

EXPLANATORY MEMORANDUM TO
THE NURSING AND MIDWIFERY COUNCIL (FITNESS TO PRACTISE)
(AMENDMENT) RULES 2011 ORDER OF COUNCIL 2012

2012 No. 17

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**
 - 2.1 The Order approves rules made by the Nursing and Midwifery Council (the “NMC”), which amend the Nursing and Midwifery Council (Fitness to Practise) Rules 2004.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None

4. **Legislative Context**
 - 4.1 The Nursing and Midwifery Order 2001 (SI 2002/253) empowers the NMC to make rules in relation to its fitness to practise procedures.
 - 4.2 The Rules scheduled to this Order make amendments in relation to the investigation of fitness to practise allegations referred to the NMC and the procedures for seeking and making interim orders.

5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The NMC's current fitness to practise rules were made in 2004. Since then the number of referrals to the NMC concerning the fitness to practise of nurses and midwives has grown from 1,460 (year ending March 2004) to 4,211 (year ending March 2011).
- 7.2 During the last year, the Council for Healthcare Regulatory Excellence and the House of Commons Health Committee have recognised that, in order to meet the challenges of the increasing demands placed on the NMC, some changes are needed to its legislation. The NMC has identified a number of procedural issues that can be addressed through amendments to its rules.
- 7.3 In particular, the Rule changes will
- remove an unnecessary step prior to consideration of an interim order by providing for the NMC's Council to serve notice of an interim order hearing after referral of an allegation by it to a Practice Committee, and will reflect new practice making greater use of the Council's powers, under the Nursing and Midwifery Order 2001, to require information from third parties for purposes of fitness to practise investigations (guidance is to be issued on this and other aspects of the revised fitness to practise procedures);
 - change the requirements for the particularisation of allegations so that these need not be particularised until the Health Committee or the Conduct and Competence Committee's notice of hearing or meeting to consider the allegation is sent: before that stage, in lieu of particularised allegations, the registrant will be sent the available documentation and information concerning the allegation (subject to the protection of personal data which may be considered necessary).
- 7.4 These Rule amendments will enable the NMC to improve the efficiency, timeliness and cost-effectiveness of its fitness to practise procedures. They will also enable the NMC, when necessary, to take action to protect patients and the public more quickly. The amendments will allow the most serious cases to be progressed and determined sooner, which is in the interests of all concerned. They will also benefit the many nurses and midwives about whom allegations are made in respect of which it is eventually decided that there is no case to answer.
- ***Consolidation***
- 7.5 The statutory instrument amends the Nursing and Midwifery Council (Fitness to Practise) Rules 2004. The NMC already publishes unofficial consolidated versions of their rules, incorporating earlier amendments, on its website (<http://www.nmc-uk.org/About-us/Governing-legislation-and-external-oversight/Legislation/>). In due course, these will be updated, to reflect the amendments.

8. Consultation outcome

- 8.1 Between August and October 2011, the NMC consulted on its proposals for legislation changes to improve the efficiency of its fitness to practise processes. During the early stages of the work, preliminary discussions were held with representatives of the relevant professional bodies and trades unions. The outcome of these discussions informed the development of the detailed proposals. The proposals were also informed by feedback collected from the NMC's fitness to practise panel members.
- 8.2 An online consultation survey was issued to a number of interested parties, including patient groups, professional bodies and unions, and employers, including directors of nursing and heads of midwifery, on 1 September 2011. It was also made available on the NMC's website. The consultation closed on 14 October 2011.
- 8.3 The NMC received 26 responses from organisations and 204 from individuals. The proposals were generally well supported and there were no major areas of disagreement. More detail is provided in the annex.
- 8.4 The report of the consultation, together with the consultation document is available on the NMC website (<http://www.nmc-uk.org/Get-involved/Consultations/Past-consultations/By-year/>).
- 8.5 The NMC also consulted on other proposals relating to voluntary removal which do not form part of this Order. They are currently considering these issues, and how to approach reforms of this nature in both legislation and guidance. .

9. Guidance

- 9.1 The NMC will be issuing comprehensive guidance notes about the new procedures being introduced by, and in relation to, these amendments. These will be published to coincide with the coming into force of these Rules.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal as it relates to the fitness to practise of individual registrants.
- 10.2 The impact on the public sector is minimal as it relates to the fitness to practise of individual registrants.
- 10.3 The NMC completed a full equality impact assessment in relation to these amendments. The assessment recognised that, as 89.5 per cent of the NMC's register is female, any changes to its fitness to practise procedures would have a

greater impact on that group. However, the assessment did not indicate a potential for any negative impact in this or any other equality areas.

- 10.4 The responses to the NMC's consultation, and the feedback received during some of the face to face consultation meetings, indicated that these Rules Amendments are likely to have a positive impact in relation to patients and members of the public (many of whom fall into one or more of the equality areas identified) in allowing the NMC, when appropriate, to seek an interim order to restrict a nurse or midwife's practice more quickly.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 The NMC will keep the rules being amended by this legislation under review.

13. Contact

Mike Lewis at the Department of Health (mike.lewis@dh.gsi.gov.uk) can answer any queries regarding the instrument.

CONSULTATION OUTCOME

1. The NMC received 26 responses from organisations and 204 from individuals. The proposals were generally well supported and there were no major areas of disagreement. The three bodies representing nurses and midwives (Royal College of Nursing, Royal College of Midwives, Unison) were broadly supportive of the proposals. The patient and public organisations who responded were generally supportive of the proposals relating to fitness to practise procedures and interim orders, in line with the overall response rates outlined in the consultation report.
2. Of the 10 proposals relating to the investigation of fitness to practise allegations, eight received support from 84 per cent or more of the respondents and four of these received support from 93 per cent or more of the respondents.
3. The proposal that the NMC should not be required to particularise the allegations in the notice of referral was supported by 66 per cent of the respondents, with 24 per cent disagreeing. The NMC will be addressing the concerns raised through its operational procedures by adopting a two-stage approach which was suggested by a number of respondents, including one of the professional bodies, and guidance will reflect this.
4. A proposal that the NMC remove reference to the name of its standards of conduct, performance and ethics, “the Code”, from the Rules, received the least support. Across all respondents, 61 per cent agreed, 22 percent disagreed and the remaining 17 per cent were not sure. Having considered the report of the consultation, and noted the strength of views expressed in the comments, the NMC decided not to proceed with this proposal.
5. The two proposals regarding the seeking and making of interim orders were well supported. There was 88 per cent agreement that the Council should be able to make a direct referral to a Practice Committee for an interim order and serve an interim order notice. There was 96 per cent agreement that it should be possible to make an interim order at a meeting, to protect the public during the appeal period following the making of a final order. (This is subject to the requirement imposed in the Nursing and Midwifery Order 2001 that registrants are given notice and an opportunity to make representations.)
6. The NMC also consulted on three proposals relating to voluntary removal of nurses and midwives from the register. The NMC is proposing to give effect to reforms in these arrangements, including via guidance and rule changes, in due course.