

NMC Briefing

Health Care and Associated Professions Nurses and Midwives: The Nursing and Midwifery (Amendment) Order 2017

Overview

- 1 We welcome these changes to the Nursing and Midwifery Order 2001 which will affect two main areas: midwifery regulation and fitness to practise legislation.
- 2 Proposed changes to the Nursing and Midwifery Council's (NMC's) midwifery legislation will separate the supervision and regulation of midwives, and will ensure that the NMC is fully responsible for all aspects of midwifery regulation. Changes will also remove the statutory requirement for the Midwifery Committee.
- 3 This is a change that we requested following a number of critical incidents and independent reports confirming that the current arrangements are not appropriate for public protection. Currently it can be confusing for the public about who is responsible when something goes wrong and conflates support and development with investigation and action.
- 4 The changes will make sure that, as the regulator, we are responsible for all regulatory decisions regarding midwives, enhancing public protection through the well-established principle of independent oversight and accountability.
- 5 Proposed changes to the NMC's fitness to practise legislation will allow for a more proportionate approach to cases, with new powers to resolve some less contentious matters more simply and quickly, taking only the most serious cases to a full hearing.
- 6 We have long maintained that our legislation is out of date, making it slow for us to change in the fast-paced healthcare environment. It forces us to use outmoded and expensive procedures for addressing concerns raised about a nurse's or midwife's skills, knowledge, health or character (known as fitness to practise).
- 7 At present we spend 80 percent of our budget on fitness to practise. A major part of this expenditure is because unless they are closed at the end of the investigation, our legislation requires us to send every case on for a full adjudication, even where the nurse or midwife admits the allegations. This prevents us from taking more proportionate action to address less serious concerns, adding huge pressure on the fee that nurses and midwives must pay to us.
- 8 The number of fitness to practise referrals we receive is a key contributor to our costs. We have made significant efficiencies, but our fitness to practise caseload

continues to rise. These changes will mean we can deal with cases in the most appropriate and proportionate manner.

- 9 We have worked closely with the Department of Health to bring forward these changes to our legislation and we are grateful for its support.
- 10 The consultation and the government's response can be read here - <https://www.gov.uk/government/consultations/changes-to-nursing-and-midwifery-council-governing-legislation>
- 11 The draft Order can be found here - http://www.legislation.gov.uk/ukdsi/2017/9780111153444/pdfs/ukdsi_9780111153444_en.pdf
- 12 If you would like to discuss this issue in advance of the debate or would like any additional information then please do not hesitate to contact Kerry Racher, Senior Parliamentary Officer, on 020 7681 5909 or at kerry.racher@nmc-uk.org.

About the Nursing and Midwifery Council

- 13 The NMC is the independent nursing and midwifery regulator in the UK. Our role is to protect the public.
- 14 We do this by setting standards of education, training, conduct and performance for nurses and midwives. We also hold the register of those who have qualified and meet our standards. If an allegation is made that a registered nurse or midwife is not fit to practise, we have a duty to investigate that allegation and, where necessary, take action to protect the health and wellbeing of the public.
- 15 We are the largest healthcare regulator in the world with over 692,000 nurses and midwives on our register, most of whom work in front-line healthcare roles.
- 16 In order to be on the register nurses and midwives must pay an annual fee of £120. This fee funds all of our regulatory activity.

Proposed changes to the Nursing and Midwifery Order 2001

Changes to how midwives are regulated – why change is needed

- 17 We welcomed the announcement by the Secretary of State for Health in July 2015 that the government would accept all the recommendations in Dr Bill Kirkup's report into Morecambe Bay, making a commitment to the families affected by the failings at Morecambe Bay to amend the legislation governing the regulation of midwives. The Department of Health consulted on the changes throughout spring 2016. The consultation was taken forward in accordance with the requirements of Section 60 of the Health Act 1999. With Parliamentary approval, we anticipate the changes will come into force at the end of March 2017.
- 18 The changes to midwifery regulation will strengthen public protection by addressing a structural problem with statutory supervision, and will mean responsibility for supervision sits in a far more appropriate place – with the organisations that employ midwives.

- 19 The current regulatory approach to midwifery supervision was a significant factor in the poor response to failings in midwifery care at Morecambe Bay University Hospitals NHS Foundation Trust. The Parliamentary and Health Service Ombudsman (PHSO), Professional Standards Authority and a Department of Health investigation led by Dr Bill Kirkup produced reports following Morecambe Bay that were critical of the additional tier of midwifery regulation from a public protection perspective.
- 20 In addition, we commissioned the King's Fund to undertake an independent review of midwifery regulation which substantiated these criticisms and endorsed the call for urgent change. The PHSO and the King's Fund both concluded that the issues raised by Morecambe Bay were not isolated pockets of poor practice but indicative of a structural problem with statutory supervision.
- 21 The King's Fund supported the PHSO recommendation that the supervision and regulation of midwives should be separated, and the NMC as the regulator should be in direct control of all regulatory activity. Furthermore, the King's Fund found no evidence that the unique layer of midwifery regulation provided any additional public protection. It recommended that it should be removed from the NMC's legislation. This recommendation was supported by the Kirkup report.
- 22 The Secretary of State for Health accepted the recommendations of the Kirkup Report in full and committed to bringing forward proposals to amend our legislation so that the supervision and regulation of midwives could be separated.

Changes to how midwives are regulated - what the changes will mean

- 23 The purpose of the changes to our midwifery legislation is to ensure that only the NMC, as the professional regulator, is responsible for regulatory decisions regarding midwives. This will bring regulation of midwives in line with the regulation of other professions.
- 24 The main change will be to remove supervision as a statutory function from the NMC's legislation. It will also mean that the statutory requirement for the midwifery committee will no longer exist.
- 25 Supervision currently covers a wide range of activity beyond regulatory investigations, including support, development and leadership. This decision need not affect those activities – it simply confirms that they are not part of the regulator's role. The four UK chief nursing officers have taken the lead in developing a new professionally based model of supervision and plans are well advanced in each of the four countries. This will help to ensure that the things about supervision most valued by midwives will continue in the future.
- 26 Midwives place high value on clinical supervision but it is for employers, not regulators, to take responsibility for this important function.
- 27 The changes will also mean the removal of the statutory Midwifery Committee from our governance structure. There is no equivalent for nursing or for any of the other regulated health and care professions, so abolishing the statutory midwifery committee would therefore bring midwives into line with all other regulated health care professionals.

- 28 The NMC will continue to have a statutory duty to consult midwives and those with an interest in midwifery on relevant matters when making changes that impact on midwifery.
- 29 We have already established a strategic Midwifery Panel to advise the Council on key midwifery issues and to provide a forum to develop strategic thinking on all aspects of the future approach to midwifery regulation. This panel has four country representation and includes the Royal College of Midwives and a lay representative amongst others.
- 30 As an additional measure, we have appointed a Senior Midwifery Advisor to the Chief Executive (Donna Ockenden) to provide expert advice on midwifery issues.
- 31 We have worked closely with the Royal College of Midwives (RCM) and other stakeholders to ensure there continues to be a strong midwifery voice within the NMC and we are delighted that the RCM have welcomed our approach to this.
- 32 We will continue to raise awareness within the midwifery community, and more widely, of the role and work of the Midwifery Panel and we look forward to continuing our work with the RCM and other stakeholders in the future.
- 33 We are also required to take into account the views of those we regulate and others when exercising our regulatory duties and we have a duty to consult with affected groups when establishing standards and guidance.
- 34 There is no statutory requirement for midwifery representation on our Council, however we ensure that there is always at least one midwife at any given time.
- 35 There will therefore be robust arrangements in place for midwives to feed in their views and influence the NMC's policies and procedures. Professor Mary Renfrew has recently been appointed as the lead adviser on our new pre-registration midwifery education standards to ensure we engage with midwives when establishing these standards.

Improvements to our fitness to practise processes

- 36 The current fitness to practise legislation is outdated and the process can seem rather bulky in places. We spend around three-quarters of our budget on our FtP work despite fewer than one per cent of nurses and midwives being referred to us, therefore we need to ensure it is fit for purpose.
- 37 This is because we are required to hold hearings in almost all cases to hear the evidence in question, even if there is not a disagreement about the facts. Hearings often take a number of days, and are costly and time-consuming to organise.
- 38 Legislative reform would allow case examiners the authority to issue warnings to or agree undertakings with the nurse or midwife. This would avoid the need for a hearing where the facts were not in dispute and the case was less serious.
 - 38.1 Undertakings are designed to address a deficiency in the professional's clinical practice. They are a formal binding agreement that the nurse or

midwife will undertake activities, such as training or operate under supervision in order to address said deficiency.

- 38.2 Warnings would be issued when a fitness to practise hearing is not necessary, but there may be aspects of the registrant's past practice or conduct that cause some concern and need a public warning. Warnings will not be issued in all 'no case to answer' cases. A warning will only be issued if it is considered that past conduct represents a serious breach of professional standards and the Code.
- 38.3 Case examiners would also gain the ability to issue a registrant with advice at the end of the investigation stage where they consider there is no case to answer, therefore a fitness to practise hearing is not necessary, but there has been a minor breach of professional standards under the Code.
- 38.4 The reforms would also allow us to merge our two Practise Committees, which hear fitness to practise cases, into a single Fitness to Practise Committee. This would enable us to address the fitness to practise of nurses and midwives in a more rounded way, by considering different kinds of allegation at the same time. It would also remove costly delays caused by transferring cases between different committees when different kinds of concern arise (which can happen when, for example, a concern about nurse or midwife's health arises during a hearing about misconduct).
- 39 These vital changes will speed up and simplify our processes to protect the public, and increase efficiency. The introduction of warnings, advice and undertakings will allow for a more proportionate response to allegations of impairment of fitness to practise while maintaining public protection and will mean we will be able to deal with cases in a more appropriate and proportionate manner, whilst not compromising public protection. Hearings will then be used for when they are most appropriate – when the facts are in dispute, or when the allegations are most serious.
- 40 It will also bring the NMC in line with other professional regulators, including the General Medical Council (GMC) who already have these powers.
- 41 We hope that Parliament will approve the Order which will enable us to make subsidiary changes to our rules, with the new powers effective from July 2017.

Next steps

- 42 Subject to the passage of the Order, changes to how midwives are regulated will come into force by the end of March 2017 and the improvements to our fitness to practise processes will be effective from July 2017.

Further information and contact details

- 43 If you would like any further information on this issue, please contact Kerry Racher, Senior Parliamentary Officer on 020 7681 5909 or via email at kerry.racher@nmc-uk.org.