EXPLANATORY MEMORANDUM TO

THE NURSING AND MIDWIFERY COUNCIL (MIDWIVES) RULES ORDER OF COUNCIL 2012

2012 No. 3025

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 The Rules scheduled to this Order make rules to regulate the practice of midwifery, including rules concerning:

- the requirements for practice as a midwife;
- midwives' scope of practice and record-keeping obligations; and
- the supervision of midwives, reporting and suspension action by the local supervising authority.

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

3.1 None

4. Legislative Context

4.1 This Order approves The Nursing and Midwifery Council (Midwives) Rules 2012 ("Midwives Rules 2012"), which were made by the Nursing and Midwifery Council (NMC) at its Council Meeting in September 2012.

4.2 These Rules replace The Nursing and Midwifery Council (Midwives) Rules 2004 ("Midwives Rules 2004", as scheduled to SI 2004/1764, as amended), which are revoked following a review and clarification of those rules.

.

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

7.1 The NMC's current midwives rules were made in 2004 to regulate the practice of midwifery.

7.2 The NMC currently publishes the rules, together with supporting standards and guidance in the *Midwives rules and standards* (NMC, 2004). In 2008 it commenced a project to review this document, the first phase of which was to review the rules.

7.3 The underlying purpose of the review was to ensure that the rules remained up to date in maintaining or improving public protection and reflected current midwifery practice. The NMC also sought to provide clarity for those using the rules.

7.4 A consultation carried out in 2010 set out a number of proposals, which included rewriting some rules to provide clarity, removing rules that dealt with matters covered in other documentation and reordering some of the content.

8. Consultation outcome

8.1 Between April and July 2010, the NMC consulted on its proposed changes to the Midwives Rules 2004. During the early stages of the review the NMC used a variety of mechanisms to seek views from a number of interested parties, which included the Midwifery Committee, midwives, users of maternity services, new fathers and lay groups. The views obtained were used to inform the development of the proposals.

8.2 The main online survey was made available on the NMC's website between 26 April and 23 July 2010. This attracted 602 valid responses from individuals and 73 from organisations; a further two respondents did not indicate in what capacity they were responding. A shorter questionnaire, with more detailed background information, was designed for members of the public who were not midwives. This survey was available between 10 June and 23 July 2010 and generated 62 valid responses.

8.3 The report of the consultation showed that 12 of the 18 proposals were supported. However, two of these were subsequently withdrawn in the light of legal advice. Opinion was divided on four of the original 18 proposals and the other two were strongly opposed.

8.4 Having considered the report, together with some additional information, the NMC agreed, on the advice of the Midwifery Committee, that five of the remaining ten proposals that had been supported would be taken forward in the new rules. It was agreed that the other five would also be taken forward but that the matters to which they related did not need to be included in the new rules. The NMC agreed that the four proposals that had received a

mixed response should be taken forward in the new rules. Recognising the strong opposition to two of the proposals, the NMC agreed that the definition of "postnatal period", as set out in the rules, would remain unchanged, as would the provisions regarding who was required to submit a notification of intention to practise.

8.5 The drafting of the new rules identified an issue in relation to the existing provision for a local supervising authority to suspend a midwife from practice. A further consultation was carried out on two interlinked proposals. Firstly, that the current rule should be removed and, secondly, that a decision to suspend a midwife or restrict her practice should rest with the NMC. The questions were included in an online consultation on the standards and guidance to support the new rules, which ran from 12 December 2011 to 27 February 2012. This second consultation attracted 245 valid responses from individuals and 61 from organisations; a further four respondents did not indicate in what capacity they were responding.

8.6 The report of the consultation showed that there was opposition to both proposals. In considering the report, the NMC also considered a paper setting out the benefits and risks, together with supporting evidence, of two options. The first option was to remove the current rule on suspension, as proposed in the consultation. The second option was to recognise the opposition expressed in the consultation responses and retain the current rule.

8.7 The NMC decided that the existing provision for a local supervising authority to suspend a midwife from practice promoted and enhanced public protection and should be retained in the new rules.

8.8 The key changes to the rules agreed by the NMC, having sought the advice of the Midwifery Committee, involve:

- revision and clarification of the rules relating to: records kept by midwives; visits to and inspections of the local supervising authorities and midwives' places of work; and the reports to be provided by the local supervising authorities;
- removal of rules relating to administration of medicines and clinical trials as these matters are covered elsewhere; and
- providing clarity around the process when a local supervising authority suspends a midwife from practice and ensuring that the views of the midwife concerned are taken into account.

8.9 The reports of both consultations, together with the consultation documents, are available on the NMC website at http://www.nmc-uk.org/Get-involved/Consultations/Midwives-rules-and-standards-phase-two/

9. Guidance

9.1 The NMC will publish supporting standards and guidance, which has been reviewed in parallel with the rules. The publication of the new *Midwives*

rules and standards will be linked to the coming into force date of the Midwives Rules 2012.

10. Impact

10.1 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 will be considered as part of that review.

13. Contact

Mike Lewis at the Department of Health can answer any queries regarding the instrument. Tel: 0113 254 6146 or email: Mike.Lewis@dh.gsi.gov.uk