EXPLANATORY MEMORANDUM TO

THE NURSING AND MIDWIFERY COUNCIL (FITNESS TO PRACTISE) (EDUCATION, REGISTRATION AND REGISTRATION APPEALS) (AMENDMENT NO. 2) RULES ORDER OF COUNCIL 2015

2015 No. 1923

1. Introduction

1.1 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 This Order of Council 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 Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Health Care and Associated Professions (Knowledge of English) Order 2015 (S.I. 2015/806) ("the Knowledge of English Order") amended the Nursing and Midwifery Order 2001 (S.I. 2002/253) to enable the NMC to apply language controls, where appropriate, for European nurses and midwives. The Rules set out in the Schedule to the Nursing and Midwifery Council (Fitness to Practise) (Education, Registration and Registration Appeals) (Amendment No. 2) Rules Order of Council uses powers in the Nursing and Midwifery Order 2001, introduced by the Knowledge of English Order, to amend the Fitness to Practise Rules requiring, nurses and midwives, where appropriate, to undertake an examination or other assessment of their knowledge of English. The Rules also amend the Registration Rules to require an applicant for admission or re-admission to the registrar to provide the Registrar with evidence that they have the necessary knowledge of English to enable them to practise safely in the UK.

4.2 Under articles 47(1) and 48 of the Nursing and Midwifery Order 2001, these Rules cannot come into force until approved by an order of the Privy Council.

5. Extent and Territorial Application

5.1 This instrument extends to all of the United Kingdom.

5.2 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 In May 2010 the Coalition Agreement of the previous Government stated that "We will seek to stop foreign healthcare professionals working in the NHS unless they have passed robust language and competence tests".

7.2 The Knowledge of English Order introduced changes to the Nursing and Midwifery Order 2001to enable the NMC to require evidence of an applicant's knowledge of the English language prior to registration, where the regulatory body has cause for concern. Previously, it could only carry out language controls on non-European applicants. It also introduced corresponding amendments to their fitness to practise powers to ensure that not having the necessary knowledge of the English language would become a ground for taking fitness to practise proceedings.

7.3 Similar measures were also introduced for the General Dental Council (GDC) and the General Pharmaceutical Council (GPhC)[1] and the Rules made under these new powers will also require approval by an order of the Privy Council. Separate Explanatory Memoranda will be prepared for these in due course. The General Medical Council (GMC) has already introduced similar measures.

7.4 The amendments to the Fitness to Practise Rules and to the Registration Rules introduced by these Rules will mean that:

- the NMC will be able to require a registrant to undertake an English language examination or assessment, and to provide evidence of the result of that examination or assessment where there is an allegation that the registrant's fitness to practise is impaired by reason of not having the necessary knowledge of English;
- the NMC will be able to, prior to a hearing to review an order of a Practice Committee, require a registrant to undertake an English language assessment , where that registrant's fitness to practise had been found to be impaired by reason of not having the necessary knowledge of English;
- the Conduct and Competence Committee can draw such inferences as it deems appropriate if a registrant refuses to undertake or provide the results of an English language assessment; and
- an applicant must provide evidence that they have the necessary knowledge of English for safe practise as a nurse or midwife, when applying to join the

[1] The NMC, GDC and GPhC were already able to carry out language checks on non-European applicants wishing to practise in the UK.

register or when they apply for readmission to the register following a lapse in their registration.

8. Consultation outcome

8.1 The NMC carried out a public consultation on the Rules approved by this Order and on the process for registration with the NMC between 1 June and 21 August 2015. The NMC received over 720 responses to the consultation. The overall response to the consultation was positive, with the majority of respondents supporting all but one of the proposals. The exception was that marginally more respondents (45%) did not support the proposal that the result stated in an examination certificate that is signed by the examination board would provide conclusive proof of the result achieved by the nurse or midwife in that examination. This compares with 41% who either agreed or strongly agreed. Some of the objections raised to this proposal related to the potential for forgery. The NMC say that it has safeguards in place through the use of an electronic verification system on the exam board website. The rules do not specify what examination board will be used but the NMC indicated in this consultation that it proposed to use the International English Language Testing System (IELTS). The consultation response document is available on the NMC's website http://www.nmc.org.uk/globalassets/sitedocuments/consultations/2015/final-version-english-language-requirements-consultation---summary-of-responses.pdf

9. Guidance

9.1 The NMC have a statutory duty to publish guidance relating to the evidence, information and documents to be provided by applicants for registration for the purpose of demonstrating that they have the necessary knowledge of the English language for safe and effective practise in the UK.

9.2 The NMC will also publish full supporting information on the measures being introduced by these Rules on their website.

10. Impact

10.1 A Regulatory Triage Assessment was prepared for the Knowledge of English Order which received a green opinion from the Regulatory Policy Committee, as having no or limited impact on business. The impact is to individual nurses or midwives (who are likely to be European applicants) who may be required to take a language test at a cost of around £150 or will be stopped from working in the UK in some cases where their English language skills are not at the necessary level for safe practise. There will be some costs which will fall to the NMC themselves in terms of set up and administration costs.

10.2 There is no impact on the public sector.

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

11. Regulating small business

11.1 The legislation does not apply to small businesses. 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 created by this legislation under on-going review.

13. Contact

13.1 Sharon Corner at the Department of Health. Tel 0113 2546150 or email: sharon.corner@dh.gsi.gov.uk can answer any queries regarding the instrument..