

EXPLANATORY MEMORANDUM TO
THE NURSING AND MIDWIFERY COUNCIL
(FITNESS TO PRACTISE) (EDUCATION, REGISTRATION AND REGISTRATION
APPEALS) (AMENDMENT) RULES ORDER OF COUNCIL 2015

2015 No. 52

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 (Fitness to Practise) Rules 2004 (which are set out in the Schedule to S.I. 2004/1761) (“the Fitness to Practise Rules”) and the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 (which are set out in the Schedule to S.I. 2004/1767) (“the Registration Rules”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 Some of the proposed changes to the Fitness to Practise Rules and to the Registration Rules draw their legal basis from the Nursing and Midwifery (Amendment) Order 2014, which came into force on 11th December 2014.
4. **Legislative Context**
 - 4.1 The Nursing and Midwifery Order 2001 (SI 2002/253) (“the 2001 Order”) empowers the NMC to make Rules in relation to fitness to practise and education, registration and registration appeals. The 2001 Order provides that the NMC Council should consult representatives of any groups of persons it considers appropriate, and any groups of persons who appear likely to be affected by any proposed changes to those Rules.
 - 4.2 The Rules scheduled to this Order make amendments to the Fitness to Practise Rules and the Registration Rules .
5. **Territorial Extent and Application**
 - 5.1 This instrument extends to all of the United Kingdom (UK).
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 In its response to the final report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, the Government noted that health and care professional regulatory bodies in the UK, including the NMC, are hampered by an outdated legislative framework, and committed to radically overhaul 150 years of complex legislation. To evidence the delivery of this commitment the Department referred to the Law Commission's work to review the legislative framework for the regulation of health care professionals and, in England only, social care, with the aim of modernising and simplifying the regulatory landscape to ensure it is fit for the future. The Law Commission published the outcome of its review and recommendations for legislative changes on 2 April 2014, the Government response will be published in due course.
- 7.2 In July 2012, the Professional Standards Authority (then Council for Healthcare Regulatory Excellence) published its report of its Strategic Review of the NMC which identified problems with the NMC's fitness to practise process and recommended these should be addressed at the earliest opportunity. To support the NMC address these problems, and in recognition of the fact that the current legislative framework does not assist the NMC in carrying out its fitness to practise function in the most efficient way, in March 2013 the Department agreed that a section 60 Health Act 1999 Order to amend the 2001 Order should be prioritised in advance of the Law Commission's report. This section 60 Order came into force on 11 December 2014 making a small number of amendments to the 2001 Order. The amendments will result in a more efficient fitness to practise process and will enable the NMC to carry out its registration functions more effectively, which will improve public protection and increase the public's confidence in the regulation of nurses and midwives. The amendments to the 2001 Order by the Nursing and Midwifery (Amendment) Order 2014 empowers the NMC to make these rules in relation to Fitness to Practise and Education, Registration and Registration Appeals. These rules will improve the NMC's fitness to practise procedure and enhance public protection in the following ways.
- 7.3 The introduction of case examiners into the fitness to practise process, to exercise certain functions of the Investigating Committee, will improve the efficiency of the early stages of the fitness to practise process and thereby also enhance public protection and the reputation of the NMC as an effective regulator. The consideration of allegations by case examiners will allow fitness to practise cases to be dealt with more speedily as the case examiners (one lay and one registrant nurse or midwife) will be employed by the NMC specifically for this role, whereas at present, a meeting of the Investigating Committee has to be convened and 3 members from a pool of around 100 members (who have other commitments and undertake this role as an independent contractor) are required. It can be difficult to convene such meetings speedily and all meetings of the Investigating Committee requires administrative support, which increases costs.
- 7.4 It is also anticipated that as case examiners will deal with a greater volume of cases than individual Investigating Committee members, this will result in greater consistency in decision making.
- 7.5 The Investigating Committee will continue to have a role in the fitness to practise process in that if case examiners fail to agree on whether or not there is a case to answer in respect of an allegation, the allegation will be referred to the Investigating

Committee for determination. It will also continue to determine allegations of fraudulent or incorrect entries in the register.

- 7.6 The provision enabling the registrar to review a decision of the case examiners or of the Investigating Committee that there is no case to answer in respect of an allegation will enhance public protection. The rules provide that the registrar may carry out such a review where the Registrar has reason to believe that the decision may be materially flawed or where there is new information which may have led to a different decision and in both cases, a review will not be carried out unless it is in the public interest to do so. This power is time limited in that (except in exceptional circumstances) a review cannot be commenced more than one year after the date of the decision that there is no case to answer in respect of an allegation; this provides certainly for the registrant.
- 7.7 The amendments made to the Registration Rules by these rules will improve public confidence in the NMC by ensuring a proper separation of the functions of the Council and its Committees. Until the coming into force of the Nursing and Midwifery (Amendment) Order 2014, the chair of the Registration Appeals Panel was a NMC Council member. The Nursing and Midwifery Council (Amendment) Order 2014 Order removed this requirement and these rules provide that Chair of a Registration Appeals Panel is to be a person who is appointed to act as a chair of a Practice Committee.
- 7.8 The 2001 Order was also recently amended by the Health Care and Associated Professions (Indemnity Order) 2014 (S.I. 2014/1887) (“the Indemnity Order”). The Indemnity Order makes it a condition of registration to have in place an indemnity arrangement providing appropriate cover. The Indemnity Order amended the 2001 Order to enable the NMC to make rules in relation to its registration functions. Specifically these rules will enable the Registrar to request information for the purposes of determining, in respect of a person’s registration, application for admission or renewal of registration that a registrant has in place or will have in place appropriate cover under an indemnity arrangement. These rules also enable the NMC to disclose to a third party information that it has received in respect of a person’s indemnity arrangement for the purposes only of verifying that information. They will also provide that registrant when applying for admission to the register, provides the NMC with details on the nature and scope of their practice as a nurse or midwife and to provide their employer’s details. This will enable the NMC to determine whether or not an applicant has appropriate cover under an indemnity arrangement or will have such cover. All these measures will support the NMC to carry out its registration functions effectively.
- 7.9 These rules also introduce provisions to the Registration Rules which will allow registrants to pay the registration, retention, renewal, readmission or restoration fee by instalments and thereby help registrants meet these costs over a period of time.

8. Consultation outcome

- 8.1 The NMC conducted two consultations in respect of the proposed rule changes introduced by this Order of Council. The first was a public consultation in the form of an online survey (<http://www.nmc-uk.org/Get-involved/Consultations/Past->

[consultations/By-year/Consultation-on-changes-to-the-Fitness-to-Practise-and-Registration-Rules/](#)) which ran in parallel to the Department of Health's Section 60 consultation from 17th April to 12th June 2014. It set out how the NMC intended to use the powers in the 2001 Order being introduced by the section 60 Order consulted upon by the Department of Health, covering:

- the introduction of case examiners into the FtP process who will exercise certain functions of the Investigating Committee ;
- the ability to review “no case to answer” decisions;
- changes to the composition of a registration appeal panel; and
- the ability to request and verify registration information.

8.2 The NMC then separately consulted on introducing the ability to pay the annual registration fee in instalments in order to enable nurses and midwives to meet the payment of their registration fees in a more manageable way. This consultation ran from 11th August to 3rd October 2014 and again was in the form of an online survey (<http://www.nmc-uk.org/Get-involved/Consultations/Introducing-powers-to-allow-payment-of-registration-fees-by-instalment/>).

8.3 At the launch of each consultation, the NMC wrote to key stakeholders and made a number of press releases. With the first consultation they also hosted a listening event for stakeholders, held on 24th April to present the proposals and receive feedback and questions. The NMC received 183 responses to the first consultation and 3,077 responses to the second. Conclusions were then drawn from the analysis of responses to the consultations and presented to the NMC's Council. In both instances, the NMC Council agreed with the conclusions to introduce the proposed rule amendments set out in the consultations, and those conclusions were published on the NMC website.

8.4 The first consultation received broad support from respondents, and the second received a very high level of support. These can be found in the published conclusions on the NMC website:

- <http://www.nmc-uk.org/Get-involved/Consultations/Past-consultations/By-year/Consultation-on-changes-to-the-Fitness-to-Practise-and-Registration-Rules/>
- <http://www.nmc-uk.org/Get-involved/Consultations/Introducing-powers-to-allow-payment-of-registration-fees-by-instalment/>

8.5 Both sets of Rule changes are to be introduced as a single instrument to maximise efficiency and the use of parliamentary time.

9. Guidance

9.1 The NMC will not be issuing any formal separate guidance to registrants in relation to the Rule changes set out above. However, supporting information on their website and all relevant information for registrants, employers and the public will be updated, along with other information leaflets and a number of media releases.

10. Impact

10.1 The NMC completed an equality impact assessment and an impact assessment for both consultations; both were reviewed in light of consultation responses. They found

no evidence of any adverse effect on protected characteristics, and showed a positive financial impact for the collective changes (as set out in the consultation materials) of between £340,000 - £650,000 per year in efficiency savings for the NMC.

11. Regulating small business

11.1 The legislation does not directly apply to small business, the changes that it brings about relate to the individual rather than business.

12. Monitoring & review

12.1 The NMC will keep the Rules being amended by this legislation under on-going review.

13. Contact

13.1 Lindsey Proctor at the Department of Health Tel: 0113 254811 or email: lindsey.proctor@dh.gsi.gov.uk can answer any queries regarding the instrument.