

**EXPLANATORY MEMORANDUM TO
THE NURSING AND MIDWIFERY COUNCIL (CONSTITUTION) ORDER
2008**

2008 No. 2553

1. This Explanatory Memorandum has been prepared by the Department of Health and is laid before Parliament by command of Her Majesty.

2. Description

2.1 This Order sets out the new constitution of the Nursing and Midwifery Council (NMC). It makes provision for the Council to consist of 14 members, made up of 7 lay and 7 professional members. All members of the Council are to be appointed by the Privy Council, although in practice this function will be delegated to the Appointments Commission through Directions made by the Privy Council.

2.2 This Order also sets out the criteria for disqualification for appointment as a member of the Council, and the circumstances in which members may be suspended or removed from office.

2.3 The Order also makes provision for there to be an appointed Chair of the Council, and in respect of deputising arrangements for that chair.

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

3.1 None.

4. Legislative Background

4.1 Prior to this Order, the membership of the NMC was made up of a number of lay members appointed by the Privy Council and a number of professional members who are elected representatives of particular constituencies of nurses and midwives. The constitution of the NMC was set out in Schedule 1 to the Nursing and Midwifery Order 2001 (S.I. 2002/253: "the NMO 2001").

4.2 The amendments made to the NMO 2001 by the Nursing and Midwifery (Amendment) Order 2008 (S.I. 2008/1485: "the NMAO 2008") made a number of changes to the constitutional arrangements for the NMC.. In particular, instead of the constitution of the NMC being set out in Schedule 1 to the NMO 2001, this is now set out in this Order.

4.3 As a consequence of the changes made by the NMAO 2008, the constitution set out in this Order gives the NMC a fully appointed Council, rather than the current mix of appointed lay members and elected professional members.

5 Territorial Extent and Application

5.1 The Order extends to the United Kingdom

6 European Convention on Human Rights

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

7 Policy Background

7.1 The White Paper *Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century* (published in 2007) set out a substantial programme of reform to the United Kingdom’s system for the regulation of health care professionals. This was based on consultation on the two reviews of professional regulation published in 2006: *Good doctors, safer patients* and *The regulation of the non-medical health care professions*.

7.2 Chapter One of the White Paper (*Assuring independence: the governance and accountability of the professional regulators*) included a number of recommendations in relation to the constitution of the professional regulators. It was recommended that:

- The Councils of the regulatory bodies should have, as a minimum, parity of membership between lay and professional members, to ensure that purely professional concerns are not thought to dominate their work
- To enhance public confidence in the healthcare professional regulators, council members should be independently appointed
- To enable councils to focus more effectively on strategy and the oversight of their executives, they will become smaller and more board-like, with greater consistency of size and role across regulatory bodies

7.3 The arrangements set out in this Order do now mean that the NMC has parity of lay and professional members, and it is smaller (down from 23 to 14 members). The appointment of members will be carried out by the Appointments Commission by virtue of a separate set of directions given by the Privy Council.

7.4 The Appointments Commission will also be responsible, by virtue of the directions, for the suspension or removal from office of members, in accordance with the criteria set out in this Order. However, the NMC may also provisionally suspend its members under its own standing orders, pending the outcome of the Appointments Commission’s consideration of the matter, and the Order also allows the Appointments Commission to stay its own consideration of whether or not to suspend a member while the NMC is carrying out its own internal investigation. A balance is therefore duly struck between the independence of the regulator, the NMC, and the effectiveness of the independent oversight of the regulator.

7.5 In 2008 Niall Dickson chaired a Group examining aspects of the White Paper ‘Trust, Assurance and Safety’ and their reports recommended no groups should

have guaranteed places on the Council and that members, including registrant ones, should be appointed because of their experience, knowledge and judgement.

- 7.6 The recently published CHRE ‘Special report to the Minister of State for Health on the Nursing and Midwifery Council’ also recommended that there should be no representative members on the new Council and no reserved places for interest groups. All members, whether registrant or lay, should be appointed against defined competencies and subject to appraisal.
- 7.7 In the light of these two reports, the Order does not provide for there to be any reserved places on the Council for individuals representing particular constituencies of nurses and midwives, as was formerly the case. However, the amendments made to the NMO 2001 by the NMAO 2008 separately require that there must be one member of the Council who lives or works wholly or mainly in each of England, Wales, Scotland and Northern Ireland.

Consultation

- 7.8 The Nursing and Midwifery Council (Constitution) Order was published in draft for public consultation on 7 July 2008. Consultation closed on 1 September. The Cabinet Office Code of Practice on consultations suggests best practice is for consultations to run for a minimum of 12 weeks, at least once during the formulation process of each policy. However, Ministers decided in this case to shorten the consultation period to 8 weeks. This was essentially for three reasons:
- i) extensive consultation on the principles underpinning the constitution order had already taken place. The consultation document *Good doctors, safer patients* (which preceded the White Paper) and draft order that originally contained the provisions set out in the NMAO 2008, had both been published for 12 week public consultations.
 - ii) the NMC (the key stakeholder) has been closely involved in the process of producing the Order
 - iii) the CHRE Report mentioned above recommended that the new governance structure of the NMC should proceed as rapidly possible, and sooner than was then planned (which was 1st April 2009). In the circumstances, 1st January 2009 seemed to be the most appropriate start date for the new Council, and a shorter consultation became necessary to achieve that date.
- 7.9 A full report on the outcome of the consultation on the draft Order is published on the Department of Health website. On the questions asked in the consultation document, ten of the twelve produced majorities in favour of the proposals of between 75% and 95%. However, 57% did not support the proposal for a Council of 7 registrant and 7 lay members, and only 46% supported the size of the quorum (some of the responses were linked to the question of the overall size of the Council). The Government’s decision not to change its proposals on these issues reflect its continuing acceptance of the recommendations of the

Niall Dickson and CHRE Reports mentioned above, and its belief that a smaller, more board like Council will enable the NMC to focus more effectively on strategy and oversight of its executive.

8 Impact

- 8.1 An impact assessment is attached to this Memorandum

9 Contact

- 9.1 Tina Townsend-Greaves at the Department of Health, tel: 0113 254 6901 or e-mail Tina.Townsend-Greaves@dh.gsi.gov.uk