EXPLANATORY MEMORANDUM TO

THE NURSING AND MIDWIFERY COUNCIL (FEES) (AMENDMENT) RULES ORDER OF COUNCIL 2018

[2018] No. 1198

1. Introduction

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

2. Purpose of the instrument

This instrument approves the Nursing and Midwifery Council (Fees) (Amendment) Rules 2018 ("the Fees Rules 2018") made by the Nursing and Midwifery Council ("the NMC"). The Fees Rules 2018 amend the Nursing and Midwifery Council (Fees) Rules 2004 (S.I. 2004/1654) ("the Fees Rules 2004") to include provision for the payment of fees by certain applicants seeking registration on the nursing associate part of the NMC's register. Nursing associates ("NAs") in England will be eligible for entry on the NA part of the NMC's register from 28th January 2019, by virtue of amendments to the Nursing and Midwifery Order 2001 (S.I. 2002/253) ("the 2001 Order") made by the Nursing and Midwifery (Amendment Order 2018 (S.I. 2018/838) ("the 2018 Order").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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

3.2 As this instrument is subject to the 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 provisions of this instrument that apply to NAs and only to the extent that they apply to NAs, apply in respect of England only. NAs are regulated in England only. Article 2A of the 2001 Order (which was inserted by the 2018 Order) limits the application of the provisions of the 2001 Order that apply to NAs, and to the extent that they apply to NAs, to England.

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 an Order of Council which approves amendments to the Fees Rules 2004 made by the NMC, to include provision for the payment of fees to the NMC, by applicants seeking registration with the NMC, as NAs in England.

6.2 The NMC became the regulator of NAs in England on the 12th July 2018. The 2018 Order amended the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 (S.I. 2004/ 1765) to create a new Nursing Associates in England part of the register. From the 28th January 2019, this new part of the NMCs register will open to applicants.

6.3 As a condition of registration, an applicant must hold an approved qualification. The 2001 Order (article 13(1)(approved qualifications)) was amended by the 2018 Order to include certain NA qualifications as approved qualifications. One such amendment was to introduce a new category at article 13(1)(dd). This provides that where an applicant has undergone training in Northern Ireland, Scotland or Wales, which is comparable to that of a NA and the NMC is satisfied that the qualification is evidence of a standard of proficiency comparable to that of NMC approved NA qualifications, then the applicant is to be regarded as having an approved qualification for registration purposes. Likewise, an applicant is to be treated as having an approved qualification where the NMC is not satisfied as to the qualification but, is satisfied following the applicant undertaking additional training or experience (and any test of competence it may require the applicant to take), that the applicant has the required standard of proficiency for admission to the NA part of the register.

6.4 The 2018 Order also inserted a new article 13A to the 2001 Order which provides transitional arrangments for admission to the NA part of the register. Certain applicants who, on or before 26th July 2019, have been awarded a specified NA qualification (as defined in article 13A(4)) or who have commenced such a course of education or training, shall be treated as holding an approved qualification for registration purposes if the NMC is satisfied that the specified qualification is evidence that the applicant has the required standard of proficiency or, where the NMC is not so satisfied, the applicant has undertaken additional training or experience as satisfies the NMC (following any test of competence it may require the applicant to take) that the applicant has the required standard of proficiency.

6.5 The Fees Rules 2004 therefore, require amendment to ensure that provision is made for charging a fee to applicants for registration who are relying on new articles 13(1)(dd) or 13A of the 2001 Order. They are also amended to provide for a fee for the evaluation of information where an applicant is relying on new article 13(1)(dd).

6.6 The Fees Rules 2004 do not require amendment in respect of applicants for the NA part of the register who are relying on other provisions of article 13(1) of the 2001 Order as these categories are provided for in the Fees Rules 2004 by virtue of the amendments to article 13(1) of the 2001 Order made by the 2018 Order.

7. Policy background

What is being done and why

7.1 In October 2015, the UK Government announced the establishment of a new healthcare role in England called a Nursing Associate, to strengthen the capacity and skills of the nursing and caring workforce in England.

7.2 In January 2017, the NMC agreed to the DHSC's request that it becomes the regulator for NAs. On 12th July 2018, the 2018 Order came into force which gives the NMC new powers to regulate the new NA profession. The legislation put in place for NAs, a framework for regulation that is broadly the same as the regulatory framework that is currently in place for nurses and midwives.

7.3 The NA role has been developed as a bridge between healthcare assistants and registered nurses. It will act as a stand-alone profession, as well as a new route to becoming a registered nurse. NAs will work with registered nurses and other professionals to deliver patient care. Health Education England established two pilot groups in January 2017(approximately 1,000 students) and April 2017 (approximately 1,000 students) of nursing associate trainees who are due to complete their training in early 2019. In October 2017 plans were announced for up to 5,000 additional NAs to commence training on HEE pilot cohorts through the apprenticeship route in 2018, with up to 7,500 a year thereafter.

7.4 Professional regulators, including the NMC, are independent of government, and funded by fees paid by registrants. Regulators fees are set at the level required to meet the global costs of regulating the professions on their registers.

7.5 Regulation will enable members of the public to be assured that NAs have the right standards of proficiency, keep their skills and knowledge up to date, and are accountable for their standards of practice and behaviour. There will be a new Nursing Associate in England part of the NMC register that can be searched by employers and members of the public, and the NMC will investigate if there are concerns about an NA's fitness to practise, and take action if needed to protect the public.

7.6 The fee structure for NAs mirrors the NMC's fee structure for nurses and midwives. The main fee to join the Nursing part of the NMC's register is £120, the same fee amount of £120 is set for retention or renewal of registration. The fee to join the NA part of the NMC's register has been set at the same level for NAs as nurses and midwives, because the same regulatory approach will apply to the three professions, so the NMC will need to meet the same costs.

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 or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 The NMC will publish a consolidated version of the legislation on its website.

10. Consultation outcome

10.1 The Government ran a consultation on "The Regulation of Nursing Associates in England" between 16th October 2017 and 26th December 2017. The Government proposed that the regulatory approach in place for nurses and midwives also apply to NAs. The 2018 Order amended the 2001 Order to apply this approach.

10.2 The 2001 Order requires the NMC to consult before determining or varying its fees. The NMC consulted on the registration fees for NAs between 4th December 2017 and 26th February 2018 (12 weeks).

10.3 The NMC's consultation proposed that the fee structure for NAs should mirror the one in place for nurses and midwives.

10.4 The consultation process was open to all stakeholders and the consultation documents and response form were published on the NMC website in English and Welsh versions. The NMC promoted the consultation at events attended by educators and NA students. At regular intervals prior to and during the consultation period, the NMC placed articles in its email newsletters, of which the combined circulation is approximately 300,000 nurses, midwives, educators, students (including NA students), employers, managers, patients and members of the public. The NMC also engaged on its social medial platforms such as Twitter, through which it has 70,400 followers.

10.5 The consultation received 863 responses. Most responses came from individuals (832), with 31 responses coming from organisations. The highest proportion of individual responses came from UK-registered nurses (411 or 49%), NA students (137 or 16%) and educators (50 or 6%). The highest proportion of organisational responses came from NHS employers of nurses or midwives (15 or 48%). Responses were also received from the main nursing and midwifery professional bodies and unions.

10.6 Most respondents supported the NMC's proposals, in particular, 66% agreed with the principle that the fee structure for NAs should mirror the NMC's current fee structure for nurses and midwives.

10.7 There was a high level of support across all questions from registered nurses and midwives. NA students were less supportive of the NMC's proposals, however, the NMC recognised that any group that is asked to pay a fee is more likely to object.

10.8 The NMC has taken the decision to apply the same fee structure to NAs as that which applies to nurses and midwives. Most respondents agreed with this proposal. The NMC has taken this decision as the same regulatory approach will apply to NAs, nurses and midwives and therefore, the NMC will need to meet the same costs as respects all three professions. The fee to join the NMC's register and the annual renewal or retention of registration fees, are currently £120. The NMC's registration fees are set at a level which covers the overall costs of regulating the professions on their register. The NMC's response to its consultation on NAs fees can be found at: https://www.nmc.org.uk/about-us/consultations/past-consultations/2017-consultations/nursing-associates-fees-consultation/

11. Guidance

11.1 The NMC will not be issuing guidance on the Fees Rules 2018. However, it will provide information on fee levels to anyone wishing to join the NA part of the register as part of the NMC communications plan for the regulation of NAs. This information will be targeted at NA students and educators.

11.2 In addition, the information on the NMC website relating to paying the fee will be updated in advance of the opening of the nursing associate part of the register. This information, as it currently stands, can be found at https://www.nmc.org.uk/registration/staying-on-the-register/paying-your-fee/.

12. Impact

12.1 An Impact Assessment has not been prepared by DHSC for this instrument. The NMC has produced both an impact assessment and an equalities impact assessment.

12.2 The NMC has confirmed that there is no, or no significant impact on business, charities or voluntary bodies.

12.3 The NMC has confirmed there is no, or no significant impact on the public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses as the fees apply to individuals. The NMC has confirmed that they have not identified any impact on small businesses.

14. Monitoring & review

14.1 This instrument does not include a statutory review clause as the duty under section 28 of the Small Business, Enterprise and Employment Act 2015, for a Minister of the Crown to make provision for review in secondary legislation, does not apply. This is because this is an Order of Her Majesty's Privy Council approving rules made by the NMC.

14.2 The NMC regularly reviews the fees that they charge to make sure that they are in line with the global costs of regulating the people on their register.

15. Contact

15.1 Jamie Samuel at the Department of Health and Social Care (Telephone: 0113 254 6747 or email: Jamie.Samuel@dh.gsi.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Claire Armstrong, Deputy Director of Professional Regulation at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Stephen Barclay Minister for State at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.