

**EXPLANATORY MEMORANDUM TO
THE NURSING AND MIDWIFERY COUNCIL (FITNESS TO PRACTISE)
(AMENDMENT) RULES ORDER OF COUNCIL 2007**

2007 No. 893

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

2. Description

2.1. This Order, which is made under the Nursing and Midwifery Order 2001, approves rules made by the Nursing and Midwifery Council (NMC), which amend the NMC (Fitness to Practise) Rules 2004 (“the 2004 Rules”). The NMC (Fitness to Practise) (Amendment) Rules 2007 (“the amending Rules”) clarify the proceedings at the initial hearing of an allegation, add a new definition of “sanction”, make some consequential amendments and set out the process for dealing with hearings which have commenced but not concluded by the time the amending Rules come into force.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Background

4.1. The NMC makes the amending Rules in exercise of its powers conferred under articles 22(4), 26(2), 26(3), 26(4), 30(9), 32, 33(4) and 47(2) of the Nursing and Midwifery Order 2001.

The Nursing and Midwifery Council has consulted in accordance with article 47(3) of that Order.

5. Extent

5.1. This instrument applies to 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

Policy

7.1 The purpose of the fitness to practise proceedings is to protect the public from registrants against whom there is an allegation that their fitness to practise is impaired. Rule 24 of the 2004 Rules sets out the order of proceedings at an initial hearing.

7.2 Where the registrant against whom the allegation is made admits the facts and impairment of fitness to practise, the Chair immediately announces that their fitness to practise is impaired. There is no specific provision for the person presenting the case to make any comments about the facts or call any evidence. In these situations it should be for the panel to decide – in the light of all the relevant circumstances and in their considerable experience – what constitutes impairment of fitness to practise. The panel should also be provided with sufficient information to allow it to make a balanced judgment as to the appropriate sanction.

7.3 Although panels have taken the view that this matter is covered by the discretion contained in the 2004 Rules, which allow the parties to make additional submissions, some registrants have disputed this interpretation. The amendments proposed in the amending Rules will clarify the position and remove any doubt on this point, by providing that as from 5 May 2007 the presenter can present any evidence in support of alleged facts, including those already admitted by the registrant.

Consultation

7.4 The NMC consultation on the proposed amendments to the 2004 Rules, which was issued on 25 July 2006, was sent to a targeted audience that included:

- Professional bodies and trades unions
- Legal assessors
- Lawyers representing the NMC
- Government health departments
- Health and social care regulators
- NMC panellists

The deadline for responses was 18 September 2006.

7.5 A total of 57 responses were received, of which 16 were submitted by organisations and the remaining 41 by individuals. Overall there was an extremely high level of support for the proposals with 93% agreeing that Rule 24 should be amended and 81% agreeing that the amendment would provide clarity. Asked if it should be for the panel to decide what constitutes impairment of fitness to practise, 89% of the respondents indicated agreement.

8. Impact

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as its impact on business, charities or voluntary bodies is negligible, as it is essentially about procedural issues.

8.2 There are no identified costs to either the public or the Exchequer arising from this instrument.

9. Contact

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