

Modernising midwifery regulation: Protected title, function and midwifery scope of practice

The Department of Health (DH) will be changing our legislation to modernise how we regulate midwives. We are limited in what we can say about the proposals while the scope of the legislation is under discussion. However, we are aware that some midwives have become concerned that we might be proposing to remove some of the important things that make midwifery a unique and distinctive profession. We want to address these concerns and explain that this is not the case.

Key points

Under our proposals for change:¹

- There will be no change to the protected title of 'midwife'. The protected function of 'attendance on a woman in childbirth' will remain. Other than in an emergency or as part of training, only a midwife or medical practitioner can deliver a baby.²
- Antenatal and postnatal care have never been protected functions for midwives, and that will still be the case after legislative change.
- There are no changes to the scope of midwifery practice, which is much wider than the narrow protected function and is reflected in the *Standards for competence for registered midwives* and *The Code*.³
- We understand that midwives are used to having a familiar and midwifery-specific source document that captures their regulatory framework. We will provide such a document as soon as the scope of the change is confirmed.

The current statutory framework

When the NMC was created, our main functions, powers and duties were set out in the Nursing and Midwifery Order 2001 (the Order). The Order grants the Council some rule-making powers. Our Rules sit below the Order, and set out in more detail how we will do something that the Order requires or allows us to do. While the Order and the Rules require parliamentary process to change them, we can introduce or amend standards ourselves. However, we must carry out a consultation before doing so.

¹ The scope of the change is not yet confirmed. This briefing is based on the proposals we have shared with the Department for Health.

² Rule 2 of the *Midwives rules and standards* does not extend the protected function of 'attendance on a woman in childbirth' to cover antenatal and postnatal periods. That would criminalise any professional treating pregnant women or new mothers. Rule 2 specifies that midwives involved in antenatal and postnatal care have to serve notice of their Intention to Practise (ItP) – even if they are not directly involved in labour. Rule 2 will be removed because there will no longer be a regulatory requirement to submit an ItP.

³ Rule 5 of the *Midwives rules and standards* is titled 'scope of practice' but there is nothing in Rule 5 that is not adequately covered by *The Code* and the *Standards for competence for registered midwives*. Rule 5 will be removed because it does not add anything to the framework set out by the *Standards for competence for registered midwives* and *The Code*.

Reforming our midwifery framework involves changes to each of these tiers of legislation. Some of those changes are consequential – a standard may become obsolete because it is no longer supported by a standard-setting power in the Order or the Rules, or a Rule may become obsolete because of changes to the Order. Getting this hierarchy right involves having these tiers in the right relationship to each other. If we have Rules that do not stem from the Order, or Standards that do not stem from the Rules, we may act outside of our statutory powers (*ultra vires*) and be subject to legal challenge.

Protected title

The Council has used its powers to create three protected titles for nurses and midwives on the relevant parts of our register: ‘registered nurse’, ‘midwife’ and ‘specialist community public health nurse’.

These are called ‘protected titles’ because it is unlawful for anyone else to falsely use them. This protection for the title ‘midwife’ results from our Order (Article 44) which makes it a criminal offence for someone to falsely represent themselves as being on the register, use the protected title of midwife or to falsely represent themselves as having midwifery qualifications. The same protection is given to the other titles. **There will be no change to the current protected title of ‘midwife’.**

Protected function

Midwifery also has a ‘protected function’ in Article 45 which makes it a criminal offence (other than in an emergency or during training) for any person other than a registered midwife or a registered medical practitioner to ‘attend a woman in childbirth’. There is no equivalent protected function for nursing. The language used in Article 45 is taken directly from earlier Midwives Acts and it is clear from the few reported prosecutions that its meaning is the same as in the previous Acts, which is direct involvement in the delivery of a baby. **There will be no change to the current protected function for midwifery.**

Rule 2 of *Midwives rules and standards* defines the terms used in these Rules, including a definition of the phrase ‘attendance on a woman in childbirth’. The Rule contains a very wide definition of ‘childbirth’ suggesting it means the antenatal and postnatal period as well as the act of giving birth. Rule 3 uses the same phrase to define whether a midwife needs to serve a notice of Intention to Practice (ItP). For example, a midwife involved in antenatal or postnatal care would have to submit an ItP, even if not involved in supporting women in labour.

Some people have misinterpreted the effect of the definition of ‘attendance on a woman in childbirth’ in Rule 2 as clarifying or expanding the meaning of the same phrase in Article 45 of the Order. That is not, and cannot, be the case. If the wider definition of childbirth did relate to a protected function, it would criminalise any other professional legitimately working with a pregnant woman or a new mother (for example, a physiotherapist, podiatrist or dentist).

Those who have misunderstood Rule 2 in this way may believe that if the Rule is removed, the protected function of midwives would be curtailed from ‘antenatal, intranatal and postnatal’ care to ‘labour’. This is not the case and the removal of Rule 2 will make no difference to the regulatory framework for midwifery. **There has never been a protected**

function for midwives encompassing antenatal and postnatal care, and that will still be the case after legislative change.

Scope of practice

Similarly, Rule 5 of the *Midwives rules and standards* is given the title 'scope of practice' but it does not actually create or define a midwife's scope of practice. It simply replicates some of the requirements on midwives captured in *The Code* and the *Standards for competence for registered midwives*. **This means that removing Rule 5 (scope of practice) has no impact on midwives' scope of practice or on their degree of autonomous practice.**

Midwives can undertake any antenatal and postnatal care which falls within the *Standards for competence for registered midwives* and which is within the limits of their individual competence. However, this care cannot be reserved for midwives because there will always be other professionals legitimately involved in the care of pregnant women, new mothers and babies.

Conclusion

It remains important that midwives are involved where their expertise is needed in the whole pregnancy and maternity pathway, and this is a matter for commissioners and providers. It is also important that other healthcare professionals receive sound training to work safely with pregnant women and new mothers and babies, and to draw on midwives' expertise when needed.

We understand that some midwives are concerned about these changes to what are long-standing provisions and we will act responsibly to set out the new arrangements as soon as we can.

Links

[The Code](#)

[Standards for competence for registered midwives](#)

[How to revalidate](#)