

EXPLANATORY MEMORANDUM TO
THE NURSING AND MIDWIFERY COUNCIL (EMERGENCY PROCEDURES)
(AMENDMENT) RULES ORDER OF COUNCIL 2020

2020 No. 364

1. Introduction

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

2. Purpose of the instrument

- 2.1 The Order contains amendments to the Nursing and Midwifery Council's ("the NMC") Rules. The amendments ensure that the NMC's processes can continue during the period of the Covid-19 pandemic.
- 2.2 Specifically, this Order amends the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (S.I. 2004/1761) ("the Fitness to Practise Rules"); the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 (S.I. 2004/1767) ("the Registration Rules") and Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008 (SI 2008/3148) ("the Practice Committee Constitution Rules").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This Order will come into force within 21 days of being laid before Parliament. This Order is also being laid during a recess period that, it is acknowledged, may extend beyond its currently scheduled 4-week period. Laying during a potentially lengthy recess period, and the short time between the laying date and this Order being brought into force, is so that the provisions are available as soon as the Secretary of State advises the NMC that there is an emergency situation under article 9A of the Nursing and Midwifery Order 2001 (S.I. 2002/253)¹. With the current Covid-19 Pandemic it is highly likely that this will occur very shortly after this Order is laid.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

¹ Article 9A is being inserted in to S.I. 2002/253, by the Coronavirus Act 2020 (c. 7).

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is being made in accordance with the NMC's powers, as set out in the Nursing and Midwifery Order 2001, to make rules in accordance with its core regulatory functions. Further detail as to the various enabling provisions used is set out below.

7. Policy background

What is being done and why?

- 7.1 This instrument is being made in order to allow the NMC to adapt its current operating procedures to respond to the Covid-19 emergency. It sits alongside new temporary powers under the Coronavirus Act to register different groups of people it decides are fit, proper and suitably experienced.
- 7.2 The instrument will allow the NMC to amend its rules on lapse of registration, and its rules about its fitness to practise and registration appeal panels. The provisions will modify current rules, but only when the Secretary of State advises the registrar that there is or is likely to be an emergency situation, and the rules will be modified only for as long as the emergency exists. The amendments will help the NMC support the nursing and midwifery workforce by enabling it to take a more flexible approach to time limits for professionals to renew their registration. They will assist the NMC to continue its panel hearing activities during the emergency by changing the rules for panel member terms, panel constitution, and providing for remote hearings, and for notices to be sent over e-mail.

Renewal and retention of registration

- 7.3 Under its governing secondary legislation,² the Nursing and Midwifery Order 2001, the NMC is empowered³ to make rules that govern how a registrant's name may be removed from the register when their specified period for complying with the Council's renewal or retention requirements expires. In the legislation this kind of removal is referred to as 'lapse of registration'. The rules⁴ currently provide that where there is good reason for a registration not to lapse, the Registrar may grant the registrant a three-month extension to comply with the NMC's renewal or retention requirements. The instrument amends the rules so that rather than three months, the extension period would be within the Registrar's discretion, and further extensions could be granted.

Management of fitness to practise and registration appeal hearings

- 7.4 Requirements for the management of fitness to practise and registration appeals hearings are set down in the NMC's rules covering both functions. These include stipulated requirements for the management of notices, hearings and meetings. The

² The Nursing and Midwifery Order 2001, SI 2002/253 ('the 2001 Order').

³ By article 12(1) of the 2001 Order.

⁴ The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004, SI 2004/1767 ('the Registration Rules').

NMC anticipates that physical attendance at hearings will significantly reduce due to existing and potentially future Government advice given the current emergency situation. This will apply to all parties. The amended rules will enable panel events to take place by video-conferencing, audio-link and telephone. In the first instance this will allow urgent hearings and meetings like interim orders and substantive order reviews to continue to take place. This may also apply to substantive events later if the situation warrants it. The approach being taken is in line with the approach being taken in the civil courts.

- 7.5 As physical attendance by the NMC's staff at its premises is also likely to significantly reduce, and the ability of the Post Office to deliver mail may be affected by the situation, the amendments to the rules will allow the serving of notices of hearings by email rather than by post.

Fitness to practise panel member terms of office and constitution of panels

- 7.6 In fitness to practise cases, the NMC's governing secondary legislation requires the Council to make rules which give the registrant being investigated the right to appear before its Practice Committees at various stages.

- 7.7 Part II of Schedule 1 to the Nursing and Midwifery Order 2001 requires the NMC to make rules on:

- Paragraph 17(1)(a) and (b) – membership, appointment, suspension and removal of members of the Practice Committees
- Paragraph 17(1)(c) and (d) – identity of chair and quorum at its meetings

- 7.8 The instrument will amend the Constitution Rules to allow the NMC to extend the second term of panel members (who can only serve two terms) for as long as it deems appropriate, allowing members to continue serving during the emergency without needing to undertake a recruitment exercise. It will also amend the requirements for quorate Practice Committee panels to allow hearings to proceed with only two members, and not require a nurse, midwife or nursing associate member. This is to make sure that hearings can continue to function when there are likely to be increased demands on health and care practitioners, and availability of panel members generally. The NMC will be issuing guidance on the circumstances in which it will do this.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The NMC will make consolidated versions of the rules available on its website but will ensure that it is clear that the relevant amended provisions are temporary and only apply during the emergency period. The consolidated versions will then be updated to remove these provisions when the emergency ends.

10. Consultation outcome

- 10.1 The NMC has consulted in accordance with article 47(3) of that Order, such consultation being limited in scope in the context of a worldwide health pandemic.

- 10.2 The NMC have discussed the proposed changes with representative bodies and consider that shortened engagement is necessary and proportionate in the context of a worldwide health pandemic.

11. Guidance

- 11.1 The NMC will produce guidance as to how it will exercise its additional powers. This will be published at www.nmc-uk.org in the week commencing 30th March 2020.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
12.2 There is no, or no significant, impact on the public sector.

An Impact Assessment has not been prepared for this instrument because the SI relates to measures to maintain the NMC's essential regulatory operations throughout the duration of the worldwide health pandemic. The changes will not be in force for any period beyond that.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 As the amendments will only be in place for as long as the Secretary of State considers that an emergency situation exists no monitoring or review provisions have been made in this instrument.

15. Contact

- 15.1 Elaine Plumb at the Department of Health and Social Care Telephone: 0113 254 5998 or email: elaine.plumb@dhsc.gov.uk can be contacted with any queries regarding the instrument.
15.2 Mark Bennett at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
15.3 The Minister of State (Minister for Care) at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.