

EXPLANATORY MEMORANDUM TO
THE NURSING AND MIDWIFERY COUNCIL
(EDUCATION, REGISTRATION AND REGISTRATION APPEALS) (AMENDMENT)
RULES ORDER OF COUNCIL 2012

2012 No. 2754

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 (Education, Registration and Registration Appeals) Rules 2004 (SI 2004/1767).
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 registration procedures.
 - 4.2 The Rules scheduled to this Order make amendments in respect of voluntary removal from the register maintained by the NMC and readmission to the register following such removal.
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 Between August and October 2011, the NMC consulted on its proposals for legislation changes to improve the efficiency of its fitness to practise processes. As a result of this consultation exercise changes in relation to, amongst other matters, the investigation of fitness to practise allegations referred to the NMC and the procedures for seeking and making interim orders were made through the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011 Order of Council (SI 2012/17).
- 7.2 Following feedback received from the Council for Healthcare Regulatory Excellence (the “CHRE”) the NMC decided not to proceed at that time with proposals to allow the Registrar of the NMC to permit, in certain circumstances, voluntary removal of a registrant’s name from the register when that registrant is subject to a fitness to practise allegation. It is these proposals which are the subject of this current set of amendment Rules.
- 7.3 In the intervening period the NMC has been working on the development of guidance on the exercise of voluntary removal powers. CHRE have provided comment on this process prior to the underpinning guidance being finalised.
- 7.4 These amendment Rules will:-
 - 7.4.1 Allow the Registrar of the NMC to permit the voluntary removal of a registrant’s name from the register when that registrant is the subject of a fitness to practise allegation in certain circumstances. Where the allegations are being considered at a fitness to practise hearing or meeting the Registrar may permit voluntary removal, taking account of the advice of the Practice Committee concerned. In all cases where use of these powers is considered the decision to permit voluntary removal must have regard to comments received from the maker of the allegation, if any, the interests of the nurse or midwife concerned, and the public interest.
 - 7.4.2 Provide that applications for readmission following voluntary removal will be considered by the Registrar having regard to any information giving rise to concerns about the fitness to practise of the nurse or midwife seeking readmission – whether those concerns arise from before or after the voluntary removal.
- 7.5 These amendment Rules will enable the NMC to improve the efficiency, timeliness and cost-effectiveness of its fitness to practise processes to enhance public protection. The NMC have also been careful to ensure that appropriate checks and balances have been built into their policy proposals to ensure public confidence in the regulatory system. Details of the decision making and assurance processes, which will be introduced operationally by the NMC to deliver the

changes made by these amendment Rules are described in Annex A to this Explanatory Memorandum

- ***Consolidation***

- 7.3 The statutory instrument amends the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004. The NMC has published an unofficial consolidated version of these Rules, incorporating earlier amendments, on its website. In due course, the NMC will be updating the document on its website to reflect the changes made by these amendment Rules.

8. Consultation outcome

- 8.1 Between August and October 2011, the NMC consulted on its proposals for wider legislative change 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.
- 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 appeared to be no major areas of disagreement.
- 8.4 The three proposals relating to voluntary removal (which would be implemented by these amendment Rules) were generally well supported:-
- 8.4.1 There was 80 per cent agreement that some nurses and midwives should be allowed to have their names voluntarily removed from the register following referral about their fitness to practise.
- 8.4.2 There was 69 per cent agreement that the consent of the maker of the allegation should not be a condition for this type of removal. The amended Rules will, however, provide for the Registrar to seek comments from that person and to have regard to those in determining the application for voluntary removal. The Registrar must also have regard to the public interest, as well as the interests of the registrant. (Nothing in the amendment Rules alters the requirement that voluntary removal is not currently available where an order for suspension or conditions of practice, or an interim order is already in place).

- 8.4.3 There was 86 per cent agreement to the NMC's proposals regarding the matters that the Registrar would have regard to in the event that a nurse or midwife who had voluntarily removed themselves from the register subsequently applied for readmission.
- 8.5 Patient and public organisations were keen to ensure that voluntary removal powers were only used in appropriate cases and that stringent readmission procedures were in place for those whose voluntary removal applications had been allowed.
- 8.6 These concerns have been addressed in the amendment Rules in terms of the prescribed matters to be taken account of in considering applications for voluntary removal, and the role of the advice to be provided by the relevant Practice Committee where a hearing or meeting has begun. In addition, the amendment Rules also contain a requirement for the Registrar, when determining the application for readmission, to have regard to information giving rise to concerns about the fitness to practise of a nurse or midwife, whether it was received before voluntary removal or more recently.
- 8.7 The NMC has also drawn upon the views of the CHRE when preparing the guidance that underpins the use of the new voluntary removal powers. This guidance has been refined and strengthened through discussion with CHRE.
- 8.8 The NMC's report of the consultation, together with the consultation document is available on the NMC website at:- <http://www.nmc-uk.org/Documents/Consultations/FtPruleChange/Report-of-the-consultation-on-proposed-changes-to-NMC-rules-to-improve-the%20efficiency-of-FtP-processes.PDF>

9. Guidance

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

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal as it relates to the registration status of individual registrants.
- 10.2 The impact on the public sector is minimal as it relates to the registration status 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 procedural rules 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 registrants who are suffering from ill health and who, in some circumstances, will be allowed to voluntarily remove themselves from the register.

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

Rhian Wells at the Department of Health [rhian.wells@dh.gsi.gov.uk] can answer any queries regarding the instrument.

OPERATIONAL IMPLEMENTATION

Introduction

1. The following is a description overview of how the powers introduced by these amendment Rules will be used by the NMC. It is provided to assist readers of this explanatory memorandum in understanding the practicalities surrounding implementation of this policy.

Cases where the powers can and cannot be used

2. These new powers will allow the Registrar of the NMC to permit the voluntary removal of a registrant's name from the register when that registrant is the subject of a fitness to practise allegation in certain circumstances. A nurse or midwife may submit an application for voluntary removal from the register at any point in the fitness to practise process prior to its completion.
3. At present, voluntary removal cannot be permitted when the nurse or midwife is the subject of a final suspension or conditions of practice order. Voluntary removal is also not permitted whilst the nurse or midwife is the subject of an interim suspension or conditions of practice order. Any such order would need to be revoked before an application for voluntary removal could be granted.

Making of an application for voluntary removal from the register

4. Any application for voluntary removal is to be made on an application form, which will be available from the NMC. Details required on the application form will include:-
 - A declaration from the nurse or midwife applying for voluntary removal, either confirming that the nurse or midwife is not aware of any matter which could give, or has given, rise to a fitness to practise allegation; or, where the nurse or midwife is aware of any such matter, giving the particulars of it;
 - A declaration by the nurse or midwife as to whether all or any of the outstanding fitness to practise allegations are admitted and as to whether it is accepted that their fitness to practise is impaired;
 - Provision of further supporting information required by the NMC being:-
 - the state of health of the nurse or midwife, where relevant;
 - the likelihood of the nurse or midwife seeking readmission to the register;
 - the length of time since the nurse or midwife last practised;
 - any evidence supporting the genuineness of the nurse or midwife's desire to permanently remove themselves from the register; and,
 - any evidence that the nurse or midwife has no intention to practise in the UK or elsewhere in the future.

Procedure to be followed by the NMC

5. Upon receipt of an application the NMC will check whether the nurse or midwife is subject to a fitness to practise allegation. If the adjudication of the fitness to practise allegation(s) has commenced, the application will be referred to the practice committee hearing the case for consideration at a stage in the proceedings that they consider appropriate after the maker of

the allegation (if any) has been provided with a reasonable opportunity to comment on the application for voluntary removal.

6. The practice committee will then provide advice to the Registrar outlining the background to the application, recording any comments received from the maker of the allegation and setting out any material relevant to the criteria set out in the NMC's guidance notes.
7. Should the Registrar confirm that a decision has been made to remove the nurse or midwife's name from the register, the practice committee can confirm its final decision to take no further action.
8. If the adjudication of the fitness to practise allegation(s) has not commenced, the maker of the allegation (if any) will be provided with a reasonable opportunity to comment on the application. Advice will then be prepared for the Registrar outlining the background to the application, recording any comments received from the maker of the allegation and setting out any material relevant to the criteria set out in the NMC's guidance notes.
9. The Registrar will have regard to any advice received and to the NMC's guidance notes and criteria in reaching a decision whether to grant or refuse the application for voluntary removal and will provide full reasons for the decision.

Criteria for the Registrar to consider

10. When making a decision the Registrar must have regard to:-

- Any comments received from the maker of the allegation (if any);
- The interests of the nurse or midwife; and,
- The public interest, being:
 - the protection of patients and the public generally from nurses and midwives whose fitness to practise is impaired;
 - the maintenance and promotion of public confidence in the nursing and midwifery professions, including the declaring and upholding of professional standards; and,
 - the maintenance and promotion of public confidence in the NMC's performance of its statutory functions.

Quality Assurance of Decision Making

11. Final decisions on the use of these new powers shall be made by the NMC's Chief Executive as its Registrar, or an Assistant Registrar appointed by the Council, and authorised by the Registrar, in accordance with article 4 of the Nursing and Midwifery Order 2001. In complex or contentious cases the Registrar may also make use of the NMC's Registrar's Advisory Group as a source of advice
12. All decisions made under these powers will be subject to the NMC's Quality Assurance procedures. In addition, in the first year of operation, to ensure their effectiveness, the NMC shall audit all decisions. The NMC will audit both the recommendations for voluntary removal made by its staff and panels, as well as the final decisions made, by the Registrar, on voluntary removal applications.

13. The NMC's quality assurance team reports to the Audit Committee of the NMC Council and so reports on the use of these powers will be made to that Committee for the purpose of providing an additional level of scrutiny.
14. In addition to internal quality assurance by the NMC, the CHRE will also be invited by the NMC to audit decisions made under these powers.

Applications for Readmission

15. The NMC recognise that there are concerns that exist in terms of readmission of nurses and midwives who have been subject to voluntary removal. Therefore, the new powers provide safeguards in that any application for readmission following voluntary removal would not be granted automatically.
16. Such an application would be referred to the Registrar to consider and any unresolved fitness to practise allegations would be taken into consideration. The revival of an unresolved allegation may not be straightforward. During the interval between the granting of voluntary removal and the application for readmission, relevant evidence may have disappeared or deteriorated through passage of time. In order to address these concerns and conscious of the fact that it cannot fetter its discretion, the view the NMC currently holds is that is only likely to be appropriate to grant an application for voluntary removal when the nurse or midwife is willing to formally admit to the allegations that have been made and that admission has been recorded in writing.
17. In these circumstances, in the event of voluntary removal being granted, details of the allegations admitted would be made available on request to relevant enquirers (including potential employers and overseas medical authorities). The allegations admitted would also be considered if the nurse or midwife subsequently applied for readmission to the register.
18. Where the Registrar receives an application for readmission following voluntary removal they can only readmit the nurse or midwife to the register if they are satisfied:-
 - That the applicant is capable of safe and effective practice as a nurse or midwife in accordance with article 9(2)(b) of the Nursing and Midwifery Order 2001;
 - Of the applicant's good health; and,
 - Of the applicant's good character.
19. In reaching a decision the Registrar will have regard to the information, provided by the nurse or midwife at the time of their application for voluntary removal, about their future intentions and any admissions made by the nurse or midwife in relation to their fitness to practise.
20. The NMC state that the Registrar will need to be satisfied that it is appropriate in all the circumstances for the nurse or midwife to be readmitted to the register. The NMC also state that the Registrar will exercise caution in allowing a nurse or midwife to be readmitted following their voluntary removal from the register in circumstances where they have previously expressed an intention to permanently cease to practise.