



Department
of Health

The Nursing and Midwifery Council - amendments to modernise midwifery regulation and improve the effectiveness and efficiency of fitness to practise processes

Response Form

Instructions for responding to the consultation

The Department of Health wants your views on the proposals to make changes to the Nursing and Midwifery Council's governing legislation through changes to the Nursing and Midwifery Order 2001. These proposed address three objectives:

1. Remove statutory midwifery supervision provisions

The NMC has a clear regulatory framework which applies to the two distinct professions that it regulates — nurses and midwives. In all key respects this framework applies to both professions in the same way. In addition to this main regulatory framework, for historical reasons, midwives have been subject to an additional tier of local regulation. It has become increasingly clear over recent years that this additional tier is unnecessary (as midwives are no more inherently dangerous or risky practitioners than doctors, nurses or healthcare professionals).

The Parliamentary and Health Service Ombudsman (PHSO) and a Department of Health investigation led by Dr Bill Kirkup both produced reports following failings in midwifery care at Morecambe Bay University Hospitals NHS Foundation Trust that were critical of the additional tier of midwifery regulation. In addition the NMC commissioned the King's Fund to undertake an independent review of midwifery regulation which supported these criticisms and endorsed the call for urgent change. 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. This recommendation was accepted by the NMC Council and supported by the Kirkup report. The Secretary of State for Health has accepted the recommendations of the Kirkup Report in full and committed to bringing forward proposals to amend the NMC's legislation.

The proposed changes will result in clear separation of the roles and purpose of the supervision and regulation of midwives.

2. Abolishing the statutory Midwifery Committee.

Although the NMC regulates two professions, nurses and midwives, the NMC is required by its legislation to have a statutory midwifery committee to advise the NMC Council on matters relating to midwifery - it has no similar requirement to have a statutory nursing committee. Furthermore, none of the other healthcare professional regulators have a comparable statutory committee. The government has a policy objective to streamline and rationalise regulatory legislation. Therefore it is considered that it would be appropriate to make this proposed statutory change now at the same time as making changes to modernise midwifery regulation.

3. Make some improvements and efficiencies to the NMC's fitness to practise processes.

These proposals will include giving Case Examiners and the Investigating Committee power to agree undertakings and issue warnings and advice with registrants at the end of the investigation stage of the Fitness to Practise process.

The response form below can be used to help you give your views on these proposals.

You can find out more and respond to this consultation at:

<http://consultations.dh.gov.uk>

The closing date for responses is 17 June 2016.

Responses received after this date may not be read.

Consultation responses should be returned via email to: HRDListening@dh.gsi.gov.uk

Or if you would prefer to send your response by post:

**NMC S60 Consultation
Professional Standards Branch, Room 2N09
Quality Division, Strategy and External Relations Directorate
Department of Health
Quarry House
Quarry Hill
Leeds
LS2 7UE**

What we will do next

We will read and consider all responses and publish a response to the consultation. The Government response will set out how comments and views shaped the final decisions. A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the GOV.UK website (www.gov.uk/dh).

Your details

Please supply details of who has supplied this response.

Name:

Roz Hooper

Address:

Royal College of Nursing
20, Cavendish Square
London
W1G 0RN

Contact email address:

Rosalind.hooper@rcn.org.uk

Please indicate whether you are:

A member of the public	<input type="checkbox"/>
A nurse	<input type="checkbox"/>
A midwife	<input type="checkbox"/>
Another healthcare professional	<input type="checkbox"/>
A representative of a professional or regulatory body	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

If Other, please specify:

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Are you responding as an individual or on behalf of an organisation?

Individual	<input type="checkbox"/>
Organisation	<input checked="" type="checkbox"/>

What is your organisation? (if relevant)

Royal College of Nursing... a union and professional body

What is your position or job title within the organisation? (if relevant)

Head of Legal (Regulatory)

If you are an employer/member of an organisation please indicate the size of your organisation:

1-4

5-99

100 or more

In which country do you currently reside?

England

Scotland

Wales

Northern Ireland

Other

Consultation questions

Question 1: Do you agree that this additional tier of regulation for midwives should be removed?

Yes () No (X)

Comments

The comments in this section have been contributed to by the RCN Midwifery lead and Midwifery Forum members:

It is proposed to remove Part 8 of the existing order. This, in one sweep, removes the NMC Midwifery Committee, rules as to midwifery practice and local Supervision of midwives. The effect will be to very significantly reduce the voice of midwifery at the NMC, remove governance of midwifery through specific rules and lose a key safeguard for women through elimination of Supervision in its present form.

Specifically, there will be no requirement to notify intention to practise, which currently creates good local control of midwifery provision. Suspension from practice will be left to management, which is a more difficult and less responsive route when there are concerns. It will be more difficult to impose a requirement for education / instruction for those practitioners who would benefit from it. As midwifery is not a branch of nursing and midwives are autonomous practitioners this potentially creates gaps in governance of the profession, to the detriment of public protection.

Our perception is that the relationship between midwife and SOM is closer and consequently more supportive for professional practice enhancement, than the proposed role of verifier in the future. Midwives have the same SOM, often for years, and in a majority of cases that relationship is built on trust and understanding of the specifics of the role of the midwife, and the needs and expectations of the woman and her family. The removal of this role may leave midwives vulnerable - midwives, often being autonomous practitioners of midwifery, have relied on their SOM for practice based support, rather than a management focus.

Question 2: Do you agree that the current requirement in the NMC's legislation for a statutory Midwifery Committee should be removed?

Yes () No (X)

Comments

The comments in this section have been contributed to by the RCN Midwifery lead and Midwifery Forum members:

The consultation document rightly states that midwives are no riskier to the public than any other health professional. However, the justification for removal of the Midwifery Committee seems to be limited to the fact that the other professions do not have this additional tier, rather than a critical, informed scrutiny of the midwifery profession, which in some ways has more similarities to medicine than to nursing. The consultation document also states that midwifery is a separate profession and yet this seems to have been overlooked. Midwives may practise independently in a way that nurses do not.

The NMC Council has six registrant members and six lay members, only one of whom is a midwife, which seems to us to be insufficient provision. The maintenance of the Midwifery Committee would ensure that the voice of midwifery voice is heard and that intelligence about midwifery practice areas is gathered and channelled back to the NMC.

The International Confederation of Midwives established a clear frame work of midwifery regulation and governance as the best vehicle to meet the needs of childbearing women, and the current structure best meets that model. It seems to us that the model proposed, treating midwifery in the same way as other nursing, does not reflect the best practice envisaged by the ICM.

The potential loss of the Midwifery Committee leaves us with anxiety that the voice of midwifery will not be heard, and the unique role of midwives will be less well supported, to the detriment of the protection of pregnant women, babies and new mothers.

Question 3: Do you agree that, when the Investigating Committee or the Case Examiners determine that there is no case to answer but there are some concerns as to past practice or conduct, the Investigating Committee and case examiners should have the power to issue a warning or advice to a nurse or midwife?

Yes () No (X)

Comments

If there is no case to answer, then that should be the outcome of the Case Examiner stage.

In relation to warnings, this change would lead to the unfair outcome that a nurse who, under the current regime, has no blemish against their registration, would instead see a warning against their pin published in the public domain by the NMC. The proposal does not contain the detail about how publication would work, but it seems that there is an intention that it will be visible to employers for an unspecified period of time. There is the additional issue that anything published online can be found against a Google search, even if the original publication is time limited. This is a serious sanction that has the potential to damage the registrant's employment prospects for the rest of their career. There is no suggestion in the proposal that the registrant will be given an option to accept or refuse the warning, so without that safeguard, a great deal of power about the outcome will be given to the Case Examiners without the registrant having had an opportunity to put their own side of the story. A warning without agreement from the registrant does not seem to be particularly helpful in relation to encouraging insight, because there is then no element of the registrant acknowledging their deficiency. No doubt there would be a process for appealing the outcome if warnings were adopted, in order to be compliant with the NMC's obligation to provide a fair process, so much turns on the detail of how this change might be made.

Having said this, if warnings were introduced for cases that would otherwise be processed as cases to answer, but at the lower end of the scale, there could be great advantages to be gained for reducing unnecessary process whilst still providing good public protection. Currently, the drawn out process and lengthy hearings for those types of cases seems disproportionate, involving distress for the registrant and high levels of cost for the NMC, registrants and representative bodies, and inconvenience for witnesses to attend hearings. Although CPD agreements have reduced the time spent on a few cases, they can only be utilised if the registrant admits all charges. If registrants were given offers of warnings where the Case Examiners were of the view that this would offer adequate public protection, then registrants could consider their behaviour in the round, and could take a view about whether the warning was a fair outcome in all the circumstances, even if there was a dispute about some of the facts. This would encourage the registrant to engage early and to reflect on what sanction is appropriate, supporting the development of good insight much closer to the events giving rise to the complaint. There may be occasions when there are no appropriate undertakings that can be given, and warnings of this type could fill that space.

In relation to advice, as the advice is not published, there is less potential for a nurse's career to suffer damage. However, it is probable that recruitment processes would be adjusted so that employers would ask nurse candidates if advice had been given, so again these should not be utilised where otherwise there is no case to answer and the registrant should be given an opportunity to decide whether to accept the advice or to choose a further process to, perhaps, clear their name.

Question 11: Do you agree that the requirement to notify specified persons, including governments of the four countries, when an allegation is referred to a Practice Committee panel for a hearing should be removed?

Yes (X) No ()

Comments

There does not appear to be any value in the current arrangements and we support this change.

Question 12: Will the proposed changes affect the costs or administrative burden on your organisation or those you represent, by way of:

- An increase
- A decrease
- Stay the same
- Unsure

Please explain your answer.

Qu.4: Undertakings (and warnings, if utilised in the way suggested in this response) have the potential to reduce the need for unnecessary hearings, which are costly for the RCN.

Qu. 8: Fewer interim order reviews will reduce the number of hearings at which we have to provide representation or provide written submissions.

Qu.10: Fewer substantive order reviews will reduce the number of hearings at which we have to provide representation

Question 13: Do you think that any of the proposals would help achieve any of the following aims:

- eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?
- advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?
- fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?

If yes, could the proposals be changed so that they are more effective in doing so?

If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

As set out above, we are concerned that a single Fitness to Practice committee might lose some of the current adjustments that accommodate the fragility of nurses with a disability or illness. If the changes are not adopted, a simpler process for transferring cases between the Health and conduct committees would assist such registrants further.

In relation to warnings, we are aware that certain groups (eg BME nurses, male nurses) are more likely to be referred. If warnings are imposed without the agreement of the registrant, and without a full investigation, then any discrimination against those groups inherent in their disproportionate referral rate will be cemented by their increased representation amongst those who have received a warning.

Question 14: Do you have any comments on the draft Order.

Yes ()

No (X)

Comments

We would ask that the NMC consults about guidance documents to accompany the order in due course, as it is in the guidance that much of the practical application of new rules takes place.

Confidentiality of information

If you would like any part of the content of your response (as distinct from your identity) to be kept confidential, you may say so in a covering letter. We would ask you to indicate clearly which part(s) of your response are to be kept confidential. We will endeavour to give effect to your request but as a public body subject to the provisions of the Freedom of Information legislation, we cannot guarantee confidentiality.

We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter. Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and, in most circumstances this will mean that your personal data will not be disclosed to third parties.