

**EXPLANATORY MEMORANDUM TO**  
**THE NURSING AND MIDWIFERY COUNCIL (MIDWIFERY AND**  
**PRACTICE COMMITTEES) (CONSTITUTION) RULES ORDER OF**  
**COUNCIL 2008**

**2008 No. 3148**

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 Rules (“the 2008 Rules”) approved by this Order of the Privy Council revise the constitutional arrangements for the statutory committees of the Nursing and Midwifery Council (NMC) and include the introduction of criteria for disqualification, suspension and removal of committee members.
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 (S.I. 2002/253) (“the 2001 Order”) established a number of committees (“statutory committees”) of the NMC. The 2001 Order was amended by the Nursing and Midwifery (Amendment) Order 2008 (S.I. 2008/1485) (“the 2008 Order”) so as to change the ways in which these statutory committees are constituted.
  - 4.2 Previously, the constitution of the NMC’s Midwifery Committee was set out in NMC standing orders, and the constitutions of the NMC’s three other statutory committees – the Investigating Committee, the Conduct and Competence Committee and the Health Committee (which are known collectively as “the Practice Committees”) – were set out in the Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2006 (scheduled to S.I. 2006/1199) (“the 2006 Rules”).
  - 4.3 The amendments to the 2001 Order made by the 2008 Order required the constitutions of all four of the NMC’s statutory committees to be set out in Rules, under new powers, and the 2008 Order also contained the prospective revocation of the 2006 Rules.
  - 4.4 The 2008 Order also amended the constitutional arrangements for the NMC itself. The Council’s own constitution is now set out in a new

constitution Order, the Nursing and Midwifery Council (Constitution) Order 2008 (S.I. 2008/2553) (“the Constitution Order”). Some of the provisions of the 2008 Rules are couched in very similar terms to provisions of the Constitution Order.

## **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 this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 The 2008 Rules set out the constitutional arrangements for all of the NMC’s statutory committees. They make provision with regard to the composition, quora and chairing arrangements for each committee, the criteria for appointment of committee members, and the criteria for suspending and removing members from office.

7.2 The White Paper *Trust, Assurance and Safety* put forward a number of reforms to the United Kingdom’s system for the regulation of health care professionals. It proposed a number of changes to the constitutional arrangements for the Health Professions’ Regulators, such as the NMC, including a move to a smaller, fully appointed Council. This move has since been made possible by the amendments to the 2001 Order made by the 2008 Order, and led to the making of the Constitution Order.

7.3 The amendments to the 2001 Order made by the 2008 Order also required the NMC to make new Rules in respect of the constitutions of its statutory committees, and these changes take effect in the context of the policy underlying the new constitutional arrangements for the Council itself.

7.4 The 2008 Rules introduce new criteria for the disqualification, suspension and removal of statutory committee members. These are very similar to the criteria that have already been included in the Constitution Order in relation to the appointment of members to the Council, and are very similar to those that have also been put in place for the General Medical Council and the General Chiropractic Council.

7.5 All of the work of the Practice Committees is to be conducted by panels of members of each Committee (a panel system is already in place for fitness to practise hearings), but in the interests of natural justice, there is a bar on people serving concurrently on the

Investigating Committee and either the Health Committee or the Conduct and Competence Committee. There is also a bar on members of the Council itself serving on the Practice Committees. This reflects the fact that the Council is to move, under its own new constitutional arrangements, towards a more strategic oversight role.

- 7.6 Having the composition of the Midwifery Committee set out in rules, instead of standing orders, is reflective of the policy that, where Health Professions' Regulators do have statutory committees, in the interests of transparency it is preferable for the basic constitution of the committee to be set out in legislation. However, beyond that, and subject to the requirements of any other legislation, the Council and thereafter the committees themselves are to regulate their procedures in standing orders. This is in line with the present overarching policy of allowing Health Professions Regulators greater autonomy over their internal structures.

- ***Consolidation***

- 7.7 The 2008 Rules amend one set of other Rules, the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (scheduled to S.I. 2004/1761), and there are no plans to consolidate those Rules.

## **8. Consultation outcome**

- 8.1 The NMC carried out a consultation on the content of the 2008 Rules through a series of four consultation meetings, one in each of the four countries of the UK. The meetings, which were run by an independent facilitator, were held at the end of July and the beginning of August 2008.
- 8.2 Nine of the NMC's key organisational stakeholders were invited to comment on a draft of a briefing document to be used during the consultation. Seven of these submitted comments, which resulted in the briefing document being revised to provide clarity on a number of issues.
- 8.3 Over 200 groups, individuals and organisations were invited to attend the consultation meetings and asked to share the information with colleagues. Information about the meetings was also published on the NMC website. A total of 96 people attended the four consultation meetings. The report of the consultation, together with the briefing document is available on the NMC website ([www.nmc-uk.org](http://www.nmc-uk.org)).
- 8.4 There was general agreement to the NMC's proposals regarding the size and membership of the committees and that members should be limited to a maximum of two terms. There was also general agreement that the provisions regarding disqualification from appointment as a member, together with the provisions regarding the circumstances when a member may be removed or suspended from office should be

the same as those for Council members. There was opposition to the proposal that, in the first instance, all the statutory committees should be chaired by Council members, and the Council agreed that there should be no restriction on whom the chairs of the statutory committees should be.

- 8.5 A supplementary consultation was held once the Department of Health decided to move as quickly as possible to remove the requirements in the 2001 Order for the three Practice Committees to provide strategic advice to the Council. In due course, the role of the Practice Committees will become the purely operational one of handling fitness to practise cases, in accordance with Part 5 of the 2001 Order, and the Council will make its own arrangements for obtaining strategic advice on fitness to practise matters. In anticipation of these changes, the proposed 2008 Rules were redrafted so that all the functions of the Practice Committees can be performed by panels of members.
- 8.6 The supplementary consultation was carried out electronically over a period of just over three weeks during October and November 2008. The consultation document was sent to over 200 people and organisations, including all those who attended the consultation meetings earlier in the year, existing fitness to practise panellists and a number of key stakeholder organisations. The report of the supplementary consultation is also available on the NMC website ([www.nmc-uk.org](http://www.nmc-uk.org)).
- 8.7 There was general agreement to a proposal that the NMC should establish a single non-statutory committee to provide strategic advice on fitness to practise matters, and this is being taken forward as a separate exercise. The proposal that the make-up of individual panels should be left to the Registrar, or the person convening the panel's meeting on the Registrar's behalf, instead of the current position whereby there are precise requirements as to their make-up (set out in paragraph 18(6) of Schedule 1 to the 2001 Order) was more contentious. However, in the light of the repeal of the paragraph 18(6) (which is in the 2008 Order) and the Government's overarching policy, referred to in paragraph 7.6 above, of allowing Health Professions' Regulators greater autonomy over their internal structures, the NMC has decided not to include provisions similar to paragraph 18(6) in the 2008 Rules.

## **9. Guidance**

- 9.1 The Department of Health has not issued any guidance in relation to this Order.

## **10. Impact**

- 10.1 There is minimal impact on business, charities or voluntary bodies. As regards fitness to practise proceedings of the NMC, the NMC is

essentially continuing with existing practice, although there are new limitations on the numbers of terms of office for which a person may serve, which may in due course increase the number of new members that it has to recruit. The Appointments Board is required (because the Council, which has to confirm appointments, is required) to follow guidance issued by the Commissioner for Public Appointments. The appointments procedure will provide the necessary safeguards to ensure that there is no negative impact on equality issues.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

11.1 The legislation does not apply to small business.

**12. Monitoring & review**

12.1 This legislation will be subject to internal review, within the Department of Health, after three years.

**13. Contact**

Niall McDermott at the Department of Health Tel: 0113 254 6873 or email: [Niall.McDermott@dh.gsi.gov.uk](mailto:Niall.McDermott@dh.gsi.gov.uk) can answer any queries regarding the instrument.