EXPLANATORY MEMORANDUM TO

THE NURSING AND MIDWIFERY COUNCIL (FEES AND EDUCATION, REGISTRATION AND REGISTRATION APPEALS) (AMENDMENT) RULES ORDER OF COUNCIL 2011

2011 No. 2297

1. This explanatory memorandum has been prepared by the Department of Health 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 The Order approves rules made by the Nursing and Midwifery Council (the "NMC"), which amend the Nursing and Midwifery Council (Fees) Rules 2004 and the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004.

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

3.1 The instrument introduces a new fee for certain categories of applicants who apply to join the NMC's register. This fee will cover the costs of evaluating the information submitted with their applications. This new fee will increase the total fee which must be paid by these categories of applicants in order to register with the NMC.

4. Legislative Context

4.1 The NMC may make rules in relation to the charging of fees for applications to join its register. All nurses and midwives who wish to practise in the UK are required to register with the NMC.

4.2 The instrument will allow the NMC to charge a fee of £110 to certain categories of applicants for the evaluation of information submitted with their applications. These applicants will not have a recognised qualification from an approved UK institution and will be applying to register by virtue of certain EEA rights. The Code of Conduct for Directive 2005/36/EC (approved by the Group of Coordinators and issued under the auspices of the European Commission) indicates that it is acceptable practice to recover the actual cost of processing such applications, provided that the fee is not set at a level which is prohibitive to EEA migrants.

4.3 The NMC currently charges an evaluation fee of £140 to certain other categories of applicants who do not possess a recognised UK qualification. The effect of this instrument will be that all applicants who do not have a recognised UK qualification will pay an evaluation fee of either £110 or £140, as the case may be.

4.4 The instrument also amends provisions relating to the retention of unsuccessful applications, subsequent applications after an unsuccessful application, and the fees to be paid in such circumstances. These provisions previously only applied to applicants who had paid an evaluation fee of £140, but will now be extended to applicants who pay an application fee of £110.

5. Territorial Extent and Application

5.1 This instrument applies to all of 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

- What is being done and why

7.1 Since the accession of new EEA member states in 2004 and 2007, the NMC has experienced a significant growth in applications for registration (equating to current levels of around 600 applications per month).

7.2 The NMC proposes to introduce a fee to recover the actual administrative costs incurred in evaluating the information submitted with the categories of applicants mentioned in paragraph 4.2 above. Such cost recovery is regarded as acceptable practice under the Code of Conduct also mentioned in paragraph 4.2 above.

7.3 The NMC incurs costs in relation to staff time, IT processing, printing, postage and other costs when processing such applications. Currently these costs are covered by the registration fees received from all nurses and midwives. The introduction of a fee at this level means that such costs will be recovered from the applicants on whose behalf these charges are incurred, and no profit will be made.

7.4 The NMC do not charge a similar evaluation fee in respect of applicants with an approved UK qualification because there is no need to evaluate these applicants' qualifications or experience. The authorised training providers electronically upload, to the NMC, details of all students who successfully complete their nursing or midwifery training. The registration system then automatically issues the relevant application form and, on its return, the completed form is processed electronically.

- Consolidation

7.5 The statutory instrument amends two sets of Rules, the Nursing and Midwifery Council (Fees) Rules 2004 and the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004. There are currently no plans to consolidate these Rules but this will be kept under review should further amendment be required for either set of Rules.

8. Consultation outcome

8.1 The NMC consulted on its proposal to introduce this new fee. The consultation was targeted at organisations and professional bodies representing the views of nurses and midwives affected by the proposals (the European Federation of Nurses Associations and the European Midwives Association) as well as those who represented the views of nurses and midwives who had trained in the UK. The consultation sought a response to three questions:

i. whether the NMC should charge a fee to cover the costs of assessing EU applications;
ii. whether the proposed new fee for EU applications should cover the costs incurred for providing this service; and
iii. whether charging a fee for EU applications discriminates against any specific group of nurses or midwives to whom the charge will apply.

8.2 The consultation was issued by email to the targeted organisations on 10 January 2011. It was also posted on the NMC's website. A link to an online questionnaire was provided for the submission of responses. The consultation closed on 4 February 2011. Reminders about the deadline for responding to the consultation were sent, and extensions to this deadline were offered those who might need them.

8.3 Responses were received from four of the six targeted organisations, together with an additional three associations representing groups of EU nurses and midwives. Five of the respondents supported the proposal to impose a fee to cover the costs of assessing EU applications; only two disagreed. On whether the fee should cover the costs incurred in providing the service, two organisations agreed, two were neutral and one disagreed. On the third question, two organisations thought that the fee proposed would not be discriminatory, one organisation did not know, and two organisations thought the new fee would potentially discriminate against some people, including applicants from eastern European countries where financial hardship is more extreme.

8.4 The NMC considered that there was adequate support for the introduction of this charge and that the charge was justified on the basis that the applications in question took longer and were more expensive to process. Therefore no changes were made to the proposals as a result of the consultation.

8.5 The report of the consultation, together with the consultation document is available on the NMC website (www.nmc-uk.org/Documents/CouncilPapersAndDocuments/Council2011/NMCCouncil-open-agenda-papers_20110331.pdf at page 109).

9. Guidance

9.1 The Department of Health has not issued any guidance in relation to this Order.

9.2 The NMC will be amending their information booklet for EU/EEA nurses and midwives to reflect the changes made by the instrument.

9.3 The NMC will publish a link to this instrument, which includes a complete and current table of registration fees, on their website (http://www.nmc-uk.org/About-us/Governing-legislation-and-external-oversight/Legislation/).

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal as the fee will be paid by individuals.

10.2 The impact on the public sector is minimal as the fee will be paid by individuals.

10.3 An Impact Assessment has not been prepared for this instrument.

10.4 The additional cost to individual applicants who are affected by the new provisions will be £110.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The fee will be reviewed on a regular basis as part to the NMC's budgetary planning process.

13. Contact

Niall McDermott at the Department of Health (niall.mcdermott@dh.gsi.gov.uk) can answer any queries regarding the instrument.