



Department
of Health &
Social Care

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

Government response

January 2018

<p>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 – Consultation Response</p>
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Executive summary

The Nursing and Midwifery Order 2001 is the Nursing and Midwifery Council's (NMC) 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 regulate the nursing associate profession in England only. 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, and Schedule 3 to, 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.

Paragraph 9(1) of Schedule 3 to the Health Act 1999² requires the Secretary of State for Health to publish a draft of an Order and invite representations from appropriate persons prior to its 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.

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

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

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

The consultation paper summarised 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:

- gives statutory responsibility to the NMC to regulate the nursing associate profession in England.
- extends 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 comparable Scottish, Northern Irish, Welsh, European Economic Area (EEA) and international qualifications for the purpose of registration to the nursing associate part of the register.
- creates a number of offences which will apply in England only in respect of nursing associates to protect the public. The draft Order makes 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.
- makes provisions that allow transitional admission to the register for those who have completed or commenced HEE pilots or apprenticeships by 26 July 2019.
- provides for the selection of appropriate education visitors and registration appeal panel members for nursing associate related matters.
- does not extend to nursing associates, the provisions which enable the NMC to annotate the register giving registrants temporary prescribing rights in an emergency.

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

In addition to the amendments to the Nursing and Midwifery Order to regulate nursing associates in England, the draft Order makes the following changes to the Nursing and Midwifery Order which would also affect the regulation of nurses and midwives:

- Removal of redundant screener provisions set out under articles 23 and 24 of the Nursing and Midwifery Order 2001. These provisions provided a rule-making power for the NMC to appoint Screener panels to provide an initial assessment of whether an allegation comes within the powers of the NMC. However, the NMC currently uses a team for initial assessment, rather than the sitting of a formal panel. The Government feels that the NMC's current process for initially assessing potential fitness to practise cases is sufficient. Therefore, the Government does not feel it appropriate for there to be provisions for a screener panel in the NMC's legislation as it does not currently use them and does not plan to do so in the future.

Amendments to subsidiary Orders and Rules

The draft Order also makes changes to add a new nursing associates part to the NMC Register and makes 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
- 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 Schedule to the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules Order of Council 2008³

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

- Amendment of the Nursing and Midwifery Council (Constitution) Order 2008
- Amendment of the European Union (Recognition of Professional Qualifications) Regulations 2015

The NMC launched a separate consultation which went live on 4 December 2017 and closed on 26 February 2018, 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 the NMC's consultation are available at <https://www.nmc.org.uk/about-us/consultations/past-consultations/2017-consultations/nursing-associates-fees-consultation/>

The closure of Sub-Part 2 of the nurses part of the register

The Order also closes Sub-Part 2 of the nurses' part of the register to new applicants. However, this sub-part will remain open for existing registrants (further detail is supplied in the analysis of Q14).

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.

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.

As proposed in the consultation document, 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 living in the UK 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 & Social Care 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.

Background to consultation

Regulation of nursing associates

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.

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.

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 was published in May 2016⁵.

On 30 November 2016, the Secretary of State for Health wrote to the NMC to ask if they would consider becoming the regulator for nursing associates. On 25 January 2017, the NMC's Council agreed to this request.

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

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

The Department of Health & Social Care launched a public consultation on 16 October 2017 on proposed amendments to the Nursing and Midwifery Order 2001 that would provide the NMC with the necessary statutory powers and duties to regulate the nursing associate profession in England.

Why did we consult?

The changes that we proposed to the NMC's legislation are to be made under Section 60 and Schedule 3 to 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.

The consultation sought evidence to make an assessment about the costs and benefits of the policy. The final assessments of the cost-benefit analysis of the regulation of nursing associates will be published alongside the Section 60 Order.

Prior to the launch of the consultation, the Government made a decision that statutory professional regulation is a necessary and proportionate requirement for this important new role. Therefore, the Government was not seeking views on whether the nursing associate role should be regulated, but rather on how nursing associates should be regulated.

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

Consultation process and overview

The consultation on the draft Order to regulate nursing associates in England ran from 16 October to 26 December 2017 and was taken forward in accordance with the Cabinet Office Consultation Principles. The full text of these principles is on the Gov.uk website at <https://www.gov.uk/government/publications/consultation-principles-guidance>.

The consultation paper was made available on the Gov.uk website and can be found at <https://www.gov.uk/government/consultations/regulation-of-nursing-associates-in-england>.

The Department received 373 consultation responses from individuals mostly working in the NHS or Healthcare Delivery, and on behalf of a range of organisations. Responses were submitted via the digital platform 'Citizen Space', by email, and by post. Not all respondents answered all of the questions.

Of those who responded, 75% identified themselves as individuals, whilst 25% responded on behalf of an organisation. A detailed breakdown of how respondents identified themselves can be seen in Tables 1 and 2 below.

Individuals

Table 1: Breakdown of all responses received from individuals

Category	Number of respondents	%
NHS or Healthcare Delivery	203	54.5%
Social Care	2	0.5%
Government/Civil Service	1	0.5%
Private Sector	6	1.5%
Other Public Sector	10	2.5%
Charity/Third Sector	1	0.5%
Retired	7	2%
Student	13	3.5%
Other	31	8.5%
Not answered	99	26%
Total	373	100%

Organisations

Table 2: Breakdown of all responses received from organisations

Category	Number of respondents	%
NHS Trusts	33	34%
Regulator/Professional Body	24	25%
Charity	4	4%
Higher Education Institution	14	14%
Hospitals	5	5%
Other	17	18%
Total	97	100%

In the 'Analysis by Question' chapter of this document, we have provided high-level figures and a snapshot of key themes. A number of responses to questions included comments that did not directly relate to the question being asked and in these instances, we have considered these points after the analysis of each question. The majority of comments were received in relation to the existence of the nursing associate role and whether it should be regulated. These comments will be further addressed in the conclusion chapter of the response document.

Analysis by question

Registration

Question 1: Do you agree that nursing associates should be identified on a separate part of the NMC's register?

Background

The draft Order proposes to 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. 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.

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 approved qualifications and training requirements. This will provide 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 publically consulted on the fee nursing

associates should be charged if registering between Monday 4 December 2017 and Monday 26 February 2018. This consultation is published on the NMC website here: <https://www.nmc.org.uk/about-us/consultations/past-consultations/2017-consultations/nursing-associates-fees-consultation/at>

Consultation analysis

Table 3: Summary of all responses received to Question 1

Response to Q1	Individuals		Organisations		Overall	
	Number of respondents	Percentage	Number of respondents	Percentage	Number of respondents	Percentage
Agree	246	89%	92	95%	338	91%
Disagree	22	8%	3	3%	25	7%
Not Sure	8	3%	0	0%	8	2%
Not Answered	0	0%	2	2%	2	1%
Total	276	100%	97	100%	373	100%

The table above shows that the vast majority of respondents (91%) agreed with the proposal of identifying nursing associates on a separate part of the register. When responses were broken down, 95% of organisations agreed with this proposal, which was higher than the 89% of individuals who agreed.

The main themes of those that agreed were:

- Recognising the nursing associate as a profession in its own right;
- Giving additional clarification and understanding of the role;
- Creating distinction between the role of a Registered Nurse and a Nursing Associate.

The main themes of those that disagreed with the proposals were:

- That nursing associates are nurses on the cheap;
- The role should not exist or not be regulated.

This consultation was not about whether the nursing associate role should exist or be regulated, nor about the scope of the role, therefore, where appropriate, these comments have been shared anonymously with the relevant bodies.

Department's response

- The Department of Health & Social Care remains of the view that nursing associates should be identified on a separate part of the NMC's Register. As set out in the consultation document, the Government sees nursing associates as a profession in their own right: one that will provide support to registered nurses and other registered professionals, freeing them to concentrate on their more specialist skills and responsibilities.
- The nursing associate role will also provide a new progression route into the registered nurse profession. Nursing associates will have a different level of education and training needs, and placing them on a separate part of the register helps them to be identified as a separate professional role within the nursing family. The majority of respondents agreed with this approach and there was not sufficient evidence provided to suggest another approach should be taken. We also welcome comments from the Professional Standards Authority that individuals working in professional regulated roles should be able to exercise professional judgement and be individually accountable for their practice.

Question 2: Do you agree that nursing associates (in England) should be subject to the same registration requirements as nurses and midwives?

Consultation Analysis

Table 4: Summary of all responses received to Question 2

Response to Q2	Individuals		Organisations		Overall	
	Number of respondents	Percentage	Number of respondents	Percentage	Number of respondents	Percentage
Agree	227	82%	89	92%	316	85%
Disagree	34	12%	4	4%	38	10%
Not Sure	11	4%	2	2%	13	3%
Not Answered	4	1%	2	2%	6	2%
Total	276	100%	97	100%	373	100%

The table above shows that the vast majority of respondents (85%) agreed that nursing associates (in England) should be subject to the same registration requirements as nurses and midwives. When responses were broken down, 92% of organisations agreed with this proposal, which was higher than the 82% of individuals who agreed.

The main themes of those that agreed were:

- Essentiality that nursing associates have approved qualifications, appropriate indemnity arrangements, and can produce evidence of being capable of safe and effective practice.

The main themes of those that disagreed were:

- Nursing associates should be subject to some of the registration requirements, but less than nurses and midwives.

Department's response

- To practise safely, the Government view is that nursing associates must be subject to the same registration requirements as nurses and midwives.
- Nursing associates will work in support of registered nurses and operate in similar working environments. Whether they are working under the delegation of a nurse or another registered professional, nursing associates will exercise their professional judgement and be accountable for their decisions. The NMC's Code will require them to work within their scope of practice.
- The regulatory framework will require nursing associates to obtain an approved qualification, have appropriate indemnity arrangements, show evidence of being capable of safe and effective practice, have the necessary knowledge of English and pay the relevant registration fee. This will ensure that nursing associates are subject to the same safety standards as other registered professionals, and provide consistency around the education, training, and fitness to practise procedures that apply to them.
- This level of regulation will also provide confidence to patients and the public that appropriate mechanisms are in place to ensure that nursing associates are able to

consistently provide the high standard of care that the public rightly expect. This approach has also been reinforced by the responses to the consultation with the vast majority of respondents agreeing with this proposal.

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 nursing associate in England?

Background

Where a person with a qualification gained outside of England, including those awarded in an EEA member state, applies to be registered in the nursing associates' 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.

If the NMC does not consider that the person's qualification meets 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 associates' part of the register.

As nursing associates will be regulated on an England-only basis, the NMC will not have the power to approve nursing associate training courses and qualifications delivered in Northern Ireland, Scotland or Wales. In order to provide a means for applicants who trained in Northern Ireland, Scotland or Wales to have their qualification recognised and to join the register to practise as a nursing associate in England, the NMC will be provided with similar powers as it has in relation to non-UK applicants. This will enable the NMC to recognise qualifications gained in Northern Ireland, Scotland and Wales that are comparable to a nursing associate qualification gained in England.

Consultation Analysis

Table 5: Summary of all responses received to Question 3

Response to Q3	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Agree	186	67%	83	86%	269	72%
Disagree	52	19%	5	5%	57	15%
Not Sure	36	13%	6	6%	42	11%
Not Answered	2	1%	3	3%	5	1%
Total	276	100%	97	100%	373	100%

The table above shows that the majority of respondents (72%) agreed with the proposal of allowing 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 nursing associates in England. When responses were broken down, 86% of organisations agreed with this proposal, which was higher than the 67% of individuals who agreed.

The main themes of the comments received for this section were requests for clarification about how assessments of equivalent qualifications will be undertaken and concerns that this could lead to registrants who do not meet the standards of training or competence being admitted to the nursing associate part of the register.

Department's response

- For the purposes of registration in the nursing associates' part of the register, an applicant is to be regarded as having an 'approved qualification' if he/ she has successfully completed a nursing associate qualification in England that has been approved by the NMC Council or through recognition of comparable qualifications awarded by non-NMC approved education providers outside of England. This could include EEA qualifications (recognised as equivalent qualifications to that of a nursing associate qualification in England under Directive 2005/36/EU (as amended by Directive 2013/55/ EU)), international qualifications, and because the nursing associate role will only be regulated in England, the NMC will also take this approach for qualifications obtained in Scotland, Wales and Northern Ireland.

- It will be for the NMC as the regulator of nursing associates in England to assess whether a qualification is comparable to qualifications that have been approved by the NMC in England. The NMC will establish standards of proficiency and standards for education and training for nursing associates, and will use these to assess and compare qualifications.
- Where the NMC is not satisfied that an applicant's qualification meets the required standard, the applicant can be required 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 associates' part of the register.
- The Government believes that these powers are proportionate for the NMC to develop a fair and safe system to allow applicants who trained outside of England to apply to join the nursing associates' part of the register, and for the NMC to have in place measures to ensure that only those applicants who meet the nursing associate standards are able to join 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 a HEE course, or from an Institute of Apprenticeships-approved English apprenticeship, meet the required standard for entry on the nursing associate part of the register?

Background

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 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. 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 nursing associates in their respective countries.

HEE established two nursing associate pilot training programmes in January and April 2017. While these have not been approved by the NMC, since they commenced in advance of statutory regulation of the nursing associate role, the HEE has worked closely with the NMC to align the pilots to the emerging nursing associate standards and HEE has committed to quality assuring pre-regulation nursing associate programmes to assist the NMC in making comparability assessments. The first iteration of the nursing associate apprenticeship standard published by the Institute for Apprenticeships in November 2017⁶ does not require programmes to meet NMC standards, because these cannot be approved until the NMC is the regulator for nursing associates. The apprenticeship standard will be updated once the NMC becomes the regulator of nursing associates in England.

The transitional provisions under article 13A of the draft Order will allow applicants who have started or completed a nursing associate qualification from either the HEE pilot or through the apprenticeship route during the transitional period, to have their qualification recognised for the purposes of registration.

The transitional provisions will apply to applicants who start (or complete) programmes up to six months after the NMC opens the nursing associate part of the register. This six-month period will enable the NMC to work with education providers to begin the process of approving nursing associate programmes.

The NMC must be satisfied that a specified qualification meets a standard of proficiency comparable to the requisite standard of proficiency for admission to the nursing associates' 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. If the NMC is satisfied that the qualification meets the required standard, or that the applicant has successfully passed a test of competence, the applicant will be treated as having an approved qualification for the purposes of registration under article 9(2) of the Nursing and Midwifery Order.

⁶ <https://www.instituteforapprenticeships.org/apprenticeship-standards/nursing-associate/>

Anyone commencing a nursing associate course in England which has not been approved by the NMC after the end of the transition period (i.e. more than six months after the opening of the nursing associate part of the register) will not be eligible to have their qualification recognised for the purposes of registration with the NMC as a nursing associate in England. Beyond that date, for qualifications awarded in England, only those applicants with qualifications from NMC courses will be eligible for registration on the nursing associate part of the register.

Consultation Analysis

Table 6: Summary of all responses received to Question 4

Response to Q4	Individuals		Organisations		Overall	
	Number of respondents	Percentage	Number of respondents	Percentage	Number of respondents	Percentage
Agree	217	79%	84	87%	301	81%
Disagree	33	12%	1	1%	34	9%
Not Sure	20	7%	7	7%	27	7%
Not Answered	6	2%	5	5%	11	3%
Total	276	100%	97	100%	373	100%

The table above shows that the vast majority of respondents (81%) agreed that the transitional arrangements were fair and would allow the NMC to ensure that applicants with a nursing associate qualification from a HEE course or from an Institute of Apprenticeships approved English apprenticeship, met the required standard for entry on the nursing associate part of the register. When responses were broken down, 87% of organisations agreed with this proposal, which was higher than the 79% of individuals who agreed.

The main themes of the comments received were requests for clarification concerning:

- What would happen if the NMC found a training course to be unsuitable?
- Is the 6-month transition period sufficient?
- Will the transition period cover allow all ‘fast followers’ to benefit from the transitional arrangements?
- What happens if a trainee takes longer to complete a course due to sickness or other extenuating circumstances?
- Are the arrangements in place sufficient to allow those nursing associate trainees on the pilot groups to meet the NMC standards required to register?

Department's response

- The Government remains of the view that the proposed transitional arrangements to allow the NMC to recognise certain specified and assured nursing associate qualifications obtained in England by individuals who started their training programme either before the nursing associate part of the register opens, or in the six-month period after that register opens, are proportionate and in the best interest of the public and patient safety.
- Such qualifications will be restricted to those obtained as part of the Health Education England nursing associate pilots, or from a nursing associate apprenticeship (in line with the nursing associate apprenticeship standard published by the Institute for Apprenticeships).
- The transitional arrangements will only apply to applicants who started their training programme either before the nursing associate part of the register opened, or in the six-month period after that part of the register opens. This will ensure that all nursing associate trainees on the HEE pilot groups will be eligible to have their qualifications recognised.
- Some concern was raised regarding the time available to complete a course and register with the NMC under the transitional arrangements. However, the proposed legislative changes do not impose any limit on the length of time available to complete a qualification, in order to be eligible to apply under the transitional arrangements. Like registered nurses and midwives, nursing associates (including those utilising the transitional arrangements) will have a period of five years from completing their course to apply to register with the NMC. All applicants who apply for registration outside of this time limit will have to pass a test of competence, or complete a further pre-registration programme.
- All applicants utilising the transitional arrangements will still need to satisfy the NMC that their qualification attests to a standard of proficiency comparable to the requisite standard of proficiency for admission to the nursing associate part of the register. Providing the NMC with the power to require an applicant utilising the transitional arrangements whose specified qualification does not meet the required standard to

take a test of competence following any further training or experience, will provide a necessary safeguard to ensure the integrity of the register and uphold public safety and confidence. Applicants will also need to meet the NMC's wider requirements for registration.

- Some concern was raised regarding what would happen if the NMC assessed a training programme and found that it did not meet its standards and whether enough was being done to support pilot courses and trainees on the pilot groups to meet the NMC standards.
- The NMC have taken the unusual step of publishing an early working draft of the nursing associate standards of proficiency before it has the statutory duty to regulate nursing associates to help the pilots and early apprenticeships to deliver training programmes of the appropriate standard. The NMC and HEE are working closely to support the original 2017 pilots and new pre-regulation cohorts and to take early steps if any training programme slips below the required standard. These steps will help minimise the risk of nursing associate trainees on the pilot programmes failing to meet the required standards to join the register, whilst ensuring the integrity of the register.
- Government is satisfied that the proposed transitional arrangements including the six-month transitional period from the opening of the register are sufficient and proportionate.

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?

Background

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.

The Human Medicines Regulations (2012) set out under what circumstances health professionals are able to prescribe after successfully completing an approved prescribing training course. Nursing associates are not listed in these regulations and therefore are not able to prescribe, even in an emergency.

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.

Consultation Analysis

Table 7: Summary of all responses received to Question 5

Response to Q5	Individuals		Organisations		Overall	
	Number of respondents	Percentage	Number of respondents	Percentage	Number of respondents	Percentage
Agree	171	62%	75	77%	246	66%
Disagree	66	24%	14	14%	80	21%
Not Sure	36	13%	4	4%	40	11%
Not Answered	3	1%	4	4%	7	2%
Total	276	100%	97	100%	373	100%

The table above shows that most respondents (66%) agreed with the proposal 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. When responses were broken down, 77% of organisations agreed with this proposal, which was higher than the 62% of individuals who agreed.

The main themes of those that agreed were:

- Nursing associates not being able to prescribe in an emergency makes clear the difference between a registered nurse and a nursing associate.
- Giving nursing associates the ability to prescribe would place responsibilities on nursing associates far above the level of their qualification

The main themes of those that disagreed were:

- As the role becomes embedded and develops, this could be a natural progression pathway. If a nursing associate is the first to respond they should be able to administer and therefore, in effect, prescribe certain medications.

Department's response

- It was clear from the responses to question 5 that there was a degree of misunderstanding concerning a number of aspects of this power.
- In terms of the definition of an “emergency situation”, this refers to a national emergency declared by the Secretary of State, such as a pandemic outbreak, rather than a day-to-day hospital emergency.
- The draft legislation proposes that the NMC will **not** have the power to annotate a nursing associate's register entry to allow them to prescribe in such an emergency. A number of respondents to this question misread the intentions of the legislation and assumed that such a power was being taken.
- Currently, both registered nurses and midwives are able to acquire prescribing responsibilities under the Human Medicines Regulations 2012⁷, once they have successfully completed the relevant qualification and this has been annotated on their NMC register entry. Individual nurses and midwives with prescribing responsibilities are only able to do so within the scope of practice in which they have been trained.
- By contrast, nursing associates will not be able to acquire prescribing responsibilities and the NMC will not have any power to annotate a prescribing qualification on their

⁷ Human Medicines Regulations 2012 <http://www.legislation.gov.uk/uksi/2012/1916/contents/made>

register entry. They will be able to administer medicines and will be trained in medicines management, but prescribing will be outside of their scope of practice.

- The NMC has an existing power to temporarily annotate any given nurse or midwife's entry, allowing them to prescribe in an emergency situation. As nursing associates will not be able to acquire prescribing responsibilities, the Government policy is that the NMC Registrar should not have the power to make such a judgment in an emergency situation.
- The Government has no intention at this time to seek a power for nursing associates to be able to acquire prescribing responsibilities, or of being able to prescribe in an emergency. Any change to the list of professions capable of holding prescribing responsibilities would require policy development following appropriate procedural process including a public consultation and legislative change. It would also be dependent on advice given to Ministers by the Commission on Human Medicines.
- Therefore the Government policy is that nursing associates should be excluded from being capable of prescribing in an emergency under article 6A of the Nursing and Midwifery Order.

Education and Training

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?

Background

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 will have the same education and training functions for nursing associates as it does for nurses and midwives, though these would be limited to England. As part of this, 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.

In summary it is proposed that the NMC will 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.

Consultation Analysis

Table 8: Summary of all responses received to Question 6

Response to Q6	Individuals		Organisations		Overall	
	Number of respondents	Percentage	Number of respondents	Percentage	Number of respondents	Percentage
Agree	243	88%	92	95%	335	90%
Disagree	18	7%	1	1%	19	5%
Not Sure	13	5%	1	1%	14	4%
Not Answered	2	1%	3	3%	5	1%
Total	276	100%	97	100%	373	100%

The table above shows that the vast majority of respondents (90%) agreed with the proposed approach for education and training for nursing associates, including the approval of courses and setting post-registration training requirements. When responses were broken down, 95% of organisations agreed with this proposal, which was higher than the 88% of individuals who agreed.

The main themes of those that agreed were:

- This is required for the protection of the public in relation to nursing associates being a new professional role with defined responsibilities for providing direct care.
- This proposed approach will ensure that there is a consistent approach to nursing associates, ensuring that skills and competencies are met at a level that will support safe and good quality care for people who use health and social care services.

The main themes of those that disagreed or had concerns were:

- A clear statement of intent regarding the planned content of the nursing associate curriculum is needed.

Other concerns raised.

- Concerns were raised about the work-based delivery of the (existing pilot) courses and how the NMC will ensure quality.

Department's response

- The consultation proposed that the NMC carries out its education and training function in respect of nursing associates in England in accordance with the current framework. This will give the NMC the same education and training functions for nursing associates as for nurses and midwives, though they will not be able to approve nursing associate qualifications in Northern Ireland, Scotland, or Wales. The NMC will be able to approve a course of education or training for nursing associates run outside the United Kingdom by UK institutions. The Government believes that this is the right approach.
- The Nursing Midwifery Order allows the NMC to visit and inspect institutions, and withdraw approval if necessary, to address such concerns. The NMC, as the regulator, will set the standards of education and training for nursing associates and determine whether a nursing associate training programme meets those standards. The concerns noted above regarding the quality of the pilot courses and the curriculum, are beyond the scope of this consultation, but have been anonymously shared with the NMC to feed into their work developing their standards and processes for approving nursing associate training programmes.
- All applicants from the HEE pilots will still need to satisfy the NMC that their qualification attests to a standard of proficiency comparable to the requisite standard of proficiency for admission to the nursing associate part of the register. Applicants whose specified qualification does not meet the required standard will be required to take a test of competence following any further training or experience. This will provide a necessary safeguard to ensure the integrity of the register and uphold public safety and confidence

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?

Background

The draft legislation proposes that the NMC should be provided with a 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.

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. While 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 and established number of sufficiently experienced nursing associates for this purpose.

However, until the profession is mature, it is not possible to know whether there will be suitable numbers of experienced nursing associates available for this role, or whether they will instead have undertaken additional training to qualify as registered nurses. 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.

Consultation Analysis

Table 9: Summary of all responses received to Question 7

Response to Q7	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Agree	217	79%	80	82%	297	80%
Disagree	39	14%	10	10%	49	13%
Not Sure	20	7%	4	4%	24	6%
Not Answered	0	0%	3	3%	3	1%
Total	276	100%	97	100%	373	100%

The table above shows that the vast majority of respondents (80%) agreed 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. When responses were broken down, 82% of organisations agreed with this proposal, which was higher than the 79% of individuals who agreed.

The main themes of those that agreed were:

- There should be an agreed / fixed date by which only nursing associates will be asked to do inspection visits.
- The process should mirror that of other registrants to ensure consistency and robustness.

The main themes of those that disagreed were:

- Visitors should always be a registered nurse.
- A registered nurse should always be included in the inspection panel as a visitor alongside a nursing associate, once there are qualified and suitable nursing associates for these activities.

Department's response

- The Government is of the view that the NMC Council should have the power to appoint visitors to inspect educational institutions that offer or propose to offer nursing associate qualifications. for the purpose of reporting to the Council on the nature and quality of education and training provided. The NMC Council will be able to select both registered nurses and nursing associates to carry out these inspections, until such a time as there are sufficient suitably experienced nursing associates to fulfil visitor roles.
- Some concerns were raised through the consultation responses that nursing associates would not be sufficiently qualified to carry out these visits and that they should therefore only be carried out by nurses. There is a principle underpinning professional regulation that each profession plays some significant role in its own regulation, and there is no intention for the approach for nursing associates to be different. Nursing associates will be a profession in their own right and once a nursing associate gains sufficient

experience and expertise, they will be in a good position to give insight into the education and training process. However, it will rightly be for the NMC to decide whether an individual nursing associate (or indeed a registered nurse) is suitably qualified to carry out the visiting role.

- An opposing view given to the consultation was that registered nurses should be allowed to act as visitors to inspect nursing associate education and training programmes, but only for a fixed time period until such a time as there are sufficient numbers of experienced nursing associates available to fulfil these roles. It is the Government's intention that nursing associates fulfil this role in respect of nursing associate programmes, but it is not possible to anticipate a date by which this expectation can be fulfilled.
- Given the uncertainties about how long it would take to reach this critical mass of experienced nursing associates, and with the role also acting as a pathway into nursing, the Government view is that placing a time limit on this power could be unnecessarily restrictive. Instead, we have provided the NMC with the flexibility to select either a registered nurse or a nursing associate as a visitor, until such a time as there are sufficient suitably experienced nursing associates to fulfil these roles.

Fitness to Practise

Question 8: Do you agree with the approach to fitness to practise with regards to nursing associates in England?

Background

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.

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.
- 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, or is otherwise in the public interest to do so, or where this 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.

Consultation Analysis

Table 10: Summary of all responses received to Question 8

Response to Q8	Individuals		Organisations		Overall	
	Number of respondents	Percentage	Number of respondents	Percentage	Number of respondents	Percentage
Agree	243	88%	90	93%	333	89%
Disagree	14	5%	2	2%	16	4%
Not Sure	19	7%	2	2%	21	6%
Not Answered	0	0%	3	3%	3	1%
Total	276	100%	97	100%	373	100%

The table above shows that the vast majority of respondents (89%) agreed with the approach to fitness to practise with regards to nursing associates in England. When responses were broken down, 93% of organisations agreed with this proposal, which was higher than the 88% of individuals who agreed.

The main themes of those that agreed were:

- Nursing associates should have the same expectations with regards to their fitness to practise as registered nurses, as appropriate to their defined nursing associate role and responsibilities.
- How will The Code apply to nursing associates registered in England but working in another country?

- What happens if a nursing associate, undergoing the fitness to practise process regarding their practice in England, applies to work in Wales/Scotland/Northern Ireland, where the role is not regulated? How will this be communicated to prospective employers to ensure patient safety?
- Agree in principle with the approach for fitness to practise but not clear whether or how The Code, professional standards of practice, and behaviour for nurses and midwives would apply to nursing associates and if not what will be in its place.

The main themes of those that disagreed were:

- The fitness to practise process is costly and time consuming.

Department's response

- The Government view is that the NMC should have powers in respect of fitness to practise for nursing associates, that are in line with its existing powers for registered nurses and midwives. There is strong support for this approach.
- Concerns were raised regarding registered nursing associates undergoing fitness to practise proceedings in England and seeking to work in unregulated roles in Scotland, Wales, or Northern Ireland. All registrants will remain subject to the NMC Code and to any interim or full fitness to practise sanctions, irrespective of where they are working.
- All employers should ask questions about previous or current regulatory or disciplinary action. The proposed fitness to practise powers will require the NMC to annotate the register entry of a nursing associate to reflect any restrictions on their practice.
- The importance of good communications between employers, regulators and health bodies in each of the four countries was highlighted, and the Government supports this approach.
- The comments regarding the Code, professional standards of practice, and behaviour for nursing associates are beyond the scope of this consultation. The NMC as the regulator is responsible for setting the standards for nursing associates. The NMC are

planning to consult on the suite of standards for nursing associates including the Code later in 2018.

Question 9: Do you agree with the proposed approach for appeals against registration and Fitness to Practise Committee decisions for nursing associates in England?

Background

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 will have the same arrangements in place for nursing associate appeals, as it does for nurses and midwives.

Proposed Approach

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.

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.

This right of appeal would lie 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.

The NMC also has in place an appeals process, by which a nurse or midwife is able to appeal to the Council against a registration decision. In practice, this appeal is heard by a Registration Appeal Panel appointed by the Council. It is proposed these arrangements should similarly apply to nursing associates. Such an appeal would be made against registration decisions in accordance with the provisions in article 37, within a period prescribed by the NMC.

A further right of appeal against the Council’s decision in a registration appeal would then lie to the County Court in England. After the appeal hearing, the court would decide whether the NMC’s registration decision should be upheld.

Consultation Analysis

Table 11: Summary of all responses received to Question 9

Response to Q9	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage	Number of respondents	Percentage (rounded)
Agree	234	85%	91	94%	325	88%
Disagree	15	5%	2	2%	17	4%
Not Sure	27	10%	2	2%	29	7.5%
Not Answered	0	0%	2	2%	2	0.5%
Total	276	100%	97	100%	373	100%

The table above shows that the vast majority of respondents (88%) agreed with the proposed approach for appeals against registration and Fitness to Practise Committee decisions for nursing associates in England. When responses were broken down, 94% of organisations agreed with this proposal, which was higher than the 85% of individuals who agreed.

Department’s response

- There is strong support for these proposals. The Government view is that the proposed approach balances the needs of registrants with the protection of the public. We note the comments from the Professional Standards Authority on the need for clear guidance on how the appeals process applies to different registrants.

Question 10: Do you agree with the proposed approach for the selection of registration appeal panel members to hear nursing associates’ registration appeals?

Background

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 nursing associate 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.

Consultation Analysis

Table 12: Summary of all responses received to Question 10

Response to Q10	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Agree	224	81%	87	90%	311	84%
Disagree	16	6%	6	6%	22	5%
Not Sure	36	13%	1	1%	37	10%
Not Answered	0	0%	3	3%	3	1%
Total	276	100%	97	100%	373	100%

The table above shows that the vast majority of respondents (84%) agreed with the proposed approach for the selection of registration appeal panel members to hear nursing associates' registration appeals. When responses were broken down, 90% of organisations agreed with this proposal, which was higher than the 81% of individuals who agreed.

The main themes of those that agreed were:

- This role should be undertaken by a registered nurse until there an adequate number of sufficiently trained nursing associates.

The main themes of those that disagreed or had concerns were:

- Whether nursing associates were suitable to sit on registration appeals panels.

Comments received in the response to this question concerning "visitors", have been addressed in our response to question 7.

Department's response

- The Government view is that the NMC Council should have the power to appoint either a nurse or a nursing associate to be a member of a panel to hear registration appeals for nursing associates, until such a time as there are sufficient suitably experienced nursing associates to fulfil these roles.
- There were some strong views raised about the suitability of both nursing associates and of registered nurses to sit on such panels. The Government position is that both registered nurses and nursing associates of suitable experience may develop the skills and insight required to be an effective panel member for a registration appeal. The issues are similar to those concerning the appointment of visitors to inspect educational institutions and we believe that again, the most appropriate solution is to give NMC the flexibility to choose appropriately experienced individuals from either profession based on their suitability for the role.

Offences

Question 11: Do you agree with the approach to offences regarding regulation of nursing associates 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 will be offences only if committed in England?

Background

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.

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 registered nurses and midwives.

Offences - England Only Regulation

It is proposed that the regulation of nursing associates would extend to England only and that 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).

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 a 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.

Consultation Analysis

Table 13: Summary of all responses received to Question 11

Response to Q11	Individuals		Organisations		Overall	
	Number of respondents	Percentage	Number of respondents	Percentage	Number of respondents	Percentage
Agree	189	68%	67	69%	256	69%
Disagree	52	19%	18	19%	70	19%
Not Sure	35	13%	10	10%	45	12%
Not Answered	0	0%	2	2%	2	0%
Total	276	100%	97	100%	373	100%

The table above shows that the majority of respondents (69%) agreed with the approach to offences regarding regulation of nursing associates in England. There was very little variation in the level of support when this was broken down to organisations (69%) and individuals (68%).

The main themes of those who responded to the consultation were:

- Whether all offences should apply on an UK-wide basis.

- Whether the protected title should be “registered nursing associate” instead of “nursing associate” – comments supporting and opposing this view were received.
- Whether the regulator should put in place additional safeguards to mitigate the risk of people moving between countries to avoid the offences.

Department’s response

- The intention of creating offences for the use of the nursing associate title when not permitted and false representation of registration or possession of nursing associate qualifications, is to promote public safety and assurance. Similar offences are in place for other regulated healthcare professionals. Because the nursing associate role will only exist and be regulated in England, the related offences will apply in England only.
- These offences will mean that only qualified persons who have satisfied the NMC that they meet the required standards for safe and effective practice, and are registered as a nursing associate with the NMC, will legally be able to be employed and work as a nursing associate in England. Those that do not meet the required minimum standards will be unable to register with the NMC and practise as nursing associates in England. This is a vital safeguard for public protection and will provide assurances to service users and the public.
- However, the offence relating to article 44(4) which requires a person, without reasonable excuse, to comply with a requirement imposed by the NMC's Council, or a Practice Committee, will be a UK-wide offence. This provision is necessary to support the NMC’s objective with specific regard to the protection of patients and the public by ensuring that the NMC's ability to use these powers in effective Fitness to Practise procedures is not limited by jurisdiction.
- The majority of respondents to this consultation agreed with our proposed approach for offences, although around a fifth of respondents disagreed. The main theme from those who disagreed was that the scope of the offences should be extended making them all UK-wide offences. This alternative approach was considered but rejected during our policy development. The Devolved Administrations have no plans to introduce a nursing associate role at this time and therefore the number of offences

outside England if these offences applied UK-wide would be minimal. The Government remains of the view that it is proportionate that the offences around the use of the “nursing associate” title or otherwise falsely claiming to hold a nursing associate qualification or to be on the nursing associate register should only apply in England.

- The 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 decided that it does not want to implement or regulate the nursing associate role in Wales at this time.
- In taking forward the regulation of nursing associates in England, we have worked closely with the three devolved administrations. The devolved administrations have indicated that they 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. The specific legal protections under the Nursing and Midwifery Order will only apply in the devolved administrations should they choose to regulate the nursing associate role in the future.
- It will therefore not be an offence in Scotland, Northern Ireland, and Wales under the Nursing and Midwifery Order to use the nursing associate title, claim to be registered or possess nursing associate qualifications where not registered with the NMC, and holding nursing associate qualifications. Individuals making such claims may be liable for prosecution under other existing offences (e.g. fraud in Scotland, or fraud by false representation in Wales or Northern Ireland) and any risk could be further mitigated by pre-employment checks.
- The Governments of Northern Ireland, Wales and Scotland consider that as they are not introducing the role at this time, there would appear to be a low likelihood of risk of

misrepresentation of nursing associates there. As such, their assessment is that creating new statutory offences to mitigate against this is a disproportionate response. This situation will be monitored by the devolved administrations and, if any risk of misrepresentation of nursing associates emerges, they may take the decision to create local measures to mitigate this in their respective countries.

- Comment was also received on whether or not the protected title should be “registered nursing associate” rather than “nursing associate”. This would make the protection similar to nursing, where the protected title under the Nursing and Midwifery Order is “registered nurse” and not “nurse”. However, “registered nurse” is protected because the title “nurse” is already used in a number of other regulated and unregulated roles, such as nursery nurse, veterinary nurse, and dental nurse. Such a distinction is not needed for nursing associates because there is no ambiguity around the use of the title “nursing associate” being a new role. For the other profession that the NMC currently regulates, the title “midwife” rather than “registered midwife” is protected in law.
- On balance, Government remains strongly of the view that the protected title should be “nursing associate” rather than “registered nursing associate”.

Consequential Changes

Question 12: Do you have any comments on these proposed consequential agreements? The closure of sub part 2 of the register is discussed further at Q14.

Background

It is proposed the Order will 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.
 - 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 remain open to those already registered in that sub-part . The closure of sub-part 2 to new entrants 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.
 - 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 2008 to:
 - amend the definition of “non-registrant” to include reference to “nursing associate”;
 - 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.

Very few comments were received in response to this question. Comments relating to the proposed consequential amendments, included:

- A suggestion that the rules should refer to the “nursing family” rather than separately listing “registered nurses” and “nursing associates”.
- A suggested change to the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order that only registered nurses will be responsible for nursing associate education, and therefore only such registered nurses should be able to provide a declaration of an applicant’s good health and character on behalf of an education provider.

Department’s response

- The Department remains of the view that the consequential amendments contained within the draft Order are necessary and proportionate.
- In terms of whether nursing associates should be separately identified within the NMC’s rules, or whether it would be better to identify registered nurses and nursing associates collectively as the “nursing family”, we believe that either option would be achievable in legislation. However, the Government view is that it is clearer to identify the two professions separately, so that it is clearer which provisions apply to nursing associates and which do not. Further, introducing the term “nursing family” would require us to include a definition of the term in each of the rules’ Orders that used it. Government is of the view that this approach would make the Order less accessible than the proposed approach.
- Government does not agree with the suggested change to the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order from one respondent that nursing associates should be excluded from the definition of those with responsibility for nursing associate education who can provide a declaration of an applicant’s good health and character.
- We agree that is far more likely that registered nurses, rather than nursing associates, will have responsibility for education at an institution providing nursing associate qualifications, especially while this is a new and developing profession. However, once the profession has matured, we would expect to see an increasing number of

experienced nursing associates. Many of these may choose to continue their training and become registered nurses, but others may wish to stay working as nursing associates and some of this group may wish to move into educational roles.

- The suggested change would create a limit on the role of nursing associates in such a position and Government does not believe that it is proportionate to set such a limit in legislation. Instead, our position is that it would be better to leave it to educational providers to decide on which registrants it wishes to employ in such roles, and for the NMC to ensure that nursing associate courses meet the required education standards through its assurance process.

Wider Changes to the Nursing and Midwifery Order 2001 and subsidiary Orders

Question 13: Do you agree with the removal of screener provisions at articles 23 and 24 of the Nursing and Midwifery Order?

Background

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.

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. It is therefore proposed that articles 23 and 24 are removed.

Consultation Analysis

Table 14: Summary of all responses received to Question 13

Response to Q13	Individuals		Organisations		Overall	
	Number of respondents	Percentage	Number of respondents	Percentage	Number of respondents	Percentage
Agree	156	57%	78	80%	234	63%
Disagree	22	8%	4	4%	26	7%
Not Sure	95	34%	10	10%	105	28%
Not Answered	3	1%	5	5%	8	2%
Total	276	100%	97	100%	373	100%

The table above shows that the majority of respondents (63%) agreed with the removal of screener provisions at article 23 and 24 of the Nursing and Midwifery Order. When responses were broken down, 80% of organisations agreed with this proposal, which was higher than the 57% of individuals who agreed.

Despite strong agreement for the proposals, almost a third of respondents answered that they were unsure about these provisions. The comments below suggest this was because it was not clear why the screening provisions were not used by the NMC for its existing registrants and whether removing them was appropriate.

The main themes of those that agreed were:

- Understanding that 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.

The main themes of those that disagreed or were unsure about the proposals were:

- Respondents were unsure of the implications of removing screeners from the process.
- Concerns that it could leave the processes with less governance or that using screeners could have benefits.
- Wanted greater clarity on the system that the NMC uses instead of screeners.

Department's response

- As set out above, the NMC does not use its powers relating to “screeners” set out in articles 23 and 24 of the Nursing and Midwifery Order. Instead, the NMC has a team of employees who initially look at enquiries, check that the person being enquired about is on the NMC register, and the nature of the referral is something the NMC should be dealing with. If satisfied that the allegation should be referred for further investigation, the team must refer it on to the case examiners for them to consider whether there is a case to answer. The NMC are proposing that the same process will be put in place for the initial assessment of cases concerning nursing associates.
- The Government view is that the NMC's current process for initially assessing potential fitness to practise cases is sufficient. The Professional Standards Authority provides an annual assessment of the NMC's performance against all of its regulatory activity, including its fitness to practise function, which provides an important safeguard and benchmark against the other professional regulators.

- On the basis that the current provisions for screeners are not required and that it is inappropriate to seek a power in respect of nursing associates that is not needed and that the NMC has no intention of using, Government is satisfied that removing these provisions is proportionate.

Question 14: Do you agree with the closure of sub part 2 of the nurse part of the register to all new applicants?

Background

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 was the former route by which UK-trained second level nurses, known as State Enrolled Nurses, would enter the register. Registration on sub-part 1 or sub-part 2 of the nurses' part of the Register enables individuals to be known respectively as a 'Registered Nurse: first level' and a 'Registered Nurse: second level' 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.

Sub-part 2 has in practice been closed to UK trained nurses since the late 1990s 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. 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.

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.

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.

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.

Closing sub-part 2 to new applications will also ensure clarity is maintained between the roles of a nurse and a nursing associate.

Consultation Analysis

Table 15: Summary of all responses received to Question 14

Response to Q14	Individuals		Organisations		Overall	
	Number of respondents	Percentage	Number of respondents	Percentage	Number of respondents	Percentage
Agree	178	64%	79	81%	257	69%
Disagree	12	4%	1	1%	13	3%
Not Sure	80	29%	10	10%	90	24%
Not Answered	6	2%	7	7%	13	3%
Total	276	100%	97	100%	373	100%

The table above shows that the vast majority of respondents (69%) agreed with the closure of sub part 2 of the nurse part of the register to all new applicants. When responses were broken down, 81% of organisations agreed with this proposal, which was higher than the 64% of individuals who agreed.

The main themes of those that agreed were:

- The closure of the sub-part 2 of the nurses’ part of the register is an appropriate action to reflect the evolution of professionals and relevant new programmes.
- Concerns regarding individuals working as band 3-4 support workers previously registered on sub-part 2 but whose registration has lapsed and whether previous learning will be recognised.

The main themes of those that disagreed were:

- Keep sub-part 2 open and change the terminology from enrolled nurse to nursing associate.

Department's response

- The Government remains of the view that sub-part 2 of the nurses' part of the register should be closed to new entrants. It is important that the process that allows applicants from overseas to join a part of the register now unavailable for newly qualified professionals trained in the UK is closed.
- Existing professionals on sub-part 2 of the register are subject to the same revalidation requirements as registered nurses on sub-part 1 of the register and need to meet those standards to remain on the register. Nurses registered on sub-part 2, whether trained in the UK or overseas, who are able to satisfy that the NMC that they meet the standards required to practise will be allowed to stay on sub-part 2 of the register and to legally practise in the UK as a nurse.
- The Government disagrees with the suggestions received to repurpose sub-part 2 for nursing associates. Nursing associates are not state-enrolled nurses. Having nursing associates registered on a separate part of the register and closing sub-part 2 to new entrants will provide greater clarity to the public on the differences between nursing associates and registered nurses, and recognise the clear blue water between the two professions with regard to different training and levels of experience.
- The closure of sub-part 2 will also provide greater clarity to nursing professionals qualified outside of the UK looking to practise in the UK. The NMC will be able to direct potential registrants to the most appropriate part of the NMC register. Applicants from overseas who might previously have applied to join sub-part 2 might in the future seek to join sub-part 1 of the nurses' part of the register or may instead be directed to apply to join the register as a nursing associate.
- We note the comments regarding the recognition of prior learning although these comments are beyond the scope of this consultation. It will be for the NMC and

education providers to determine whether prior learning can be used as accreditation towards an NMC-approved nursing or nursing associate qualification.

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

The draft Order that will be made under Section 60 of the Health Act 1999 was attached at annex A to the consultation document, and we invited respondents to comment on the draft legislation.

Whilst 71% of respondents did not provide any comments in response to this question, a significant number of comments were raised, most of which fell outside of the scope of the consultation. These included:

- Whether or not the nursing associate role should be introduced in England and indeed other countries in the UK;
- Whether or not the nursing associate role should be regulated and in which countries;
- Comments about how the role will be implemented;
- Comments regarding the scope of practice of a nursing associate;
- Comments regarding the revalidation process for nursing associates;
- Comments on the standards that will be set for nursing associates including The Code, standards of practice and behaviour, education standards, revalidation process / continuous professional development; and
- Comments on recognition of prior learning and experience for those joining a nursing associate programme and for nursing associates looking to become registered nurses.

The Professional Standards Authority raised a concern regarding the ability of a registrant to allow their registration to lapse and be removed from the NMC register before a Professional Standards Authority section 29 appeal to the High Court has taken place.

Department's response

- As set out in the consultation document the purpose and scope of the consultation was to seek the views of interested parties on the legislation required to amend the Nursing and Midwifery Order 2001 to allow the regulation of nursing associates.

- Throughout the responses received to this consultation, but in particular to those received for this question, a significant number of comments have been received which fell outside the scope of the consultation. Government is not seeking views through this consultation on whether or not the nursing associate role should be introduced in England at this time, nor on whether the role should be regulated. These views, which were shared by a small number of respondents, are noted, and Government is committed to working with our partner organisations to safely introduce this new regulated role, which we believe will be an important part of a modern and flexible NHS workforce.
- A large number of comments were received on the standards and processes that will be set by the NMC using the powers that are provided in this legislation. Again, these are beyond the scope of this consultation, though the NMC are seeking views on standards for nursing associates. The NMC ran a consultation on changes to its fee rules in relation to nursing associates from 4 December 2017 to 26 February 2018 (<https://www.nmc.org.uk/about-us/consultations/past-consultations/2017-consultations/nursing-associates-fees-consultation/>). The NMC's consultation on the Code as it applies to nursing associates, standards of proficiency, education & training standards, and the registration, revalidation and fitness to practise processes for nursing associates has been published on the NMC website (<https://www.nmc.org.uk/standards/nursing-associates/nursing-associate-consultation/>) and runs from 9 April to 2 July 2018.
- We note the comments from the Professional Standards Authority (PSA) regarding the ability of an individual to allow their registration to lapse and be removed from the NMC register before a PSA appeal to the High Court under Section 29 of the National Health Service Reform and Health Care Professions Act 2002 has taken place. This enables the PSA to appeal against a decision of the Fitness to Practise Committee that it considers is not sufficient to protect the public. The Department does not consider that the current position raises an immediate public protection concern as the PSA's right to appeal is not affected and the individual is not able to practise after lapsing. As this requested amendment raises wider issues around the interface between registration and fitness to practise processes, it will be addressed when a suitable legislative opportunity arises.

Costs and benefits analysis

Question 16: Do you agree or disagree with the costs and benefits identified in the table provided on pages 32-35 of the consultation?

Table 16: Summary of all responses received to Question 16

Response to Q16	Individuals		Organisations		Overall	
	Number of respondents	Percentage	Number of respondents	Percentage	Number of respondents	Percentage
Agree	179	65%	60	62%	239	64%
Disagree	30	11%	10	10%	40	11%
Not Sure	60	22%	18	19%	78	21%
Not Answered	7	3%	9	9%	16	4%
Total	276	100%	97	100%	373	100%

The table above shows that the majority of respondents (64%) agreed with the costs and benefits identified in the table provided in the consultation document. When responses were broken down, 62% of organisations agreed with this proposal, while 65% of individuals agreed.

Amongst the comments received were:

- Burdens to employers, HEIs etc. in terms of co-ordinating placements, providing mentoring/support for trainees, absences from work.
- Impact (time) for mentors who support nursing associates in training.
- Emerging costs from the pilot sites.
- Numbers of trainees that could be supported by the service.
- Concerns about a lack of evidence to support the figures.
- The need for non-quantifiable benefits of regulating the nursing associate role to be articulated, especially where quantifiable benefits cannot be identified or readily calculated.

Department's Response

- Government welcomes the helpful comments to this question. To be absolutely clear, the costs-benefits analysis relates to the regulation of the nursing associate role and not to the introduction of the role.
- Therefore a number of comments are classified as being out of scope even though they will usefully contribute to a wider analysis of the impact of the nursing associate role. These comments have been shared anonymously with Health Education England who will be looking at the impact of nursing associates more broadly.
- Concerns regarding the potential costs (and benefits) of regulation to education providers, employing organisations, and other healthcare professionals have been noted. In particular, we note the need to develop an evidence base about the nursing associate role, including in time, the impact of regulation. HEE has commissioned an evaluation of the pilot and we are exploring the scope of a longitudinal study to follow on once nursing associates are qualified, registered and delivering health and care.
- We will be revisiting our cost-benefits analysis in light of the comments received in this consultation and reflect any emerging evidence.

Question 17: Our initial assessment assumes nursing associate numbers will increase to 5,000 per year in 2018, and 7,500 per year in 2020. It assumes a 10% annual attrition rate during training and a 4% annual attrition rate after qualification. Do you agree or disagree with this growth assumption?

Table 17: Summary of all responses received to Question 17

Response to Q17	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Agree	121	44%	37	38%	158	43%
Disagree	58	21%	14	15%	72	19%
Not Sure	92	33%	39	40%	131	35%
Not Answered	5	2%	7	7%	12	3%
Total	276	100%	97	100%	373	100%

Please note: for the period from the launch of the Consultation on 13 October until 3 November 2017, the question listed on the online Citizen Space portal did not match the question in the published consultation. The question on Citizen Space assumed that nursing associate numbers would increase by 1,000 per quarter, with a 1% per quarter attrition rate. On 3 November 2017, this was corrected to make clear that we were assuming numbers would increase by 5,000 in 2018 and 7,500 per year from 2019, and that annual attrition rate would be 10% during training and 4% after qualification. All 147 respondents who answered the question on Citizen Space during that period were made aware of the error, and 7 respondents thence chose to change their answer.

The table above shows that the just under half of all respondents (43%) agreed with the initial assessment which assumed nursing associate numbers will increase to 5,000 per year in 2018, and 7,500 per year from 2019, along with the assumption that there would be a 10% annual attrition rate during training and a 4% annual attrition rate after qualification. Over a third of respondents (38%) were unsure or did not answer. When “don’t know” respondents and those who chose not to answer this question were removed, support for these assumptions rises to 69%.

Analysis of the subset of responses received after the question published on Citizen Space was revised to match that in the consultation document shows a slight increase in the level of agreement in support of the growth assumptions at 47%, with 34% not sure, as set out in table 18 below. When the “don’t know” respondents and those who did not answer were removed, we see that support for our growth assumptions was 77% from those who responded after the question was corrected on Citizen Space.

Table 18: Summary of responses received to Question 17 after update to Citizen Space (3/11/17 to 26/12/17)

Response to Q17	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Agree	75	54%	31	36%	106	47%
Disagree	20	14%	12	13%	32	14%
Not Sure	40	29%	37	43%	77	34%
Not Answered	4	3%	7	8%	11	5%
Total	139	100	87	100%	226	100%

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A large number of comments were received to this question, covering the following themes:

- Will the 4% attrition rate after training take into account nursing associates who choose to continue their education into pre-registration training?
- An attrition rate of 10% seems optimistic, given data from old nursing diploma courses which were the same academic level as the nursing associate course had an attrition rate of between 15% - 25%.
- Difficulty in agreeing or disagreeing with the growth assumptions, as pilot nursing associate programmes have not yet been evaluated, and the nursing associate role is new.
- Should we factor in age of trainees in estimating attrition rates? Older students have lower attrition rates and nursing associate trainees are on average older than other comparable groups.
- The need to analyse data from the HEE Pilot Programmes ahead of roll-out.

Department's Response

- This question is very technical, and it is perhaps not surprising that a large number (35%) of respondents replied that they were not sure about our growth assumptions. However, of those that did respond, there was a strong level of agreement.
- The level of support for these growth assumptions increased after the question was updated, though it is impossible to identify whether the shift was related to the change in the question on Citizen Space, and if so, by how much. Overall, we have seen strong support for our cost-benefit assumptions throughout the consultation period.
- Government welcomes the large number of contributions regarding our growth assumptions, and these will be fed into our analysis of the impacts and, where appropriate, anonymously shared with HEE and NMC to help those organisations to plan the roll-out and regulation of the nursing associate role.#
- We particularly welcome comments on the attrition rates and the need to adjust for nursing associates moving on to become registered nurses and the interaction between age and attrition. Data from the HEE pilot groups confirm that nursing associate trainees have, so far, had a higher average age than registered nurses. This should be balanced

with the views from a number of respondents linking lower entry requirements with higher attrition. We will assess the impact of the uncertainty in this assumption in our sensitivity analysis of the impacts.

Equality

Question 18: Do you think that any of the proposals would help achieve any of the following aims:

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

If yes, could the proposals be changed so that they are more effective in doing so? If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

Consultation Analysis

35% of respondents provided an answer to this question.

A small number of respondents provided comments in response to this question which did not cover equalities and these have been reallocated to the appropriate consultation question, or where more general responses, have been addressed in our response to Question 15, above.

The main themes in the responses to this question were:

- Should the protected group be “gender and sexual orientation” rather than the current “sex and sexual orientation” to reflect current gender-neutral discussions.
- The potential for unintended consequences associated with an equalities impact arising from regulating the role in England only.

Department’s Response

- The Department remains of the view that these proposals are built on sound equality principles and that regulating the nursing associate role will have a positive impact on a range of demographic groups including those protected under the Equality Act 2010.

- The Department and our partner organisations have a duty under the Equality Act 2010 to consider the impact of the policy on all groups protected groups under the Act. An equalities impact assessment has been carried out, which concludes that, overall, the measures will have a positive or neutral impact across the protected groups.
- In terms of the impact on equalities of regulating in England only, the Department will continue to work closely with our colleagues in Northern Ireland, Scotland, and Wales to identify and address any consequences of this approach.

Conclusion

The Department is grateful to those who took the time to respond to this consultation and for the wide-ranging comments that were provided.

After considering the responses received as part of this consultation the Department plans to move forward with the proposals and lay the Order in Parliament for debate. The changes to the Nursing and Midwifery Order will be made via a Section 60 Order⁸ which is a legislative vehicle used to amend legislation relating to regulated health professions under the affirmative resolution procedure.

Offences

The majority of respondents to this consultation agreed with our proposed approach for offences, and the Department acknowledges the concerns that some respondents have expressed through this consultation in relation to creating offences for the use of the nursing associate title when not permitted and false representation of registration. However, the Government remains of the view that it is proportionate that the offences around the use of the “nursing associate” title or otherwise falsely claiming to hold a nursing associate qualification or to be on the nursing associate register should only apply in England.

Comments were also received on whether or not the protected title should be “registered nursing associate” rather than “nursing associate”. Both Government and the regulator have concerns that protecting the title “registered nursing associate” instead of “nursing associate” would create a situation where unregistered nursing associates using the title “nursing associate” could legally practise in England, which would undermine confidence in the register and reduce public protection. The Government has therefore made the decision to protect only the “nursing associate” title.

Wider Changes to the Nursing and Midwifery Order 2001 and Subsidiary Order

The Department would like to thank respondents for providing their views on the wider changes that we are proposing to bring forward in this Order. In particular, there were a number of comments regarding the implications of removing screeners, including concerns about the

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

reduced amount of governance to the process. As explained in our analysis to Q13, current provisions for screeners are not required by the NMC and it has no intention of using its powers in relation to screeners in the future. Government is therefore of the view that removing these provisions is proportionate.

The Government also remains of the view that sub-part 2 of the nurses' part of the register should be closed to new entrants. It is important that the process that allows applicants from overseas to join a part of the register now unavailable to newly qualified professionals trained in the UK is closed. The closure of sub-part 2 will also provide greater clarity to nursing professionals qualified outside of the UK seeking to register to practise here. This change will make it easier for the NMC to direct potential registrants to the most appropriate part of the NMC register. Applicants from overseas who would previously have applied to join sub-part 2 might in the future be directed to apply to join the register as a nursing associate.

Comments received outside the scope of this consultation

This consultation was specifically on the legislation to make amendments to the Nursing and Midwifery Order to provide the NMC with the necessary legal powers to effectively regulate the nursing associate profession. The Government is grateful for all the comments received in response to the consultation, however, a large number of the comments received were outside the scope of this consultation.

The main themes of those comments that were outside the scope of the consultation were:

- Whether the nursing associate role should be introduced in England;
- Whether the nursing associate role should be regulated in England;
- Whether the role should exist and be regulated in other countries in the UK;
- Whether nursing associates are a profession in their own right, or should be considered a support role to nurses;
- Comments on the Code and professional standards of practice and behaviour for nursing associates; and
- Questions or comments on the role, the activities that nursing associates will undertake and how they will be deployed in the NHS and beyond.

Whilst the above comments were beyond the scope of this consultation, the Department recognises the concerns and suggestion of respondents. Where appropriate, these have been shared anonymously with our delivery partner, HEE, and with the NMC and the Devolved Authorities.

The nursing leadership across the system requested clarity about the levels of autonomy Nursing Associates are permitted to have.

The NMC's Code: Professional standards of practice and behaviour for nurses and midwives presents the professional standards that registrants must uphold in order to be registered to practise within the UK. Failure to comply with the Code may bring their fitness to practise into question. The English system of regulation relies on the protection of the relevant professional titles as opposed to functions. This allows flexibility and supports the development of a profession. It is only possible to protect a function where that function can be defined in legislation as discrete interventions, or areas of practice which are limited to members of a particular professional.

We do not want to set out a list of tasks which Nursing Associates can and cannot perform as we all believe this will be too restrictive. However on the basis of advice from the Chief Nursing Officer, senior nurses at the Department's arm's length bodies, and other registered nursing professionals, the Department agrees further guidance should be developed concerning the deployment of the role.

For the purposes of deployment of the role, and on the basis of advice from the CNO, NMC, ALB senior nurses and other registered nursing professionals, the Department agrees Nursing Associates will be responsible and accountable for their actions and able to work independently to deliver the standards of proficiency set out by the NMC. They should not be the primary assessor of care, but will provide a wide range of care and monitor the condition and health needs of those in their care and be able to recognise when it is necessary to refer to others for reassessment.

As a new profession, employers, co-workers (especially registered nurses), patients and

Nursing Associates themselves will need clear guidance on how Nursing Associates will operate in practice. The Department will work across the arm's length bodies, NHS Employers, HEIs and the regulators – the NMC and the Care Quality Commission – to develop guidance about deployment of the role. Guidance, including such for patients and the public, will be available for use by the time the first Nursing Associates have qualified and are registered in January 2019.

Respondents who wish to comment on the proposed Code as it will apply to nursing associates, the standards of education and training, the standards of proficiency, and the registration, revalidation and fitness to practise processes for nursing associates, are asked to refer to the NMC website, where the NMC are currently consulting at

<https://www.nmc.org.uk/standards/nursing-associates/nursing-associate-consultation/>