EXPLANATORY MEMORANDUM TO

THE NURSING AND MIDWIFERY COUNCIL (CONSTITUTION) (AMENDMENT) ORDER 2012

2012 No. 2745

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order makes a number of amendments to the Nursing and Midwifery Council (Constitution) Order 2008 to reflect the recommendations made by the Council for Healthcare Regulatory Excellence in its report *Board size and effectiveness* published in September 2011.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None.

4. Legislative Context

4.1 The Nursing and Midwifery Council (Constitution) Order 2008 was made by the Privy Council in accordance with powers conferred by Article 3 of the Nursing and Midwifery Order 2001 (as amended). This Order makes a number of changes to the 2008 Order.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the 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 In February 2011 the Government published the Command Paper *Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*. The paper sets out the

Government's vision for the future of workforce regulation, which includes increasing the independence and accountability of the regulatory bodies.

7.2 Following this, the Council for Healthcare Regulatory Excellence (the "CHRE") was commissioned to lead a sector wide review of the cost-efficiency and effectiveness of each regulator within its remit. As an initial part of this work it was asked to look at whether there was a case for reducing the size of the governing councils of the regulators.

7.3 In order to do this, the CHRE looked at a number of studies and highlighted what it saw as the most important characteristics of an effective board. The CHRE published its interim report, *Board size and effectiveness: advice to the Department of Health regarding health professional regulators*, in September 2011. The CHRE report established the following main 'typical' functions of a board (the first two of which are similar to those established by the Dickson Report):-

- Strategic leadership and strategic decision making;
- Stewardship, including holding the executive to account;
- External relations and accountability; and,
- Board maintenance.

7.4 It recommended that 'boards with a range of 8-12 members are associated with greater effectiveness' in discharging these functions.

7.5 The Government agreed with the CHRE report understanding of the role and purpose of the regulatory bodies' governing councils and considers that there is merit in the recommendations put forward by the CHRE. It therefore consulted on plans to implement its recommendations for the NMC Council.

7.6 At the same time as consulting on a reduction in size for the NMC Council, the Government also sought to take the opportunity to cure an anomaly in terms of periods of membership for NMC Council members. Currently the NMC limits membership of the Council to a total of 6 years. This is out of step with other regulatory bodies, which enable members to serve for a total of 8 years in any 20-year period.

- Consolidation

7.7 There are no plans to consolidate these amendments at the current time.

8. Consultation outcome

8.1 The consultation asked for views on:

- A reduction in the size of the NMC's governing Council (in line with recommendations of the CHRE on board size and effectiveness, which were based on published research and evidence);
- Alterations to the period of membership of Council members; and,
- Resultant transitional arrangements.

8.2 There was strong support for a reduction in size of the NMC Council, and unanimous support that the reduced size should be between 8 and 12 members.

8.3 A wide variety of views were expressed as to the correct size within this 8-12 range, with the largest support being for the bottom and top end of this range. The Government does not agree with the basic premise that Councils with memberships at the bottom end of the range would not be able to work effectively. The evidence in the CHRE report on *Board Size and Effectiveness* clearly shows that smaller Councils can work effectively. However, the Government has listened carefully to the counter arguments and (for the reasons given in the Consultation Report) are persuaded that, on balance, it is right to move to a 12 strong new NMC Council.

8.4 The issue of the quorum was also consulted upon with a majority of respondents supporting the proposal for a quorum of 50% +1 (the current requirement for the NMC). As such, we will proceed on this basis.

8.5 The Government also consulted on bringing the NMC into line with other regulators regarding the length of membership of its members. As respondents identified, the important point with this is to ensure that the correct balance is struck between enabling continuity of leadership, whilst still allowing for new people with new ideas to be brought in to an organisation. The Government believes that harmonising the position regarding the NMC with the other regulators will allow this balance to be achieved.

9. Guidance

9.1 The Government does not plan to issue any guidance about this Order.

10. Impact

10.1 The Government looked at the costs and benefits of these proposed changes based on the costs of the current appointment process conducted through the Appointments Commission. There are no significant cost or administrative burdens arising from these changes. An Impact Assessment has not therefore been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government has asked the Law Commissions for England and Wales, Scotland and Northern Ireland to review the legislative framework for the regulation of health professions across the UK and

social workers in England. This Order and the NMC Constitution Order it amends will be considered as part of that review.

13. Contact

Stuart Griffiths at the Department of Health Tel: 0113 254 5249 or email: stuart.griffiths@dh.gsi.gov.uk can answer any queries regarding the instrument.