



Department
of Health

Regulation of Nursing Associates in England

A consultation on amendments to the Nursing and Midwifery Order 2001 and subordinate legislation to regulate nursing associates in England by the Nursing and Midwifery Council

Title: A consultation on amendments to the Nursing and Midwifery Order 2001 and subordinate legislation to regulate nursing associates in England by the Nursing and Midwifery Council
Author: Yusuf Gora ACW - Workforce / Professional Regulation 13730
Document Purpose: A policy consultation on amendments to the Nursing and Midwifery Order 2001 and subsidiary legislation to regulate nursing associates in England by the Nursing and Midwifery Council
Publication date: 16 th October 2017
Target audience: Nurses Midwives Trainee nursing associates Healthcare professionals Healthcare regulatory bodies Health education bodies Devolved administrations Education and training providers Royal colleges Unions Employer representatives Employee representatives General Public Patients and service users
Contact details: Professional Regulation Team, Room 2W06, Quarry House, Leeds, LS2 7UE Nursingassociates@dh.gsi.gov.uk

You may re-use the text of this document (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

© Crown copyright

Published to gov.uk, in PDF format only.

www.gov.uk/dh

Regulation of Nursing Associates in England

A paper for consultation on amendments to the Nursing and Midwifery Order 2001 and subordinate legislation to regulate nursing associates in England by the Nursing and Midwifery Council

Foreword.....	5
Executive summary.....	7
Section 60 Order.....	7
The Nursing Associate S60 Order	7
1. Introduction.....	12
2. Regulation of Nursing Associates in England	15
3. Wider changes to the Nursing and Midwifery Order 2001	30
4. Costs and benefits analysis.....	33
5. Equality.....	37
6. Summary of Questions.....	39
7. Annex A: Draft Order	42
8. How to respond to this consultation.....	57

Foreword

Strengthening the future NHS workforce is one of the Government's top priorities. Nursing associates will complement the existing registered nursing workforce and widen access to the nursing profession.

The introduction of the nursing associate role will help us to meet two Conservative party manifesto pledges:

- To ensure that the NHS and social care system have the nurses, midwives, doctors, carers and other health professionals that it needs
- To encourage the development of new roles and create a diverse set of potential career paths for the NHS workforce

The nursing associate role is being developed to bridge the gap between healthcare assistants and registered nurses in England. Nursing associates will work to deliver hands on care, freeing up registered nurses so they can spend more time using their specialist training to focus on clinical duties and take more of a lead in decisions around patient care.

The Government has asked the Nursing and Midwifery Council (NMC), which regulates nurses and midwives, to regulate nursing associates in England. Nursing associates will form part of the nursing team, and bringing them under the regulation of the NMC will ensure that nurse and nursing associate roles are complementary and will support a clear pathway for nursing associates who want to undertake additional training and meet the appropriate standards to become registered nurses.

As part of implementation of the role, we are developing a nursing associate apprenticeship. This will give healthcare assistants, and others with an interest in a career in healthcare, a route to develop their careers to become nursing associates, earning while they learn. We are also working with Health Education England and the NMC to develop programmes which will allow nursing associates with the desire and ability to progress into nursing. These nursing degree apprenticeships, which will be shortened to recognise the experience and learning gained in their nursing associate training, will provide a new route to achieve a nursing degree.

We want our health and care system to be the safest in the world. Regulating nursing associates will deliver proportionate and appropriate safeguards for this new profession, giving confidence to patients and the public that they are receiving the highest quality care.

Executive summary

The Nursing and Midwifery Order 2001 is the NMC's governing legislation that sets out its powers and duties. Amendments need to be made to the Nursing and Midwifery Order to provide the NMC with the necessary legal powers to effectively regulate the nursing associate profession. It is intended that the key aspects and regulatory functions of the legislation will apply to the nursing associate profession in the same way as for nurses and midwives. This will ensure that nursing associates and nurses have similar safeguards in place and work to professional standards that are aligned. In amending the legislation, the regulatory framework for nursing associates will be broadly similar to that of nurses and midwives, except where it is necessary to accommodate specific differences in the nursing associate profession.

Section 60 Order

The amendments to the Nursing and Midwifery Order will be made using the powers under Section 60 of the Health Act 1999¹. Section 60 allows changes to be made to legislation concerning the regulation of healthcare professions, by means of an Order in Council.

Section 60 of the Health Act 1999² requires the Secretary of State for Health to consult on draft orders prior to their introduction before Parliament. Section 60 Orders are subject to appropriate Parliamentary scrutiny through the affirmative resolution procedure, which requires formal approval of both Houses of Parliament before the changes become law.

The Nursing Associate S60 Order

Amendments to the Nursing and Midwifery Order 2001

The draft Nursing and Midwifery (Amendment) Order 2018 ("the draft Order") sets out proposed amendments to the Nursing and Midwifery Order 2001 that will provide the NMC with the necessary statutory powers and duties to regulate the nursing associate profession in England. The draft Order is at Annex A of this document.

¹ <http://www.legislation.gov.uk/ukpga/1999/8/contents>

² <http://www.legislation.gov.uk/ukpga/1999/8/section/60>

This consultation paper summarises the changes proposed in the draft Order to introduce regulation of the nursing associate profession in England by the NMC, and the policy and approach behind these changes.

In summary, the draft Section 60 Order will:

- give statutory responsibility to the NMC to regulate the nursing associate profession in England
- extend the NMC's current powers and duties contained in the Nursing and Midwifery Order to nursing associates, in particular the key functions of:
 - registration of qualified and competent nursing associates in England;
 - setting standards of practice, education and training, and continuing professional development and conduct for nursing associates in England;
 - approving nursing associate programmes in England;
 - operating fitness to practise procedures to deal with registrants where there are concerns about the fitness to practise of a nursing associate in England; and
 - recognising Scottish, Northern Irish, Welsh, European Economic Area (EEA) and international qualifications for the purpose of registration to the nursing associate part of the register.
- create a number of offences which will apply in England only in respect of nursing associates to protect the public. The Order would make it an offence in England:
 - to use the professional title 'Nursing Associate' unless registered as a nursing associate with the NMC;
 - to falsely claim to be on the nursing associate part of the register; and
 - to falsely claim to have nursing associate qualifications.
- set out the powers that the NMC can use to assess applications for registration from individuals who have undertaken specified nursing associate training programmes that commenced before regulation
- provide for the selection of appropriate nursing associate education visitors and registration appeal panel members for nursing associate related matters
- in respect of nursing associates, there will be no provision which enables the NMC to annotate the register giving registrants temporary prescribing rights in an emergency

- make necessary consequential amendments to the NMC's Rules and other subordinate legislation.

In addition to the amendments required to bring nursing associates into regulation, the order will make the following changes to the Nursing and Midwifery Order which will also affect the regulation of nurses and midwives:

- remove redundant screener provisions set out under articles 23 and 24 of the Nursing and Midwifery Order 2001. These provisions provide a rule making power for the NMC to appoint persons to provide an initial assessment of whether an allegation meets the threshold for consideration under the Nursing and Midwifery Order. To date these provisions have never been used and therefore removing this provision will move the legislation in line with the NMC's current model and avoid the need to give them a power in respect of nursing associates which the NMC will not utilise.

Amendments to subsidiary Orders and Rules

The draft Order will also make changes to add a new nursing associates' part to the NMC Register and to close Sub-Part 2 of the nurse part of the register to new applicants (further detail is supplied in section 3 at para 3.4 of this document).

The draft Order proposes to make amendments to the following subordinate legislation as a consequence of the amendments to the Nursing and Midwifery Order, to provide for regulation of nursing associates:

- Amendment of the Schedule to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004
- Amendment of the Schedule to the Nursing and Midwifery Council (Education, Registration, and Registration Appeals) Rules Order of Council 2004
- Amendment of the European Union (Recognition of Professional Qualifications) Regulations 2015

- Amendment of the Schedule to the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008³
- Amendment of the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004
- Amendment of the Nursing and Midwifery Council (Constitution) Order 2008

The NMC will undertake a separate consultation with regard to fees for nursing associate registrants and to make any necessary changes to the Nursing and Midwifery Council (Fees) Rules 2004. Details of how to take part in the NMC's consultation will be available at <https://www.nmc.org.uk/standards/nursing-associates/>. There will be a specific page on the NMC's website; this will be updated closer to the time of the publication of the consultation.

The extent of regulation of nursing associates

The NMC currently regulates nurses and midwives across the UK. However, nursing associates will only be regulated in England.

The nursing associate role has been developed in England to meet the specific needs of the English nursing workforce and the decision to regulate has been based on the specific risk profile of nursing associates in England.

Regulation of health and care professionals is a devolved matter in Northern Ireland and in Scotland it is devolved for new groups of healthcare professionals and those regulated since the Scotland Act 1998. Both administrations have decided not to introduce or regulate the nursing associate role within their respective workforces at this time. Whilst professional regulation is not a devolved matter in Wales, the Welsh Government has made clear that it does not want to implement or regulate the nursing associate role in Wales at this time.

All three devolved administrations are planning to assess how the role is implemented and utilised in England before making any decision to extend regulation of the role into their respective countries. A further amendment to the Nursing and Midwifery Order will be required should Scotland, Wales or Northern Ireland seek to regulate nursing associates.

³ In March 2017 the name of the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008 were changed to Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008

As regulation of the nursing associate role will be on an England only basis, the amendments made to the Nursing and Midwifery Order that are specific to the regulation of nursing associates will therefore, in the main, provide the NMC with the statutory powers and duties to carry out their regulatory functions in England. Likewise, the registration requirement for a person wishing to use the title 'Nursing Associate', will only apply to those professionals practising in England.

However, it is proposed that the offence under Article 44 (4) of the Nursing and Midwifery Order whereby a person who fails to comply, without reasonable excuse, with a requirement imposed by the NMC to produce information or documentation in respect of fitness to practise proceedings, will remain a UK wide offence. This will mean that the NMC can compel the disclosure of information from a person regardless of the country in which the person lives.

While recognising the different views on the introduction of this role across the UK, the Department of Health has worked closely with its respective counterparts in Scotland, Northern Ireland and Wales in developing the policy proposals in this document and has agreed the proposed changes with relevant parties in those countries.

1. Introduction

Development of the nursing associate role

- 1.1. The Government commissioned Health Education England (HEE) to undertake a review of the nursing and caring workforce in England. The Shape of Caring Review⁴ published in March 2015 made a series of recommendations to strengthen the capacity and skills of the nursing and caring workforce. A key recommendation was to explore the need for a defined care role to act as a bridge between the unregulated healthcare assistant workforce and the registered nursing workforce.
- 1.2. It was envisaged that this role would support the delivery of nursing care in and across a wide range of health and care settings and practice fields. Unlike nurses, nursing associates would not have a field of practice specified on their register entry. Their scope of training would allow them to be capable of working across all four fields of practice; adult, children, mental health and learning disabilities. The regulated nursing associate would be a key member of health and care teams, extending the capacity and capability of the nursing workforce by working with healthcare assistants and delivering hands on care, allowing registered nurses to concentrate on more specialist care and advanced practice. By delivering a safe and sustainable nursing workforce for the future, employers will be able to develop their workforce to meet the increasing and changing needs of the population.
- 1.3. In the autumn of 2015, HEE engaged widely with stakeholders to explore the findings of the Shape of Caring Review. There was a shared perception that the challenges and areas of change outlined in the report were real and pressing. There were distinct perspectives, but employers, managers and staff in the health and social care sectors expressed support for a new nursing support role that would act as a bridge between the unregulated care assistant workforce and the registered nursing workforce. In December 2015, the HEE Executive approved the recommendations and the Government announced a plan to create a new nursing support role for England. HEE was asked to consult on this new role.

⁴ HEE, Shape of Caring Review; 2015. Available at: <https://hee.nhs.uk/our-work/developing-our-workforce/nursing/shape-caring-review>

- 1.4. HEE carried out a six-week public consultation on the proposed new nursing associate role. The majority of respondents, a large proportion of whom were registered nurses, supported the development of the role. HEE's official response to the consultation, published in May 2016⁵, showed that 54.9% of those who responded to the consultation said nursing associates should be statutorily regulated. A further 17.4% (the next largest group of respondents) said nursing associates should be registered through voluntary systems of registration.
- 1.5. HEE's nursing associate curriculum training framework document states that nursing associates will be trained to an academic level 5 qualification and be equipped with the knowledge, skills and behaviours that enable them to support the delivery of nursing care in and across a wide range of health and care settings. They will also support registered nurses in the assessment, planning and evaluation of care. The Government considers that all nursing associates should be trained to a level 5 qualification.
- 1.6. While registered nurses will retain responsibility as assessors, planners and evaluators of an individual's care needs, nursing associates will develop an understanding of the nursing process and the rationale for each stage of care as part of their training.

Regulation of nursing associates

- 1.7. The Government is committed to the principle of proportionate regulation of health and care professionals and any burdens imposed should be a necessary measure to meet the assessed risks to public safety.
- 1.8. Statutory regulation protects the public by ensuring that only professionals who meet the standards required for safe and effective practice are registered and permitted to practise that profession. As part of their day-to-day practice, nursing associates will need to exercise a significant level of judgement as they support registered nurses, as well as ensuring the effective administration of medicines. The Government

⁵ HEE Response to Consultation. Available at: <https://hee.nhs.uk/our-work/developing-our-workforce/nursing/nursing-associate-new-support-role-nursing>

believes that statutory regulation of this new role in England is the most effective way of assuring the highest standards of practice and the safety of patients.

1.9. On 30 November 2016, the Health Secretary announced that he had asked the NMC to consider the statutory regulation of nursing associates. On 25 January 2017, the NMC's Council agreed to this request.

Why are we consulting?

1.10. The changes that we are proposing to the NMC's legislation will be made under Section 60 of the Health Act 1999, which requires the Secretary of State for Health to consult on draft Orders made under these provisions before their introduction before Parliament. This consultation seeks views on the provisions of the draft Order.

1.11. In addition, the consultation seeks further evidence to make an assessment about the impact of the policy. This is covered in sections 4 and 5 of this consultation document. The final assessments of the impact of the regulation of nursing associates will be published with the Government's formal response to this consultation.

1.12. The Government has made a decision that statutory professional regulation is a necessary and proportionate requirement for this important new role. We are not therefore seeking views on whether the nursing associate role should be regulated, but we are seeking views about how nursing associates should be regulated.

1.13. The Scottish, Northern Irish and Welsh Governments have decided not to introduce or regulate the nursing associate role at this time. We are not, therefore, seeking views on whether the nursing associate role should be regulated outside of England.

2. Regulation of Nursing Associates in England

2.1. The draft Order will amend the Nursing and Midwifery Order 2001 to establish the legislative framework for the regulation of nursing associates in England. In developing the proposed nursing associate regulatory framework we have followed the current framework for nurses and midwives set out in the Nursing and Midwifery Order 2001 to ensure consistency in regulation. The provisions have only been adapted where appropriate to accommodate the specific requirements of the new role. Nursing associates will need to exercise a significant level of judgement to support nurses and so it is felt appropriate that they have a similar level of regulation to nurses to ensure consistent levels of training and patient safety.

Registration of nursing associates

Approach

2.2. The draft Order will amend the Nursing and Midwifery Order to require the NMC to register nursing associates in accordance with the current registration framework set out in Part III of the Nursing and Midwifery Order. The NMC will have the same registration functions in terms of the responsibilities and requirements for nursing associates as it does for nurses and midwives. However, this will not be the case in respect of providing the NMC with powers to temporarily annotate its register in an emergency, which is addressed at paragraphs 2.15 to 2.17. Additionally, the regulation of nursing associates will be restricted to England only. This means the registration requirement for a person wishing to use the title 'Nursing Associate' will only apply to those professionals practising in England.

2.3. In summary the NMC will be required to:

- include nursing associates in the Register that it is required to establish and maintain under the Nursing and Midwifery Order. Amendments to the Nurses and Midwives (Parts of and Entries in the Register) Order of Council, will establish a separate part of the Register for nursing associates in England which will ensure they are identified as a separate profession with different qualifications and education and training to nurses and midwives. This will ensure clarity for the

public and employers as to whether an individual is a registered nurse, midwife or nursing associate.

- establish the standards of proficiency and requirements to be met so that someone can be admitted to the nursing associate part of the Register to ensure safe and effective practice. Nursing associates will be subject to the same requirements for registration as nurses and midwives as regards having an approved qualification, appropriate indemnity arrangements, evidence of being capable of safe and effective practice, having the necessary knowledge of English and paying the relevant fee. The NMC will publically consult on the fee nursing associates should be charged to be registered. This consultation will be published on the NMC website in due course.

Question 1: Do you agree that nursing associates should be identified on a separate part of the NMC's Register? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Question 2: Do you agree that nursing associates (in England) should be subject to the same registration requirements as nurses and midwives? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Applications from people who have not trained in England

- 2.4. Where a person with a qualification gained outside the UK, including those awarded in an EEA member state, applies to be registered in the nursing associate part of the register, the NMC must be satisfied that the person's qualification provides them with a comparable standard of proficiency as that provided by a nursing associate qualification awarded in England.
- 2.5. It is proposed that as, with nurses and midwives, if the NMC does not consider that their qualifications meet the required standard, it can ask the applicant to undergo additional training or experience followed by a test of competence (or an aptitude test or period of adaptation for EEA applicants) to ensure they have the requisite standard of proficiency for admission to the nursing associate part of the register.

2.6. As nursing associates will be regulated on an England only basis, UK applicants who have undergone comparable training in Wales, Northern Ireland and Scotland who apply to be registered as a nursing associate in England, will need a means of having their qualifications recognised to be able to register and practise as a nursing associate in England. It is therefore proposed that the NMC should be provided with similar powers to those it has in relation to non-UK applicants to enable it to recognise qualifications gained in Scotland, Wales and Northern Ireland that are comparable to a nursing associate qualification gained in England.

Question 3: Do you agree with the approach taken to allow the NMC to recognise comparable training undertaken outside England, including applicants gaining qualifications in the EEA, overseas and Scotland, Wales and Northern Ireland, for the purposes of registration as a nursing associate in England?

Transitional arrangements for nursing associate training programmes that commenced prior to regulation

2.7. Under the current registration provisions in the Nursing and Midwifery Order all applicants trained in the UK must have completed a qualification approved by the NMC's Council in order to be eligible for registration with the NMC. Under the draft Order it is proposed the NMC would have the same powers for nursing associates in terms of approving nursing associate education and training, qualifications and institutions as it does for nurses and midwives. However, as detailed in para 2.6, the NMC will not have the power to exercise these functions in Northern Ireland, Scotland or Wales as the devolved administrations are planning to assess how the role is implemented and utilised in England before making any decision to introduce or regulate the role in their respective countries.

2.8. Following extensive engagement with education providers, NHS Trusts, Royal Colleges, the NMC and NHS England about the findings of the Shape of Caring Review, which included how best to develop the quality and standards of education for nurses and care assistants, HEE established a pilot two year nursing associate training programme in January 2017. These pilot programmes have not been approved by the NMC since they commenced in advance of statutory regulation of the nursing associate role. Similarly, nursing associate apprenticeships, as defined

in the nursing associate apprentice standard published by the Institute for Apprenticeships, will not be approved by the NMC as they will have commenced prior to the introduction of regulation by the NMC.

- 2.9. The transitional provisions under new article 13A in the draft Order will allow applicants who have started or completed a nursing associate qualification from the HEE pilot or through the apprenticeship route, before the NMC set education requirements for nursing associate programmes or begun programme approvals, to have their qualification deemed comparable in terms of standards of proficiency to an NMC approved qualification for the purposes of registration.
- 2.10. In order for qualifications under the transitional provision to meet the registration requirement under article 9(2)(a) of being an approved qualification, the NMC must be satisfied the qualification meets the standard of proficiency comparable to the requisite standard of proficiency for admission to the nursing associate part of the register. If the NMC does not consider that the specified qualification meets the required standard, it may require the applicant to take a test of competence following any further training or experience to satisfy itself that the applicant has the required proficiency for registration. If the NMC is satisfied that the qualification meets the required standard, the applicant will be treated as having an appropriate qualification for the purposes of registration under article 9(2) of the Nursing and Midwifery Order.
- 2.11. The transitional provisions will apply to applicants who start (or complete) programmes up to six months after the NMC's powers to establish standards of proficiency for nursing associates come into force. This six month period will enable the NMC to work with education providers to begin the process of approving nursing associate programmes.
- 2.12. HEE is engaging with the NMC to support its pilot cohorts to meet the NMC's required standards. However, where appropriate, the NMC will still have the power to insist on further education and training and a test of competence if required in order to protect the public. Ensuring qualifications meet the required standards will provide assurance that all registered nursing associates are appropriately qualified and capable of safe and effective practice.

2.13. For clarity, the following two examples set out how the provisions would apply.

The examples assume the NMC's powers to establish standards in respect of nursing associates and to approve education and training commence on 1 October 2018 and its remaining powers commence when the NMC begins registration of nursing associates on 1 February 2019, when the first cohort of nursing associates from the HEE pilot schemes are expected to apply.

Example 1: a person who is awarded an HEE pilot nursing associate qualification in January 2019 would be eligible to use the transitional provisions for the purposes of registration as they have been awarded a specified qualification within 6 months of October 2018.

Example 2: a person who commences an HEE or apprenticeship nursing associate programme no later than March 2019 and who subsequently receives a qualification from that course, would be also eligible to have their qualification assessed under the transitional provisions for the purposes of registration..

2.14. Anyone commencing a nursing associate course in England not approved by the NMC after 1 April 2019 (i.e. six months after the commencement of the NMC education and training approval powers) would not be eligible to apply for registration under the transitional provision. From that date only qualifications awarded in England from NMC approved courses would be eligible for registration in the nursing associate part of the register.

Question 4: Do you agree that these transitional arrangements are fair and would allow the NMC to ensure that applicants with a nursing associate qualification from an HEE course or from an Institute for Apprenticeships approved English apprenticeship meet the required standard for entry on the nursing associate part of the register? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Emergency annotation

2.15. Article 6A of the Nursing and Midwifery Order provides for the NMC's Registrar to temporarily annotate a nurse or midwife's entry allowing them to prescribe in an

emergency, even though the registrant is not qualified to do so. This provision ensures adequate numbers of individuals are available to prescribe in the event of an emergency, such as, in the event of a flu epidemic, where it might be necessary for (non-prescribing) nurses to prescribe vaccinations.

2.16. As nursing associates have not been assessed by the Commission for Human Medicine in terms of their suitability for providing, supplying and administering medicines, they will not be capable of acquiring prescribing responsibilities, even in an emergency.

2.17. The Government's view is that it is not appropriate to give the NMC's Registrar the power to provide for nursing associates to prescribe in an emergency because the risk to public safety outweighs the desirability to have flexibility in the legislation to adapt the workforce in an emergency. It is, therefore, proposed that the draft Order amends the Nursing and Midwifery Order to disapply article 6A, in respect of nursing associates and thereby exclude nursing associates from being able to prescribe in an emergency.

Question 5: Do you agree that the NMC's Registrar should not have the power to annotate a nursing associate's entry in the Register to enable them to prescribe in an emergency? If you do not agree, please set out your reasons why, any alternative suggestions and any evidence to support your views.

Education and training

Approach

2.18. The draft Order requires the NMC to carry out its education and training function in respect of nursing associates in England in accordance with the current framework set out in Part IV of the Nursing and Midwifery Order. It is proposed the NMC would therefore have the same education and training functions for nursing associates as it does for nurses and midwives though, with one exception, these would be limited to England. The exception is that the NMC will have the power under article 15(7) of the Nursing and Midwifery Order to approve a course of education or training for nursing associates run outside the United Kingdom by UK institutions that the NMC considers to be properly organised and equipped to do so. This will enable approved nursing

associate qualifications to be delivered in crown dependencies or other overseas countries in similar partnerships with English universities as happens for nursing and midwifery qualifications delivered overseas by approved UK universities.

2.19. In summary it is proposed the NMC would have the power to:

- Establish the standards of education and training necessary to achieve the standards of proficiency for registration as a nursing associate in England
- Establish the requirements for admission to and continued participation in nursing associate education and training in England
- Make rules setting out the requirements for post-registration training and for returning to practice after a prescribed period
- Appoint visitors to inspect educational institutions that offer, or propose to offer, nursing associate qualifications for the purpose of ensuring they meet the required standards
- Approve nursing associate education and training that meets the education and training standards established, and refuse or withdraw approval for those that fail to meet these standards
- Approve qualifications granted from an approved course of education and training
- Approve institutions which the NMC considers can deliver an approved course of education and training
- Publish a list of approved nursing associate courses of education, training, qualifications and institutions.

Question 6: Do you agree with the proposed approach for education and training for nursing associates including the approval of courses and setting post-registration training requirements? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Selection of visitors

2.20. It is proposed the NMC should be provided with the power to appoint visitors to inspect educational institutions that offer, or propose to offer, nursing associate education and training, hold nursing associate examinations or other assessments or conduct tests of competence. These visitors would report to the NMC on the nature

and quality of training or other matters as required to help ensure the institution meets the NMC's required standards.

2.21. Visitors appointed for the purpose of inspecting institutions offering nursing and midwifery qualifications are selected with due regard to the profession on which they are to report and at least one visitor must be registered in the part of the register relating to that profession. Whilst in principle, the favoured approach in due course would be for nursing associates to inspect institutions offering nursing associate qualifications, it will not be possible to select visitors for nursing associate courses from the profession until there are an adequate number of sufficiently experienced nursing associates for this purpose. To address this it is proposed that the NMC would be permitted to select either a nurse or nursing associate as a visitor to inspect nursing associate education and training programmes.

Question 7: Do you agree that the NMC should be permitted to select either a nurse or nursing associate as a visitor to inspect nursing associate education and training programmes? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Fitness to Practise

Approach

2.22. The draft Order would require the NMC to carry out its fitness to practise function in respect of nursing associates in accordance with the current framework set out in Part V of the Nursing and Midwifery Order. The NMC would have the same fitness to practise functions for nursing associates in England, as it does for nurses and midwives across the UK.

2.23. This means that, as for nurses and midwives, the NMC will have the following powers in respect of nursing associates:

- The Council will establish and keep under review the standards of conduct, performance and ethics expected of nursing associates and give guidance on these; and establish and review effective arrangements for nursing associate registrants whose fitness to practise is impaired

- That Case Examiners and the Investigating Committee, who are responsible for deciding whether a registrant has a case to answer, can investigate allegations that a nursing associate's fitness to practise may be impaired and can agree undertakings, issue a warning or give advice to a nursing associate
- The Council (the governing body of the NMC), the Practice Committees (collectively the Investigating Committee and the Fitness to Practise Committees) and the Registrar (the individual, usually the Chief Executive, who has overall responsibility for the register) can require disclosure of information from any person to assist in the carrying out of fitness to practise functions with regards to nursing associates
- The Fitness to Practise Committee is able to adjudicate on fitness to practise matters by considering and making final decisions on cases involving concerns about the conduct or competence of a nursing associate
- The Fitness to Practise Committee can impose any sanction on a nursing associate following a finding of impairment of fitness to practise as is available in respect of nurses and midwives i.e. cautions, conditions of practice orders, suspensions and striking off orders as set out in article 29 of the Nursing and Midwifery Order
- A Practice Committee can impose an interim suspension or an interim conditions of practice order on a nursing associate if it is satisfied that it is necessary for the protection of members of the public, it is otherwise in the public interest to do so, or where it is in the interests of the person who is the subject of an allegation
- The Council can appoint medical and legal assessors to offer advice to Practice Committees, the Registrar and Council regarding matters concerned with nursing associates

Question 8: Do you agree with the approach to fitness to practise with regards to nursing associates in England? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Fitness to practise and registration appeals

2.24. The draft Order would require the NMC to have an appeals process in respect of nursing associates in accordance with the current framework set out in Parts VI of

the Nursing and Midwifery Order. The NMC would therefore have the same process for nursing associate appeals as it does for nurses and midwives. As nursing associates will be regulated in England only, the draft Order proposes an amendment to the Nursing and Midwifery Order to provide that “the appropriate court” for the bringing of an appeal against a decision of the Fitness to Practise Committee is the High Court in England and Wales.

Approach

- 2.25. The draft Order would provide nursing associates with the same rights of appeal in respect of registration and Fitness to Practise Committee decisions, as for nurses and midwives, in accordance with the current framework set out in Part VI of the Nursing and Midwifery Order.
- 2.26. The NMC has in place an appeals process by which a nurse or midwife is able to appeal against the outcome of their fitness to practise hearing. It is proposed that these arrangements should apply in the same way to nursing associates. An appeal would have to be made within 28 days of the date stated on the letter informing the nursing associate of the outcome of the hearing.
- 2.27. A further right of appeal would apply to the High Court of Justice in England and Wales. After the appeal hearing, the court would decide whether the NMC's decision should be upheld.
- 2.28. Similarly the NMC has in place an appeals process by which a nurse or midwife is able to appeal to the Council against a registration decision. It is proposed these arrangements should similarly apply to nursing associates. An appeal would be made to the NMC's Council against registration decisions in accordance with the provisions in article 37, within a period prescribed by the NMC.

Question 9: Do you agree with the proposed approach for appeals against registration and Fitness to Practise Committee decisions for nursing associates in England? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Selection of registration appeal panel members

2.29. Under the Nursing and Midwifery Order, the Council must make rules in respect of appeals (The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004). These rules must include a provision that an appeal panel is to include at least one registrant in the same part of the register as the person concerned is, or is applying to be, registered. It would not be possible for the Council to select appeal panel members to review decisions made against nursing associates until there are adequate numbers of sufficiently experienced nursing associates for this purpose. Given that this could take a number of years to achieve, it is proposed that the NMC will be able to select either a nurse or a nursing associate as a registration appeal panel member.

Question 10: Do you agree with the proposed approach for the selection of registration appeal panel members to hear nursing associates' registration appeals? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Offences

Approach

2.30. The regulation of nursing associates will apply in England only. It is therefore proposed that the current offences under article 44(1) to 44(3) of the Nursing and Midwifery Order 2001 should apply with regards to the nursing associate profession but the application of these should be restricted to England. This would mean that a person would be committing an offence, in England, if with intent to deceive they:

- falsely represent themselves to be on the nursing associate part of the register
- use the nursing associate title when not entitled to or falsely represent themselves to possess nursing associate qualifications

It would also be an offence to:

- permit or cause another person to make a representation about themselves in connection with being registered in the nursing associate part of the register, with the intent that any other person shall be deceived
- make a representation of another person, in connection with being registered in the nursing associate part of the register, which is false to their own knowledge with intent to deceive
- fraudulently procure, or try to procure, the making, amendment, removal or restoration of an entry on to the register in connection with that of a nursing associate

2.31. It is proposed that a person guilty of the above offences would be liable, on summary conviction, to an unlimited fine consistent with the penalty for these offences for nurses and midwives.

Offences - England Only Regulation

2.32. It is proposed that the regulation of nursing associates would extend to England only, therefore, the offences set out above, will only be offences if they are committed in England. Under this legislation an offence would not have been committed if one, or more, of these actions were committed in Scotland, Wales or Northern Ireland. However, such individuals may still be liable for prosecution under existing offences such as fraud (in Scotland) or fraud by false representation (in Wales or Northern Ireland).

2.33. It is, however, proposed that the offence at Article 44 (4) would remain a UK wide offence. This would mean that a person residing in any part of the UK would be guilty of committing an offence if, without reasonable excuse, they failed to comply with a requirement imposed by the NMC's Council or a Practice Committee to produce documents, give evidence or attend a fitness to practise hearing, even if it is an nursing associate who is the subject of the proceedings. This would ensure that the NMC could compel the disclosure of information by relevant witnesses during fitness to practise proceedings regardless of the country in which the witness lives.

Question 11: Do you agree with the approach to offences regarding regulation of nursing associate's in England? Do you agree with the proposal that, where the matter concerns the use of the nursing associate title, nursing associate qualifications or an entry in the nursing associate part of the Register, the offences in article 44(1) to (3) of the Nursing and Midwifery Order (described above) will be offences only if committed in England?

If not, please set out why you disagree, any alternative suggestions and any evidence to support your views

Consequential changes

2.34. It is proposed the Order should also make amendments to the following subordinate legislation as a consequence of the amendments to the Nursing and Midwifery Order to provide for the regulation of nursing associates:

- Amendment of the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, to:
 - create a new part of the Register called 'Nursing Associates in England';
 - designated title of entrant will be 'Nursing Associate';
 - technical amendments to add nursing associates throughout, including nursing associate registration entries; and
 - closure of sub-part 2 of the nurse part of the NMC Register to new applicants. Those individuals already registered on sub-part 2 will not need to transition elsewhere i.e. sub-part 2 will be 'saved' for those already registered in that sub-part . The closure of sub-part 2 is discussed below.
- Amendments of the Schedule to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 to:
 - change the definition of a "lay" case examiner to be someone who, in addition to not or ever having been a nurse or midwife, will also not be someone who is or was ever a nursing associate ; and
 - change the definition of 'professional' in relation to a case examiner to include a nursing associate

NB: Case examiners are employed by the NMC to decide whether there is a 'case to answer' in a fitness to practise allegation. Case examiners work in

pairs. One case examiner in the pairing is always a 'professional' (a registrant) and the other is a lay person (someone who is not and never has been an NMC registrant).

- Amendment of the Schedule to the Nursing and Midwifery Council (Education, Registration, and Registration Appeals) Rules Order of Council 2004. These will be amended to:
 - make technical amendments to add nursing associates where necessary
 - update the evidence required as part of an application for registration, in this case evidence of an approved qualification as a nursing associate;
 - enable a registered nurse or nursing associate registrant responsible for nursing associate education in the relevant educational institution to sign a supporting declaration to a declaration of health and character for an applicant seeking to enter the register;
 - enable supporting declarations to a declaration of health and character to be provided for applicants seeking to enter the register from Scotland, Wales and Northern Ireland, and under the transitional provisions in article 13A of the Order; and
 - amendments to the requirements for composition of registration appeal panels in relation to lay panel members, ensuring that these cannot be, never have been, nor hold qualifications which would entitle them to apply for registration as a nursing associate.
- Amendment of the European Union (Recognition of Professional Qualifications) Regulation 2015, to include nursing associates. These are the regulations for the recognition of certain professional qualifications of applicants from EEA states and Switzerland to gain access to the profession in which they are qualified and to practise that profession in another member state.
- Amendment of the Schedule to the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008⁶ to:
 - amend the definition of "non-registrant" to include reference to "nursing associate"; and

⁶ In March 2017 the name of the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008 were changed to Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008

- amend the provisions for being disqualified from appointment as a member of the Council to also apply to “nursing associates” where it currently applies to “the nursing and midwifery professions”
- Amendment of the Nursing and Midwifery Council (Constitution) Order 2008 to include in the provisions relating to the disqualification of Council members, that a person whose membership of the Council would undermine public confidence in the nursing associate profession is disqualified from being a member of Council.

Question 12: Do you have any comments on these proposed consequential amendments? The closure of sub-part 2 of the register is discussed further at para 3.4

3. Wider changes to the Nursing and Midwifery Order 2001 and subsidiary Orders

3.1. While the draft Order is primarily focused on delivering the regulatory framework for nursing associates, the opportunity has been taken to remove two redundant provisions in the Nursing and Midwifery Order. This is designed to provide clarity of process and ensure effective public safety arrangements are in place.

Removal of screener provisions

3.2. Screeners would provide an initial assessment as to whether an allegation meets the threshold for consideration by the NMC, using powers under the Nursing and Midwifery Order. The NMC has powers under article 23 of the Nursing and Midwifery Order to make rules to appoint screeners to whom allegations against nurses and midwives may be referred. The Council has powers to make rules under article 24 setting out the procedure for the selection of screener panels, their functions and remuneration arrangements. Additionally, these provisions also allow for Fitness to Practise Committees to refer a matter to the screeners for mediation.

3.3. The NMC does not use screeners for this initial reviewing process, nor for the purposes of mediation, nor for other activities and has no plans to do so. We therefore propose that articles 23 and 24 are removed.

Question 13: Do you agree with the removal of the screener provisions at articles 23 and 24 of the Nursing and Midwifery Order? If you do not, please set out why you disagree, any alternative suggestions and any evidence to support your view.

Closure of sub-part 2 of the nurse part of the register

3.4. The nurses' part of the register is currently divided into two sub parts: sub-part 1 for first level nurses and sub-part 2 for second level nurses. Sub-part 2 of the register was the former route by which UK-trained second level nurses, known as State Enrolled Nurses, would enter the register. Registration on either sub-part 1 or sub-part 2 of the register enables individuals to be known as a 'Registered Nurse' and there is currently no restriction on scope of practice between the two levels. Most

nurses on sub-part 2 have undertaken further training and are now also registered on sub-part 1. There are currently approximately 11,000 nurses who are only registered on sub-part 2 and this number is diminishing each year.

- 3.5. Sub-part 2 has in practice been closed since the late 1990s to UK trained nurses when Project 2000 training removed the distinction between the two levels of nursing education. Since then there have been no new UK-trained entrants to sub-part 2 of the nurses' part of the register. The only individuals who now enter sub-part 2 are a very small number of nurses from outside the UK whose qualifications are not sufficient for registration to sub-part 1.
- 3.6. The NMC must consider applicants from EEA persons who have qualifications which the EEA has agreed are equivalent to sub-part 2 nurses. These applicants are allowed to join sub-part 2 but only following completion of compensatory measures. Numbers of sub-part 2 EEA applicants are very small (16 between 2000 and 2014) and this has been the position for some time.
- 3.7. We propose to close sub-part 2 to all new applicants, although existing registrants will be entitled to remain on this part of the register. They will also be able to apply to renew their registration and apply for readmission and restoration to sub-part 2. This would mean that sub-part 2 would exist and remain for those currently registered on sub-part 2 but no new applicants would be able to apply to be registered after this provision comes into effect.
- 3.8. All EEA trained nurses would be able to apply to what is currently sub-part 1 of the register, where they can enter the register if they meet the requirements. Alternatively applicants with EEA qualifications will be able to apply to the nursing associate part of the register and either remain in that part of the register or subsequently convert to a registered nurse by undertaking further training.
- 3.9. Closing sub-part 2 to new applications will also ensure clarity is maintained between the roles of a nurse and a nursing associate.

Question 14: Do you agree with the closure of sub-part 2 of the nurse part of the register to all new applicants? If not, please set out why you disagree, any alternative suggestions and evidence to support your view.

The draft Order

3.10. The draft Order that will be made under Section 60 of the Health Act 1999 is attached at annex A to this document.

Question 15: Do you have any further comments on the draft Order?

4. Costs and benefits analysis

4.1. As part of developing the final impact assessment to accompany the legislation, we are particularly keen to hear views on the potential costs and benefits that statutory regulation of nursing associates would enable and evidence that will help us to quantify the impact.

4.2. Our initial assessment of costs and benefits is set out below:

Cost	Borne by	Evidence of impact and potential quantification
C1. Initial Set-up costs	Taxpayer	It has been agreed that DH will fund the initial set up costs of regulating NAs.
C2. Applying for initial registration, renewing and revalidating	Individual nursing associates (some of whom may be in the private sector or self-employed). Nurse line managers will be required to participate in revalidation.	<p>We have assumed time taken to initially apply to the register will take an hour. Paying the renewal fee every year will take 25 minutes.</p> <p>Revalidation occurs every 3 years for nurses with an average total time burden of approximately 6.5 hours. If verification of the revalidation is required an additional hour is required.</p> <p>For quantification purposes we have assumed the revalidation process will be comparable for nursing associates, although no decision on revalidation arrangements has been made.</p>

<p>C3. On-going costs of regulating nursing associates</p>	<p>Individual nursing associates (some of whom may be in the private sector or self-employed)</p>	<p>We assume the regular running costs are passed on to nursing associates through registration fees. The current fee for nurses and midwives is £120.</p> <p>Fees are tax deductible. A basic rate taxpayer can claim £24 in tax relief. A survey by the NMC in 2013 said approximate 30% of nurses do this.</p> <p>This is a reduction in revenue (cost) to the taxpayer.</p>
<p>C3. Setting up and/or amending existing nursing associate courses</p>	<p>Higher Education Institutions (HEIs) and Further Education Colleges (FECs)</p>	<p>Impact of setting up/amending existing scope of courses to include regulatory consideration.</p> <p>Currently unquantified due to lack of evidence.</p>
<p>C4. Accreditation of education providers</p>	<p>HEIs and FECs</p>	<p>Education providers are likely to incur costs as a result of being inspected and accredited by the NMC.</p> <p>Currently unquantified due to lack of evidence.</p>
<p>C5. Initial registration of nursing associate graduates</p>	<p>HEIs and FECs</p>	<p>Education providers will be responsible for submitting proof of identity and qualification to the NMC upon completing their training.</p> <p>Evidence from a single university suggests this takes approximately 1 hour for a cohort of 100 nursing graduates.</p>

BENEFITS	Accrues to	Evidence of impact and potential quantification
B1. Increased patient safety	Patients and families	<p>Protections of nursing associate title, setting of minimum standards and investigations into poor practice by the regulator are likely to contribute to improved patient safety.</p> <p>Impact likely to be positive but currently lack of evidence to quantify.</p>
B2. Increased patient redress	Patients and families	<p>By having a formal fitness to practise procedure, patients and families who raise concerns about care can benefit from an independent investigation and where appropriate, regulatory action.</p> <p>This is likely to have a positive impact on patient redress but is currently unquantified.</p>
B3. Pre-employment admin Checks	Employers	<p>Statutory regulation may reduce the time taken by employers for pre-employment checks.</p> <p>Currently lack of evidence to quantify this benefit.</p>
B4. Improved consistency of education and training	Nursing associates, employers, patients	<p>Inspection of training providers will ensure consistency across all education providers and maintain minimum standards in the profession.</p> <p>Currently unquantified.</p>

4.3. We are also required to identify and quantify regulatory burdens to business as part of the Government's overall aim of reducing red tape and costs. Our initial assessment of impacts to business suggests that regulation is likely to be low impact on business but this will be revisited as part of the final impact assessment.

Question 16: Do you agree with the costs and benefits identified in the table above? If not, please set out why you disagree, any alternative impacts you consider to be relevant and any evidence to support your views. We are keen to identify evidence on the likely benefits of statutory regulation and whether regulation will enable nursing associates to carry out any additional activities (benefit B1 above).

Question 17: Our initial assessment assumes that nursing associate training numbers will increase to 5,000 per year in 2018 and 7,500 per year in 2020 and beyond, in line with the Secretary of State for Health's commitment to expand training numbers. We have assumed a 10% annual attrition rate during training and 4% per year attrition rate from fully qualified nursing associates leaving the NMC register. Do you agree with these growth assumptions? If not, please set out why you disagree, any alternative forecasts and any evidence to support your views.

5. Equality

5.1. The Department of Health and the NMC are covered by the Equality Act 2010⁷, and specifically, the Public Sector Equality Duty.

5.2. The Duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race (includes ethnic or national origins, colour or nationality), religion or belief (includes lack of belief), sex and sexual orientation.

5.3. There are three parts to the Duty and public bodies must, in exercising their functions, have due regard to them all. They are:

- the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.4. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves, in particular, to the need to:

- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low. The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

⁷ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

5.5. Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves, in particular to the need to:

- tackle prejudice; and
- promote understanding.

5.6. Please be aware, this consultation is not seeking views about whether the nursing associate role should be introduced in England, nor about whether it should be regulated in England. Responses to the following question should therefore focus on the equality impact of how we are intending to regulate nursing associates.

Question 18: Do you think that any of the proposals for how we are intending nursing associates are regulated will 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, do you believe that the proposals could 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 these aims?

6. Summary of Questions

Question 1: Do you agree that nursing associates should be identified on a separate part of the NMC's register? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Question 2: Do you agree that nursing associates (in England) should be subject to the same registration requirements as nurses and midwives? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Question 3: Do you agree with the approach taken to allow the NMC to recognise comparable training undertaken outside England, including applicants gaining qualifications in the EEA, overseas and Scotland, Wales and Northern Ireland, for the purposes of registration as a nursing associate in England?

Question 4: Do you agree that these transitional arrangements are fair and would allow the NMC to ensure that applicants with a nursing associate qualification from an HEE course or from an Institute for Apprenticeships approved English apprenticeship meet the required standard for entry on the nursing associate part of the register? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Question 5: Do you agree that the NMC's Registrar should not have the power to annotate a nursing associate's entry in the register to enable them to prescribe in an emergency? If you do not agree, please set out your reasons why, any alternative suggestions and any evidence to support your views.

Question 6: Do you agree with the proposed approach for education and training for nursing associates including the approval of courses and setting post-registration training requirements? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Question 7: Do you agree that the NMC should be permitted to select either a nurse or nursing associate as a visitor to inspect nursing associate education and training programmes? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Question 8: Do you agree with the approach to fitness to practise with regards to nursing associates in England? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Question 9: Do you agree with the proposed approach for appeals against registration and Fitness to Practise Committee decisions for nursing associates in England? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Question 10: Do you agree with the proposed approach for the selection of registration appeal panel members to hear nursing associates' registration appeals? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views.

Question 11: Do you agree with the approach to offences regarding regulation of nursing associate's in England? Do you agree with the proposal that, where the matter concerns the use of the nursing associate title, nursing associate qualifications or an entry in the nursing associate part of the register, the offences in article 44(1) to (3) of the Nursing and Midwifery Order (described above) will be offences only if committed in England? If not, please set out why you disagree, any alternative suggestions and any evidence to support your views

Question 12: Do you have any comments on these proposed consequential amendments? The closure of sub-part 2 of the register is discussed further at para 3.4

Question 13: Do you agree with the removal of the screener provisions at articles 23 and 24 of the Nursing and Midwifery Order? If not, please set out why you disagree, any alternative suggestions and any evidence to support your view.

Question 14: Do you agree with the closure of sub-part 2 of the nurse part of the register to all new applicants? If not, please set out why you disagree, any alternative suggestions and evidence to support your view.

Question 15: Do you have any further comments on the draft Order?

Question 16: Do you agree with the costs and benefits identified in the table above? If not, please set out why you disagree, any alternative impacts you consider to be relevant and any evidence to support your views. We are keen to identify evidence on the likely benefits of statutory regulation and whether regulation will enable nursing associates to carry out any additional activities (benefit B1 above).

Question 17: Our initial assessment assumes that nursing associate training numbers will increase to 5,000 per year in 2018 and 7,500 per year in 2020 and beyond, in line with the Secretary of State for Health's commitment to expand training numbers. We have assumed a 10% annual attrition rate during training and 4% per year attrition rate from fully qualified nursing associates leaving the NMC register. Do you agree with these growth assumptions? If not, please set out why you disagree, any alternative forecasts and any evidence to support your views.

Question 18: Do you think that any of the proposals for how we are intending nursing associates are regulated will 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, do you believe that the proposals could 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?

7. Annex A: Draft Order

Draft Order in Council laid before Parliament under section 62(9) of the Health Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2018 No.

HEALTH CARE AND ASSOCIATED PROFESSIONS

NURSES AND MIDWIVES

The Nursing and Midwifery (Amendment) Order 2018

Made - - - - *xxx2018*

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the *** day of ***2018

Present,

The Queen's Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 60 and 62(4) and (4A) of, and Schedule 3 to, the Health Act 1999⁽⁸⁾.

⁽⁸⁾ 1999 c.8. Section 60 was amended by paragraph 16 of Schedule 5 to the Nursing and Midwifery Order 2001 (S.I. 2002/253); section 26(9) of the National Health Service Reform and Health Care Professions Act 2002 (c.17); paragraph 1 of Schedule 8 to the Health and Social Care Act 2008 (c.14); sections 209, 210 and 213 of, and paragraphs 60 and 72 of, Schedule 15 to the Health and Social Care Act 2012 (c.7); paragraph 7 of Schedule 4 to the Pharmacy Order 2010 (S.I. 2010/231); paragraph 43 of Schedule 34 to the Human Medicines Regulations 2012 (S.I. 2012/1916). Section 62 was amended by paragraph 1 of Schedule 4 to the National Health Service (Consequential Provisions) Act 2006 (c.43); and paragraph 2 of Schedule 8 to the Health and Social Care Act 2008. Subsections (4) and (4A) were substituted in section 62 by paragraph 11 of Schedule 10 to the Health and Social Care Act 2008. Schedule 3 was amended by section 26(10) of the National Health Service Reform and Health Care Professions Act 2002 (c.17); paragraph 8(b) of Schedule 4 to the Health and Social Work Professions Order 2002 (S.I. 2002/254); paragraph 67 of Schedule 11, and paragraph 1 of Schedule 14, to the Health and Social Care (Community Health and Standards) Act 2003 (c.43); sections 33 and 80 of, and Schedule 9 to, the

The Secretary of State published a draft Order and invited representations as required by paragraph 9(1) of Schedule 3 to that Act, and in accordance with paragraph 9(1A) of that Schedule consulted the Scottish Ministers.

The period of three months mentioned in paragraph 9(2) of that Schedule expired before a draft of this Order in Council, together with a report about consultation, was laid before Parliament.

A draft of this Order in Council has been laid before, and approved by resolution of, each House of Parliament in accordance with section 62(9) of that Act.

Accordingly, Her Majesty is pleased by and with the advice of Her Privy Council, to make the following Order in Council.

Citation and commencement

1.—(1) This Order may be cited as the Nursing and Midwifery (Amendment) Order 2018.

(2) The following provisions come into force on [insert date]—

(a) this article;

(b) article 2 in so far as it relates to provisions of Schedules 1 and 2 mentioned in sub-paragraph (c) [further instructions];

(c) xxx

(3) The remaining provisions, and article 2 for all remaining purposes, and article 3 [if necessary] come into force on [insert date].

Amendments

2.—(1) Schedule 1 (amendments to the Nursing and Midwifery Order 2001)⁽⁹⁾ has effect.

(2) Schedule 2 (amendments to subordinate legislation) has effect.

Transitional, transitory or saving provisions

3.—(1) In connection with the commencement of any provision of this Order, the Privy Council may by order make such transitional, transitory or saving provisions as it considers appropriate.

(2) The power to make an order under paragraph (2) may be exercised—

(a) so as to make different provision—

(i) with respect to different cases or different classes of cases, or

(ii) in respect of the same case or class of case for different purposes;

(b) in relation to all cases to which the power extends or in relation to all those cases subject to specified cases;

(c) so as to make any supplementary, incidental or consequential provisions which the Privy Council considers necessary or expedient.

(3) The power of the Privy Council to make an order under paragraph (2) may be exercised by two or more members of the Privy Council.

(4) The making of an order under paragraph (2) shall be sufficiently signified by an instrument signed by the Clerk of the Privy Council.

Health Act 2006 (c.28); paragraphs 4 to 10 of Schedule 8, and paragraph 1 of Schedule 15, to the Health and Social Care Act 2008; section 211 of, and paragraphs 61 and 72 of Schedule 15 to, the Health and Social Care Act 2012.

⁽⁹⁾ S.I.2002/253.

(5) The power to make an order under paragraph (2) shall be exercisable by statutory instrument.

(6) For the purposes of section 1 of the Statutory Instruments Act 1946 (definition of “statutory instrument”), the power in paragraph (2) is to be taken as conferred by an Act of Parliament.

(7) Where an order of the Privy Council under this Order is signified by an instrument purporting to be signed by the Clerk of the Privy Council, that shall be evidence of—

- (a) the fact that the order was duly made; and
- (b) the order’s terms.

Clerk of the Privy Council

SCHEDULE 1

Article 2(1)

Amendments to the Nursing and Midwifery Order 2001

Insertion of new article 2A

1. After article 2 (interpretation) insert—

“Application

2A. The provisions of this Order that apply to nursing associates, to the extent that they apply to nursing associates, only apply to England.”.

Amendment of article 3

2. In article 3 (the Nursing and Midwifery Council and its Committees)(10)—

- (a) in paragraph (2) for “nurses and midwives” substitute “nurses, midwives and nursing associates ”;
- (b) for paragraph (5)(b)(ii) substitute—
 - “(ii) the education or training of nurses, midwives, nursing associates or other health care professionals,”.

Amendment of article 5

3. In article 5 (establishment and maintenance of register)(11)—

- (a) for paragraph (1) substitute—

“(1) In accordance with the provisions of this Order the Council shall establish and maintain a register of qualified nurses, midwives and nursing associates.”;
- (b) in paragraph (2)(b) for “ as a nurse or midwife” substitute “as a nurse, midwife or nursing associate ”;
- (c) for paragraph (5) substitute—

“(5) In any enactment or instrument (past or future and including this Order), except where the context otherwise provides, “registered” in relation to nurses, midwives and nursing associates means registered in the register maintained under this article by virtue of qualifications in nursing or midwifery or by virtue of a qualification as a nursing associate , as the case may be.”.

Amendment of article 6

4. In paragraph (3)(aa) of article 6 (register)(12) for “ a visiting nurse or midwife” substitute “ a visiting nurse, midwife or nursing associate”.

⁽¹⁰⁾ Article 3 was amended by the Health and Social Care (Safety and Quality) Act 2015 (c. 28), and S.I. 2008/1485.

⁽¹¹⁾ Article 5 was amended by S.I. 2009/1182, article 4(1), Schedule 4, paragraph 38(a).

Amendment of article 6A

5. In article 6A (temporary annotations with regard to emergencies involving loss of human life or illness etc.)(13) before paragraph (1) insert—

“(A1) This article does not apply to nursing associates.”.

Amendment of article 7

6. In article 7 (supplemental provisions) for paragraph (4) substitute—

“(4) Rules under this article shall not provide for fees to be charged in respect of a person’s registration in exercise of an entitlement under article 39A(14) (visiting general system nurses from relevant European States), article 39C (visiting general system nursing associates from relevant European States) or Schedule 2A (visiting midwives, and certain nurses, from relevant European States).”.

Amendment of article 9

7. In article 9 (registration)(15)—

(a) in paragraph (2)(b) for “as a nurse or midwife” substitute “as a nurse, midwife or nursing associate”;

(b) for paragraph (7) substitute—

“(7) This article does not apply to a person who seeks registration in exercise of entitlement under article 39A (visiting general system nurses from relevant European States), article 39C (visiting general system nursing associates from relevant European States) or Schedule 2A (visiting midwives and certain nurses from relevant European States).”.

Amendment of article 10

8. In article 10 (renewal of registration and readmission) for paragraph (6) substitute—

“(6) This article does not apply to a visiting nurse, midwife or nursing associate from a relevant European State.”.

Amendment of article 12A

9. In article 12A (indemnity arrangements)(16)—

(a) in paragraph (3) for “nurse or midwife” substitute “nurse, midwife or nursing associate”;

(b) for paragraph (11) substitute—

“(11) This article does not apply to a person who has an entitlement to be registered under article 39 and Schedule 2A (visiting midwives and certain nurses from relevant European States), article 39A (visiting general system nurses from relevant European States), or article 39C (visiting general system nursing associates from relevant European States).”.

Amendment of article 13

10. In article 13 (approved qualifications)(17)

⁽¹²⁾ Article 6 was amended by 2007/3101, regulations 155, 156.

⁽¹³⁾ Article 6A was inserted by S.I. 2008/1485, article 1(2)(b).

⁽¹⁴⁾ Article 39A was inserted by S.I. 2007/3101.

⁽¹⁵⁾ Article 9 was amended by S.I. 2007/3101 and S.I. 2015/2059.

⁽¹⁶⁾ Article 12A was inserted by S.I. 2014/1887.

⁽¹⁷⁾ Article 13 was amended by S.I. 2016/1030.

- (a) for paragraph (1)(a) substitute—
 - “(a) he has a nursing or midwifery qualification awarded in the United Kingdom or a nursing associate qualification awarded in England which has been approved by the Council as attesting to the standard of proficiency it requires for admission to the part of the register in respect of which he is applying;”;
- (b) for paragraph (1)(d) substitute—
 - “(d) he is not an exempt person and he has, elsewhere than in the United Kingdom, undergone training in nursing or midwifery, or training comparable to that of a nursing associate and either—
 - (i) the Council is satisfied that his qualification attests to a standard of proficiency comparable to that attested to by a qualification referred to in sub-paragraph (a), or
 - (ii) the Council is not so satisfied, but the applicant has undergone in the United Kingdom or elsewhere such additional training or experience as satisfies the Council, following any test of competence as it may require him to take, that he has the requisite standard of proficiency for admission to the part of the register in respect of which he is applying;
 - (dd) he is not an exempt person and he has, in Northern Ireland, Scotland or Wales undergone training comparable to that of a nursing associate, and either—
 - (i) the Council is satisfied that his qualification attests to a standard of proficiency comparable to that attested to by a qualification referred to in sub-paragraph (a) required for admission to the nursing associates’ part of the register, or
 - (ii) the Council is not so satisfied, but the applicant has undergone in the United Kingdom or elsewhere such additional training or experience as satisfies the Council, following any test of competence as it may require him to take, that he has the requisite standard of proficiency for admission to the nursing associates’ part of the register;”;
- (c) in paragraph (1)(f) for “to practise as a nurse in the United Kingdom” substitute “to practise as a nurse in the United Kingdom, or as a nursing associate in England”.

Insertion of new article 13A

11. After article 13 (approved qualifications)(18) insert—

“Transitional provisions relating to admission to the register

13A.—(1) This article applies to a person who, before [insert date]—

- (a) has been awarded a specified qualification; or
- (b) has commenced a course of education or training leading to a specified qualification.

(2) A person referred to in paragraph (1) who applies for admission to the nursing associate part of the register under article 9(1) (“the applicant”) and who satisfies the conditions in paragraph (3) of this article, shall be treated as holding an approved qualification for the purposes of article 9(2)(a).

(3) The conditions referred to in paragraph (2) are that—

- (a) the applicant provides evidence of the award of the specified qualification; and
- (b) the Council is satisfied that the qualification attests to a standard of proficiency comparable to the requisite standard of proficiency for admission to the nursing associates’ part of the register; or
- (c) the Council is not so satisfied but the applicant has undergone in the United Kingdom or elsewhere such additional training or experience as satisfies the Council, following any test of competence as it may require the applicant to take, that the applicant has the requisite standard of proficiency for admission to the nursing associates’ part of the register.

(4) For the purposes of this article—

- (a) “a specified qualification” means a qualification as a nursing associate awarded—

⁽¹⁸⁾ Article 13 was amended by S.I.2007/3101 and S.I. 2015/806.

- (i) on the satisfactory completion of a course of education or training which has been approved by Health Education England⁽¹⁹⁾ in accordance with sections 97, 98, 99 and 100 of the Care Act 2014⁽²⁰⁾, or
 - (ii) as part of an approved English apprenticeship for nursing associates under an approved English apprenticeship agreement;
- (b) “an approved English apprenticeship agreement” means an agreement under section A1(3) of the Apprenticeship, Skills, Children and Learning Act 2009⁽²¹⁾.”.

Amendment of article 15

12. In article 15 (Education and Training)⁽²²⁾—

- (a) in paragraph (6) for “In performing the function” substitute “Subject to paragraph (6A), in performing the function”;
- (b) after paragraph (6), insert—

“(6A) The Council’s power in paragraph (6) must not be exercised in Scotland, Wales or Northern Ireland where the Council is performing the function in paragraph (5)(b) in connection with standards and requirements for nursing associates.”.

Amendment of article 16

13. In article 16 (visitors)—

- (a) for paragraph (5), substitute—

“(5) A person shall not be prevented from being a visitor merely because he is a member of the Council, or any of its committees, but he may not be a visitor if he is employed by the Council.”;
- (b) for paragraph (6), substitute—

“(6) Visitors shall be selected with due regard to the profession with which the education and training they are to report on is concerned and subject to paragraph (6A), at least one of the visitors shall be registered in that part of the register which relates to that profession

(6A) At least one of the visitors who are to report on the education and training of nursing associates shall be registered in the nurses’ or nursing associates’ parts of the register.”

Amendment of article 19

14. In article 19⁽²³⁾ (post-registration training)—

- (a) in paragraph (2A), for “visiting nurse or midwife from a relevant European State,” substitute “visiting nurse, midwife or nursing associate from a relevant European State,”;
- (b) in paragraph (2B)(a), for “nursing or midwifery” substitute “a nurse, midwife or nursing associate”;
- (c) in paragraphs (2C) and (2D), for “as a nurse or midwife” substitute “as a nurse, midwife or nursing associate”.

⁽¹⁹⁾ Health Education England is a body corporate established by section 96(1) of the Care Act 2014 c. 23.

⁽²⁰⁾ 2014 c.23.

⁽²¹⁾ 2009 c.22.

⁽²²⁾ Article 15 was amended by S.I. 2007/3101.

⁽²³⁾ Article 19 was amended by S.I. 2007/3101.

Amendment of article 22

15. For paragraph (5)(b) of article 22 (allegations)(**24**) substitute—
“(b) in any other case, to a Practice Committee.”.

Revocation of articles 23 and 24

16. Omit article 23 (screeners) and article 24 (screeners: supplementary).

Amendment of article 25

17. For paragraph (2)(a) of article 25 (Council’s power to require disclosure of information) substitute—
“(a) any person—
(i) by whom he is employed to provide services as a nurse, midwife or nursing associate; or
(ii) with whom he has an arrangement to provide such services; and”.

Amendment of article 26

18. In article 26 (the investigating committee)(**25**)—
(a) in paragraph (1) omit “or 24”;
(b) for paragraph (6)(b) substitute—
“(b) refer the case to the Fitness to Practise Committee.”;
(c) in paragraph (6A) omit “or (b)(i)”.

Amendment of article 26D

19. In paragraph (a) of article 26D (the Fitness to Practise Committee)(**26**) omit “, Screeners”.

Amendment of article 29

20. For paragraph (4) of article 29 (orders of the Fitness to Practise Committee)(**27**) substitute—
“(4) The Committee may undertake mediation of the matter, or decide that it is not appropriate to take any further action.”.

Amendment of article 32

21. In paragraph (2)(h) of article 32 (investigation of allegations: procedural rules) omit “, Screeners”.

Amendment of article 34

22. In article 34 (legal assessors)—
(a) in paragraph (2) omit sub-paragraph (a);
(b) in paragraph (6)(c) omit “Screener.”.

⁽²⁴⁾ Article 22 was amended by S.I. 2008/1485, S.I. 2015/806, section 27 of the Health and Social Care Act 2008 and section 81(5) of the Policing and Crime Act 2009.

⁽²⁵⁾ Article 26 was amended by S.I. 2014/3272 and S.I. 2017/xxx and by section 5(2) of the Health and Social Care (Safety and Quality) Act 2015 c. 28.

⁽²⁶⁾ This article was inserted by S.I. 2017/ 321.

⁽²⁷⁾ This article was amended by S.I. 2017/321.

Amendment of article 35

23. In article 35 (medical assessors)—

- (a) in paragraph (2) omit sub-paragraph (a);
- (b) in paragraph (4)(c) omit “Screener.”.

Amendment of article 36

24. In article 36 (registrant assessors)—

- (a) in paragraph (2) omit sub-paragraph (c);
- (b) in paragraph (4)(c) omit “Screener.”.

Amendment of Article 37

25. In article 37 (appeals against Registrar’s decisions)(**28**)—

(a) For paragraph (1)(aa) substitute—

“(aa) refuses to register a person under article 39A (visiting general systems nurses from relevant European States), article 39C (visiting general system nursing associates from relevant European States) or Schedule 2A (visiting midwives, and certain nurses, from relevant European States);”;

(b) in paragraph (1)(e) for “the profession of nurse or midwife in the United Kingdom” substitute “ the profession of a nurse or midwife in the United Kingdom, or a nursing associate in England”;

(c) for paragraph (5)(c) substitute—

“(c) for a panel considering an appeal to consist of no fewer than three members who are to be selected with due regard to the matter under consideration and to include—

(i) one registrant registered in the same part of the register as the one in which the person concerned is, or is applying to be, registered except in relation to appeals concerning nursing associates, where the panel must include one registrant registered in the nurses’ or nursing associates’ part of the register;

(ii) a person who—

(aa) is not and never has been a registered nurse, midwife or nursing associate (and article 5(5) does not apply for these purposes),

(bb) is not and has never been a registered medical practitioner, and

(cc) does not hold qualifications which would entitle them to apply for registration as a registered nurse, a midwife, a nursing associate or a registered medical practitioner;”.

Amendment of article 38

26. In article 38 (appeals)(**29**)—

(a) after paragraph (1) insert—

“(1ZA) An appeal from a decision referred to in paragraph (1)(b) relating to a nursing associate shall lie only to the county court.”;

(b) after paragraph (4), insert—

“(5) In this article, in the case of an appeal relating to a nursing associate or person seeking registration in the nursing associates’ part of the register, “the appropriate court” means the High Court of Justice in England and Wales.”.

⁽²⁸⁾ This article was amended by the following S.I.s: 2007/3101, 2008/1485, 2009/1182/ 2014/1887, 2014/3272, 2015/806 and 2017/321.

⁽²⁹⁾ Article 38 was amended by S.I. 2007/3101.

Amendment of article 39A

27. In article 39A(1) (visiting general system nurses from relevant European States) for sub-paragraph (b) substitute—
- “(b) who seeks to provide, or is providing, nursing services in the United Kingdom of a kind which are provided, in the United Kingdom, by nurses admitted to sub-part 1 of the nurses’ part of the register whose field of practice is mental health nursing, learning disabilities nursing or children’s nursing.”.

Insertion of new article 39C

28. After article 39B (European Professional Card)⁽³⁰⁾ insert—

“Visiting general systems nursing associates from relevant European States

39C.—(1) This article applies to an exempt person (“V”) who—

- (a) is lawfully established as a nursing associate in a relevant European State other than the United Kingdom (“State A”); and
- (b) seeks to provide, or is providing, services as a nursing associate in England of a kind which are provided, in England, by nursing associates admitted to the nursing associates’ part of the register.

(2) Paragraph (3) applies if V has the benefit of regulation 12 of the General Systems Regulations in connection with the provision by V of relevant services in the United Kingdom on a temporary and occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of relevant services).

(3) V is entitled to be registered in the nursing associates’ part of the register and the register shall give effect to the entitlement.

(4) If V is entitled under paragraph (3) to be registered, but is not registered in the nursing associates’ part of the register, V shall be treated as being registered in that part.

(5) V’s entitlement under paragraph (3) ceases if V ceases, whether as a result of the operation of regulation 24 of the General Systems Regulations or otherwise, to have the benefit of regulation 12 of those Regulations in connection with the provision by V of relevant services in the United Kingdom on a temporary and occasional basis.

(6) Where V is registered by virtue of an entitlement under paragraph (3) above, the Registrar may remove V’s name from the register if such entitlement ceases by reason of the operation of paragraph (5).

(7) Paragraph (8) applies if—

- (a) V’s establishment in State A is subject to a condition relating to V’s practice as a nursing associate;
- (b) V’s name is registered in the nursing associates’ part of the register; and
- (c) for any of the purposes of this Order it falls to be decided whether V’s fitness to practise is or may be impaired on the ground of misconduct.

(8) The matters that may be counted as misconduct include (in particular) any act or omission by V during the course of the provision by V of services of a nursing associate in the United Kingdom on a temporary and occasional basis that is, or would be if the condition applied in relation to practice as a nursing associate outside State A, a breach of the condition.

(9) In paragraphs (7) and (8) “condition” includes limitation.

(10) Paragraphs (1) to (6) are not to be taken to prejudice the application, in relation to registrants, of any other provision of this Order under which a registrant’s name may be removed from the register or under which a registrant’s registration may be suspended.”.

Amendment of article 44

29. In article 44 (offences)—

⁽³⁰⁾ Article 39B was inserted by S.I. 2016/1030.

- (a) in paragraph (1) for “A person commits an offence” substitute “Subject to paragraph (1A), a person commits an offence”;
- (b) after paragraph (1), insert—
 - “(1A) In England, a person commits an offence if with intent to deceive (whether expressly or by implication)—
 - (a) he falsely represents himself to be registered in the nursing associates’ part of the register;
 - (b) he uses the title of nursing associate to which he is not entitled;
 - (c) he falsely represents himself to possess a nursing associate qualification.”.
- (c) in paragraph (2) for “A person commits an offence” substitute “Subject to paragraph 2A, a person commits an offence”;
- (d) after paragraph (2), insert—
 - “(2A) The offence referred to in paragraph (2) applies only to England where the representation made is in connection with being registered in the nursing associates’ part of the register, using the title of nursing associate or possessing a nursing associate qualification.”.
- (e) in paragraph (3) for “A person who fraudulently procures,” substitute “ Subject to paragraph (3A), a person who fraudulently procures,”;
- (f) after paragraph (3), insert—
 - “(3A) The offence referred to in paragraph (3) applies only to England where the fraudulent procurement or attempted procurement of the making, amending, removal or restoration of an entry in the register is in connection with that of a nursing associate.”.

Amendments to Schedule 1

30. In Schedule 1 (Nursing and Midwifery Council and Committees)(**31**) for paragraph (1A)(1)(b)(i) substitute—

- “(i) are not and never have been registered nurses, registered midwives or registered nursing associates (and article 5(5) does not apply for these purposes), and”.

Amendments to Schedule 4

31. In Schedule 4 (interpretation)—

- (a) in the appropriate place insert—
 - ““nursing associate” means, in relation to articles 6(3), 7(4), 9(7), 12A(11) and 39C, a person who is entitled by virtue of Part 2 of the General Systems Regulations to provide professional services on a temporary and occasional basis as a nursing associate in England having completed comparable training or education in another relevant European State;”;
- (b) in the definition of “competent authority” for “in connection with the practice of nursing or midwifery” substitute “in connection with practice as a nurse, midwife or nursing associate”;
- (c) in the definition of “exempt person” for the words “in relation to the profession of nursing or in relation to the profession of midwifery,” substitute “ in relation to the nurse, midwife or nursing associate professions,”;
- (d) omit the definition of “lay person”;
- (e) in the definition of “the necessary knowledge of English” after paragraph (b) insert—
 - “(c) in relation to a person registered, or applying to be registered, as a nursing associate means knowledge of English which is necessary for safe and effective practice as a nursing associate in England;”;
- (f) for the definition of “practising” substitute—
 - ““practising” means working as a registered nurse or midwife or, in England, a nursing associate ;”;
- (g) for the definition of “the professions regulated under this Order” substitute—
 - ““the professions regulated under this Order” means the nurse, midwife and nursing associate professions;”;

⁽³¹⁾ Schedule 1 was amended by []

- (h) for the definition of “registrant” substitute—
 ““registrant” means a nurse, midwife or nursing associate who has been admitted to the register maintained under article 5;”;
- (i) for the definition of “visiting nurse or midwife from a relevant European State” substitute—
 ““visiting nurse, midwife or nursing associate from a relevant European State” means a nurse or midwife registered in exercise of entitlement under article 39A (visiting general systems nurses from relevant European States) or Schedule 2A (visiting midwives, and certain visiting nurses, from relevant European States or, a nursing associate registered in exercise of entitlement under article 39C (visiting general systems nursing associates from relevant European States));”;
- (j) omit the definition of “Screeners”.

SCHEDULE 2

Article 2(2)

Amendments to subordinate legislation

Amendment of the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004

1. The Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004⁽³²⁾ is amended as follows.
2. In article 1, in the appropriate place insert—
 ““nursing associate” means in relation to article 8, a person who has completed education or training in another relevant European State to pursue a profession which is comparable to that of nursing associates in England.”.
3. After article 2 (parts and sub-parts of the register) insert—

“Closure of Parts and Sub-Parts of the register

2A.—(1) The closure of any Part or Sub-Part of the register specified in column 1 of Schedule 1 to this Order, including the date from which these Parts and Sub-Parts close to new entries (“closure date”), shall be specified in columns 1 and 2 respectively, of Schedule 3 to this Order.

(2) Saving and transitional arrangements in relation to the closure of any Part or Sub-Part of the register in accordance with paragraph (1) shall be specified in Schedule 4”.

4. For article 8 (annotations denoting visiting nurses or midwives from relevant European States) substitute—

“Annotations denoting visiting nurses, midwives or nursing associates from relevant European States

8. The entries in the register are to include such annotation as the Council considers appropriate to denote that a registrant is a visiting nurse, midwife or nursing associate from a relevant European State.”.

5. In Schedule 1 (parts and sub-parts of the register)—
 - (a) in column 1, after the entry “Midwives” add the following entry: “Nursing Associates in England”;
 - (b) in column 2, after the entry “Midwife” and opposite the entry in column 1 added by paragraph (a), add the following entry: “Nursing Associate ”.
6. After Schedule 2 (registration of persons already registered in the old register) insert—

⁽³²⁾ S.I. 2004/1765.

“SCHEDULE 3

Article 2A(1)

Closure of Parts and Sub-Parts of the Register

Column 1	Column 2
Part or Sub-Part of register	Closure date
Nurses: Sub-Part 2	[xx January 2019]

SCHEDULE 4

Article 2A(2)

Saving provisions

Column 1	Column 2
Part or Sub-Part of Register	Saving provisions
Nurses: Sub-Part 2	Sub-Part 2 of the register shall be saved, and continue to apply for the purposes of registrants entered into it before the closure date [xx January 2019].”

Amendment of the Schedule to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004

7. In the Schedule to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004(33), in rule 2 (interpretation)—

(a) for the definition of “lay” substitute—

““lay”, in relation to a Case Examiner, means a person who—

- (a) is not and has never been a registered nurse, midwife or nursing associate (and article 5(5) of the Order does not apply for these purposes;
- (b) is not and has never been a registered medical practitioner; and
- (c) does not hold qualifications which would entitle them to apply for registration as a registered nurse, registered midwife, registered nursing associate or registered medical practitioner;”;

(b) for the definition of “professional” substitute—

““professional” in relation to Case Examiner, means a registered nurse, midwife or nursing associate ;”.

Amendment of the Schedule to the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004

8. In the Schedule to the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004(34)—

(a) for rule 2A (application to visiting nurses and midwives from relevant European States) substitute—

“Application to visiting nurses, midwives and nursing associates from relevant European States

2A. In these Rules—

⁽³³⁾ Scheduled to S.I. 2004/1761.

⁽³⁴⁾ Scheduled to S.I. 2004/1767.

- (a) Part 2 shall not apply to visiting nurses, midwives or nursing associates from relevant European States, or in respect of a person’s registration in exercise of an entitlement under article 39A or 39C of, or Schedule 2A to, the Order, except for rule 3(3);
 - (b) Part 3 shall not apply in respect of a person’s registration in exercise of an entitlement under article 39A or 39C of, or Schedule 2A to, the Order, except for rule 4 (the register), 14 (lapse of registration) and 16 (amendments to the register);
 - (c) Part 4 shall apply in respect of a person’s registration in exercise of an entitlement under article 39A or 39C of, or Schedule 2A to, the Order.”
- (b) in rule 5 (application for admission to a part of the register)—
- (i) in paragraph (2)(a)(iii) for “article 13(1)(c) or (d)” substitute “article 13(1)(c), (d) or (dd)”,
 - (ii) omit “or” after paragraph (2)(a)(iii),
 - (iii) for paragraph (2)(a)(iv) substitute—
 - “(iv) where the applicant is relying on article 13(1)(e) or (f) of the Order, a valid European professional card as a nurse or evidence of her qualifications or details of her training as a nurse or a nursing associate, or ”,
 - (iv) after paragraph (2)(a)(iv) insert—
 - “(v) where the applicant is relying on article 13A of the Order, evidence of her specified qualification as mentioned in article 13A(4);”;
- (c) in rule 6 (requirements for declarations of good health and character)—
- (i) omit “or” after paragraph (1)(a)(i) and insert “or” after paragraph (1)(a)(ii),
 - (ii) after paragraph (1)(a)(ii) insert—
 - “(iii) by the registered nurse or nursing associate, whose name has been notified to the Council, who is responsible for the nursing associate education in the relevant approved educational institution, or her designated registered nurse substitute or designated registered nursing associate substitute,”
 - (iii) in paragraph (1)(b)(i) for “with paragraph (1)(a)(i) or (ii)” substitute “with paragraph (1)(a)(i), (ii) or (iii)”,
 - (iv) for paragraph (1)(b)(ii) substitute—
 - “(ii) by a declaration signed by a registrant who—
 - (aa) is registered in the same part or sub-part of the register in which the applicant is applying to be registered as a nurse or midwife; or
 - (bb) is registered in the nurses’ or nursing associates’ part of the register in respect of an applicant applying to be registered as a nursing associate; and
 - (cc) has known the applicant for at least one year, and has been in contact with her during the preceding six months and can attest to matters set out in the declaration;”;
 - (v) before paragraph (1)(c) insert—
 - “(bb) for an applicant applying for admission to the nursing associates’ part of the register under article 13A of the Order, by a declaration signed by a registered nurse who has known the applicant for at least one year and been in contact with her during the preceding six months and who is able to attest to the matters set out in the declaration;”;
 - (vi) for paragraph (1)(c) substitute—
 - “(c) for an applicant applying for readmission to the register who has not completed a return to practise programme, by a declaration signed by a registrant who—
 - (i) is registered in the same part or sub-part of the register in which the applicant is applying to be registered as a nurse or midwife, or
 - (ii) is registered in the nurses’ or nursing associates parts of the register in respect of an applicant applying to be registered as a nursing associate, and
 - (iii) has known the applicant for at least one year, and has been in contact with her during the preceding six months and can attest to the matters set out in the declaration;”;
 - (vii) before paragraph (1)(e) insert—
 - “(dd) for an applicant applying to join the nursing associates’ part of the register who is relying on article 13(1)(dd) of the Order, by a declaration signed—

- (i) by a registered nurse or registered nursing associate who has known the applicant for at least one year and been in contact with her during the preceding six months and who is able to attest to the matters set out in the declaration, and
 - (ii) by a member of the occupational health department of a body that has employed or engaged the applicant who, on the basis of a health assessment of the applicant undertaken by that department, is able to attest to the matters set out in the declaration, or
 - (iii) by a registered medical practitioner who has undertaken a health assessment of the applicant in the last six months;”
- (viii) in paragraphs (1D)(b) and (1E) for “to practise as a nurse or midwife” substitute “ to practise as a nurse, midwife or nursing associate”;
- (ix) for paragraph (1F)(a) substitute—
- “(a) the relevant European State in which A obtained her qualifications in nursing or midwifery, or a qualification comparable to that of a nursing associate in England;”;
- (x) in paragraphs (5)(b) and (6)(b) for “paragraphs (1)(a), (b), (c) or (e) or paragraph (1B), (1C), (2) or (3)” substitute “paragraphs (1)(a), (b), (bb), (c), (dd) or paragraph (1B), (1C), (2) or (3)”;
- (d) in paragraph (4)(a) of rule 15 (readmission to the register) for “as a nurse or midwife” substitute “ as a nurse, midwife or nursing associate”;
- (e) in paragraphs (1)(c)(i) and (ii) of rule 16A (evidence in connection with indemnity arrangements) in both paragraphs for “as a nurse or midwife” substitute “as a nurse, nursing associate or midwife”;
- (f) in rule 25 (consideration by appeal panel)—
- (i) for paragraph (3)(a) substitute—
- “(a) a person who is registered in—
- (i) the same part of the register in respect of an appellant who is, or is applying to be, registered as a nurse or midwife, or
 - (ii) the nurses’ or nursing associates’ parts of the register in respect of an appellant who is, or is applying to be, registered as a nursing associate;”;
- (ii) in paragraph (3)(aa) for “the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules 2008” substitute “The Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008”;
- (iii) for paragraph (3)(b) substitute—
- “(b) a person who—
- (i) is not and has never been a registered nurse, midwife or nursing associate (and article 5(5) does not apply for these purposes),
 - (ii) is not and has never been a registered medical practitioner, and
 - (iii) does not hold qualifications which would entitled them to apply for registration as a registered nurse, registered midwife, registered nursing associate or registered medical practitioner;”;
- (g) in paragraphs (j)(i) and (ii) of Schedule 3 (application for admission to a part of the register) for “as a nurse or midwife” substitute “as a nurse, midwife or nursing associate” in both paragraphs;
- (h) in paragraphs (1)(h)(i) and (ii) of Schedule 4 (notice of renewal of registration) for “as a nurse or midwife” substitute “ as a nurse, midwife or nursing associate” in both paragraphs.

Amendment of the Schedule to the Nursing and Midwifery Council (Midwifery and Practice Committees)(Constitution) Rules Order of Council 2008

9. In the Schedule to the Nursing and Midwifery Council (Midwifery and Practice Committees)(Constitution) Rules Order of Council 2008(35)—

⁽³⁵⁾ S.I. 2008/3148.

- (a) in rule 2 (interpretation)⁽³⁶⁾ in the definition of “non registrant” for “registered nurse or midwife” substitute “registered nurse, midwife or nursing associate”;
- (b) in rules 8(l) and (m) (disqualification from appointment as committee member)⁽³⁷⁾, for “in the regulation of the nursing and midwifery professions” substitute “in the regulation of nurses, midwives and nursing associates”;
- (c) in rule 9(1)(j) (termination of committee membership)⁽³⁸⁾ for “in the regulation of the nursing and midwifery professions” substitute “in the regulation of nurses, midwives and nursing associates”.

Amendment of the Nursing and Midwifery (Constitution) Order 2008

10. In the Nursing and Midwifery (Constitution) Order 2008⁽³⁹⁾—

- (a) in article 5(l) and (m) (disqualification from appointment as a member)⁽⁴⁰⁾, for “in the regulation of the nursing and midwifery professions” substitute “in the regulation of nurses, midwives and nursing associates”;
- (b) in article 6(1)(j) (removal of members from office), for “in the regulation of the nursing and midwifery professions” substitute “in the regulation of nurses, midwives and nursing associates”.

Amendment of the European Union (Recognition of Professional Qualifications) Regulations 2015

11. In the European Union (Recognition of Professional Qualifications) Regulations 2015⁽⁴¹⁾—

- (a) in Schedule 1 (regulated professions), in Part 1 (professions regulated by law or public authority) in—
 - (i) the column headed “profession” after “Nurse (other than a nurse admitted to Sub-Part 1 of the nurses’ part of the register maintained by the Nursing and Midwifery Council whose field of practice is adult nursing).”, insert “Nursing Associate in England”;
 - (ii) the column headed “competent authority” after “Nursing and Midwifery Council” insert “Nursing and Midwifery Council”; and
- (b) in Schedule 2 (regulated professions having public health or safety implications), in the list after “Nurse (other than a nurse admitted to Sub-Part 1 of the nurses’ part of the register maintained by the Nursing and Midwifery Council whose field of practice is adult nursing) insert “Nursing Associate in England”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Nursing and Midwifery Order 2001 (S.I. 2002/253) (“the 2001 Order”) to include provisions relating to the regulation of nursing associates in England and to make consequential amendments in that regard.

[add text]

A full regulatory impact assessment of the effect that this instrument will have on the costs of business, the voluntary and the public sector, together with a report on the Consultation in relation to the Secretary of State’s proposals to make this Order, is available at <https://www.gov.uk/government/consultations/changes-to-nursing-and-midwifery-council-governing-legislation> hard copies of which can be obtained by writing to the Department of Health, Professional Standards Division, Quarry House, Quarry Hill, Leeds, LS2 7UE.

⁽³⁶⁾ Rule 2 was amended by S.I. 2017/321.

⁽³⁷⁾ Rule 8 was amended by S.I. 2012/3006.

⁽³⁸⁾ Rule 9 was amended by S.I. 2017/321.

⁽³⁹⁾ S.I. 2008/2553.

⁽⁴⁰⁾ article 5 was amended by S.I. 2012/3006.

⁽⁴¹⁾ S.I. 2015/2059.

8. How to respond to this consultation

8.1 This consultation begins on 16 October 2017 and will close on 26 December 2017.

Department of Health policy officials will consider all responses to the consultation questions received during this period and consider these in finalising the policy on the regulation of Nursing Associates in England.

8.2 You can respond to the consultation in writing, by e-mail or by completing the on-line consultation response form/questionnaire.

Responding on the web

8.3 It will help us to analyse the responses if respondents fill in the online consultation response form, which can be found at: <http://consultations.dh.gov.uk>. The online consultation response form will be available for the whole consultation period.

Responding by e-mail

8.4 If you wish to respond by e-mail please write to nursingassociates@dh.gsi.gov.uk asking for a response form to be email to you.

Criteria for consultation

8.5 This consultation follows the Cabinet Office Principles. In particular we aim to:

- Formally consult at a stage where there is scope to influence the policy outcome;
- Consult for a sufficient period;
- Be clear about the consultations process in the consultation documents, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- Ensure the consultation exercise is designed to be accessible to, and clearly targeted at, those people it is intended to reach;
- Consult in a manner which is clear, concise and informative.;
- Analyse responses carefully and give clear feedback to participants following the consultation within a period of 12 weeks; and
- Ensure officials running consultations are guided in how to run an effective consultation exercise and share what they learn from the experience.

8.6 The full text of the code of practice is on the Better Regulation website at:

www.bis.gov.uk/policies/better-regulation/consultation-guidance

Confidentiality of information

8.7 We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter:

(www.dh.gov.uk/en/FreedomOfInformation/DH_088010).

8.8 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).

8.9 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.

8.10 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.

Next steps

8.11 Following the closing date of this consultation, policy officials at the Department of Health will analyse the replies and publish a response document within 12 weeks of the consultation, or provide an explanation as to why this is not possible. The consultation response will set out the main findings resulting from the submissions made to the consultation. The response will also confirm the finalised policy, further to consideration of the consultation responses, in respect of regulation of the new

nursing associate role and the next steps in the progressing the Nursing and Midwifery (Amendment) Order 2018.

8.12 Responses 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 www.gov.uk/dh website

8.13 If you have concerns or comments which you would like to make relating specifically to the consultation process itself please contact:

Consultations Coordinator
Department of Health
2E26 Quarry House
Leeds
LS2 7UE
consultations.co-ordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.