and procedures. This will enable the NMC to set standards of practice, training and

conduct together with requirements for good health and good character necessary for safe and effective practice as a nurse or midwife. Such requirements are to be met by all registrants who alone will be legally entitled to practise as registered nurses or midwives.

9. In setting up a modern, comprehensive regulatory framework the Government determined that reformed regulatory bodies should :

- Have as their main objective the need to safeguard the health and well-being of persons using the services of registrants.
- Be open and transparent in their procedures and requirements.
- Have fair, fast decision-making processes.

10. Before establishing the NMC the Government undertook two public consultations. The first, in August 2000, covered the Government's draft legislative proposals. It attracted over 550 responses. The proposed legislation was modified in the light of that consultation, and a draft section 60 Order under the Health Act 1999 was published for consultation in April 2001. This attracted 2300 responses, the majority of which supported the broad thrust of the legislation. The two consultations are summarised in the Department of Health's document "Establishing the new Nursing and Midwifery Council: Report on the consultation", published in February 2002. Copies are available in the Libraries of both Houses of Parliament.

11. In addition the NMC undertook its own consultation on various aspects of its regulatory system in 2003.

Impact

12. There are no identified costs either to the public or to the Exchequer arising from this Instrument.

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