



Department  
of Health

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

## **Government response**

January 2017

<b>Title:</b> The Nursing and Midwifery Council - amendments to modernise midwifery regulation and improve the effectiveness and efficiency of fitness to practise processes Consultation report
<b>Author:</b> Department of Health
<b>Document Purpose:</b> To provide a summary of consultation responses and set out next steps
<b>Publication date:</b> January 2017
<b>Target audience:</b> Midwives Nurses Healthcare professionals Healthcare regulatory bodies Royal colleges Unions Employer representatives Employee representatives General public Patients
<b>Contact details:</b> Professional Regulation Branch Room 2N09 Quarry House Quarry Hill Leeds LS2 7UE  Email: <a href="mailto:HRDlistening@dh.gsi.gov.uk">HRDlistening@dh.gsi.gov.uk</a>

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

[www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/)

© Crown copyright

Published to gov.uk, in PDF format only.

[www.gov.uk/dh](http://www.gov.uk/dh)

# Contents

Contents.....	3
Executive summary.....	4
Background to consultation.....	6
Consultation process and overview .....	9
Analysis by question .....	10
Removal of Statutory Midwifery Supervision .....	10
Removal of statutory requirement for midwifery committee .....	14
Changes to fitness to practise processes .....	16
Costs and benefits and equalities considerations .....	30
The draft Order .....	32
Conclusion .....	33

# Executive summary

The Nursing and Midwifery Council (NMC) is the healthcare professional regulator for nursing and midwifery in the UK. It is an independent body, which exists to safeguard the health and wellbeing of the public. It does this by setting standards of education, training, conduct and performance for nurses and midwives. It also holds the register of those who have qualified and meet those standards. If an allegation is made that a registered nurse or midwife is not fit to practise, the NMC has a duty to investigate that allegation and, where necessary, take action to safeguard the health and wellbeing of the public.

All four UK Health Departments recognise the important work that the NMC, and the other eight health professional regulatory bodies, undertake in protecting the public and delivering efficient and effective regulation. The four countries are committed to working with the NMC to ensure the legislative framework surrounding nurses and midwives' regulation remains fit for purpose. The Department of Health consulted on proposed changes to the legislative framework governing the NMC, the Nursing and Midwifery Order 2001 (NMO)<sup>1</sup>, from 21 April to 17 June 2016.

The proposed changes to the NMO will:

- remove the additional tier of regulation relating specifically to midwives by removing provisions on the statutory supervision of midwives;
- remove the Midwifery Committee as a statutory committee of the NMC;
- make a number of changes to improve the efficiency and effectiveness of the NMC's fitness to practise processes.

The Department received 1,424 responses to the consultation from individuals (mainly midwives) and organisations, such as the UK health and care professional regulators, trade unions and professional bodies. This document sets out a summary of the responses we received and the next steps.

The changes will be made via a Section 60 Order<sup>2</sup> which is a legislative vehicle used to amend legislation relating to regulated health professions. The Order will amend the Nursing and Midwifery Order 2001 and the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules 2008 and revokes the Nursing and Midwifery Council (Midwives) Rules Order of Council 2012.

In addition to the changes made through the Section 60 Order, the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 and the Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004 will need to be amended in order to implement the changes fully. The NMC ran a consultation on the proposed changes to the fitness to practise rules between 24 October and 19 December 2016. Further information can be found at the following link:

<https://www.nmc.org.uk/about-us/consultations/current-consultations/modernising-fitness-to-practise>

---

<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2002/253/contents/made>

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

This consultation report should be read in conjunction with the NMC's consultation on proposed amendments to its rules and the information published in January 2016<sup>3</sup> in relation to the new models of midwifery supervision being developed by the four countries. We will continue to work with key stakeholders such as the regulatory bodies and other key stakeholders to ensure that the changes are implemented appropriately.

---

<sup>3</sup> <https://www.gov.uk/government/publications/changes-to-midwife-supervision-in-the-uk/proposals-for-changing-the-system-of-midwifery-supervision-in-the-uk>

# Background to consultation

## The NMC's governing legislation

The Nursing and Midwifery Order 2001 (NMO) is the NMC's governing legislation which sets out the regulatory framework for both nursing and midwifery. In all key aspects - education, registration, standards and fitness to practise - the same framework applies to both professions. However the NMO currently contains an additional set of provisions unique to midwifery, specifically:

- a role for Local Supervising Authorities (LSAs), Local Supervising Authority Midwifery Officers (LSAMOs) and Supervisors of Midwives (SoMs) in discharging supervisory functions for midwifery including determining whether to suspend a midwife from practice (in accordance with Rule 14 of the Midwives rules and standards<sup>4</sup>) and investigating cases of alleged misconduct or lack of competence
- a requirement for there to be a Midwifery Committee to advise the NMC Council on matters relating to midwifery

There are no similar provisions to those set out above in relation to nursing or in relation to any other regulated health and care profession.

The NMO sets out the functions and activities in relation to the fitness to practise of registrants (both nurses and midwives). The NMC also has rules which set out in more detail how it will investigate and take action on allegations that a registered nurse's or midwife's fitness to practise is impaired. The rules also include information on the hearings process, appeals and sanctions that are available.

## Reviews and recommendations

### Statutory supervision of midwives

There have been a number of reviews in recent years which have commented on the distinct model of midwifery regulation set out above and a number of recommendations have been made. The relevant text from these reports is reproduced below.

- Parliamentary and Health Service Ombudsman (PHSO) Report<sup>5</sup>  
"Health and care professionals are subject to a number of mechanisms to ensure safe practice, from frameworks put in place by employers or service providers, to professional regulation. The case for an additional tier of regulation for midwives is not clear. Moreover, other health and care professions benefit from supervision without it being a statutory right, or an aspect of their professional regulation."

It recommended that the following principles should inform the future model of midwifery regulation:

---

<sup>4</sup> <https://www.nmc.org.uk/about-us/our-legal-framework/our-order-and-rules/>

<sup>5</sup> <http://www.ombudsman.org.uk/reports-and-consultations/reports/health/midwifery-supervision-and-regulation-recommendations-for-change>

- That midwifery supervision and regulation should be separated;
  - That the NMC should be in direct control of regulatory activity.
- Kings Fund Report – Midwifery regulation in the UK<sup>6</sup>

“The NMC as the health care professional regulator should have direct responsibility and accountability solely for the core functions of regulation. The legislation pertaining to the NMC should be revised to reflect this. This means that the additional layer of regulation currently in place for midwives and the extended role for the NMC over statutory supervision should end.

The de facto implication of this recommendation is that for the NMC the system of regulation for midwives would be the same as for nurses, as we found no risk-based evidence to conclude that an alternative model is justified.

The NMC as the health care professional regulator should have direct responsibility and accountability for the core functions of regulation, that is:

- The registration and renewal of registration of professionals
- Ensuring the quality of pre-registration and post-registration education and training
- Setting standards for professional conduct and practice and ensuring ongoing practice standards (for example, through revalidation)
- The investigation and adjudication of fitness-to-practise cases.

The existence of the LSAs as separate structures does not meet the criteria of the regulator having clear oversight of regulatory decisions and we recommend that the LSA structure should be removed from statute as it pertains to the NMC”.

- Kirkup Report – Investigation into Morecambe Bay<sup>7</sup>:Recommendation 32

“The Local Supervising Authority system for midwives was ineffectual at detecting manifest problems at the University Hospitals of Morecambe Bay NHS Foundation Trust, not only in individual failures of care but also with the systems to investigate them. As with complaints, our remit was not to examine the operation of the system nationally; however, the nature of the failures and the recent King’s Fund review (Midwifery regulation in the United Kingdom) lead us to suppose that this is not unique to this Trust, although there were specific problems there that exacerbated the more systematic concern. We believe that an urgent response is required to the King’s Fund findings, with effective reform of the system”.

### Statutory Midwifery Committee

The three UK Law Commissions’ review<sup>8</sup> of the regulation of health and (in England) social care professions considered the streamlining of processes across regulators. The Law Commissions concluded that all statutory committees, with the exception of fitness to practise and appointment committees should be abolished.

---

<sup>6</sup> <http://www.kingsfund.org.uk/projects/midwifery-regulation-united-kingdom>

<sup>7</sup> <https://www.gov.uk/government/publications/morecambe-bay-investigation-report>

<sup>8</sup> <http://www.lawcom.gov.uk/project/regulation-of-health-and-social-care-professionals/>

Having a statutory committee who advises the professional regulator is unique to midwifery.

### **Department's proposals**

The Department consulted on proposed changes to the NMC's governing legislation which would:

- remove the additional tier of regulation for midwives created by statutory supervision, and
- remove the statutory requirement for the NMC to have a Midwifery Committee

In addition, the Department is proposing a number of changes to the NMC's fitness to practise processes to ensure they are both efficient and proportionate. These include giving additional powers to the Investigating Committee and replacing the Health Committee and the Conduct and Competence Committee with a single Fitness to Practise Committee which can hear allegations of impairment of fitness to practise on any grounds. The proposed amendments in relation to the NMC's fitness to practise processes cover both nurses and midwives.

These points are discussed in more detail in later chapters of this document.

# Consultation process and overview

The consultation ran from 21 April 2016 to 17 June 2016 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 document can also be found at <https://www.gov.uk/government/consultations/changes-to-nursing-and-midwifery-council-governing-legislation> and was undertaken on behalf of the four UK Health Departments with the agreement of all UK Health Ministers.

The Department received 1,424 consultation responses from both individuals and on behalf of organisations. Responses were submitted via the digital platform 'Citizen Space', email and by post. Not all respondents answered all of the questions. Reasons for this could include that some of the proposed changes are only relevant to midwives meaning certain questions were therefore not applicable to all respondents.

Of those who responded, 92% identified themselves as individuals with only 8% responding on behalf of an organisation. A detailed breakdown of how respondents identified themselves can be seen in Tables 1 and 2 below.

**Table 1: Individuals**

Category	Number of respondents	%
Midwives/student midwives	863	66%
Nurses	31	2%
Another healthcare professional	34	2%
Member of the public/Other/Not Answered/An individual	387	30%
<b>Total</b>	<b>1,315</b>	<b>100%</b>

**Table 2: Organisations**

Category	Number of respondents	%
NHS Trusts	30	28%
Regulator/Professional Body	14	13%
Charity	5	5%
Higher Education Institution	25	23%
Supervisors of Midwifery Group	7	6%
Other	28	25%
<b>Total</b>	<b>109</b>	<b>100%</b>

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 under the most relevant question. The majority of comments were received in relation to Questions 1 and 2 which concerned the additional tier of statutory supervision for midwives and the removal of the statutory requirement for a Midwifery Committee, respectively.

# Analysis by question

## Removal of Statutory Midwifery Supervision

**Q1. Do you agree that this additional tier of statutory supervision for midwives should be removed?**

### Background

Under the NMC's governing legislation there are a number of historic provisions which are inconsistent with the current model of regulation across other health and care professions. Midwives are currently subject to an additional tier of local regulation through the supervision of midwives statutory provisions. These provisions are not mirrored for any of the other regulated healthcare professions. Under this process, investigations into the fitness to practise of midwives can be resolved locally by other midwives without the involvement of the NMC.

The NMC's current legislation provides for LSAs that oversee a system of local supervision of midwives. The LSA function is discharged through the LSAMOs and local supervision is conducted by SoMs. This supervisory system dates back to 1902 when midwifery was provided outside the health sector and additional safeguards were deemed necessary. The current system contains elements of self-regulation where concerns about midwives can be investigated and resolved locally by other midwives, who have been appointed as SoMs without involvement from the NMC. This additional tier of statutory supervision for midwives is not a feature of the regulation of any other health and care profession in the UK. In addition, today, the overwhelming majority of midwives are subject to clinical governance, appraisal and performance management through their employer.

As set out on pages six and seven a number of recent reviews have been critical of the additional tier of midwifery regulation and have recommended that the supervision and regulation of midwives should be separated and that the NMC should be in direct control of all regulatory activity. To meet the recommendations, accepted by both the NMC and the Government, that the supervision and regulation of midwives should be separated, Articles 42 and 43 of the NMO would need to be removed.

### Consultation analysis

Response to Q1	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Yes	169	13%	40	37%	209	15%
No	1131	86%	60	55%	1191	84%
Not Answered	15	1%	9	8%	24	2%
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1242</b>	<b>100%</b>

The table on page 10 shows that the majority of respondents (84%) disagreed with the proposal to remove the additional tier of regulation through supervision specific to midwives. When responses are broken down the percentage of organisations that disagreed with the proposals was lower (55%) than the percentage of individuals (86%) but still overall more than half of respondents disagreed.

The main themes of those that disagreed were:

- concerns around patient safety and quality assurance if statutory supervision is removed;
- removal of support for midwives;
- concerns that the midwifery profession will be undermined by the removal of the midwifery rules;
- concerns relating to the NMC's ability to manage an increased fitness to practise referral rate.

It was also commented a number of times that the specialised nature of the midwifery profession is being marginalised within the NMC and that the NMC's focus is on generic nursing standards which can then be applied to midwifery. There appears to be a lack of trust by midwives in the NMC's ability to regulate midwifery in a way that fits with midwifery's scope and level of responsibility.

A number of the responses from organisations that disagreed with the proposals mirrored that of the individual responses.

The main themes of those that agreed with the proposal were:

- removing statutory supervision would bring midwifery regulation in line with other regulated professions;
- the development of clinical governance took away the need for this tier of regulation, and the current provision of two local investigative processes (employer led and as part of the supervisory system) can cause confusion;
- there is no evidence that the additional tier of regulation protects patients.

Arguments were raised that no other profession has the opportunity to take unilateral decisions about fitness to practise and it was thought the removal of statutory supervision would provide more clarity for midwives in relation to their accountability to the NMC.

The concern around the removal of statutory supervision was countered by some who felt that some supervisors did not understand the purpose of their role and that Trusts had focussed on the use of the role as a way to investigate and manage untoward incidents. This had reduced the role of support for midwives and personal and professional development.

## **Department's response**

The Department acknowledges the concerns that respondents have expressed through this consultation in relation to the removal of the statutory elements of midwifery supervision.

The Department remains of the view that the NMC should be responsible for all aspects of midwifery regulation to ensure public protection. This is in line with the regulatory system in place for all other regulated healthcare professionals and the findings of a number of reviews and reports (discussed in more detail on pages six and seven) support this view. It must be noted that the threshold for midwifery fitness to practise referrals has not changed.

Nevertheless, the Department expects the NMC to manage any potential increase on referrals effectively, including through working with employers.

The Department recognises the contribution that LSAs, LSAMOs and SoMs have made to the midwifery profession and continues to value the benefits of supervision. In order to ensure that these benefits are retained, the four government Chief Nursing Officers have been charged with developing a new model of supervision for each UK country. We believe that the concerns in relation to the potential loss of support and development put forward by respondents as part of this consultation can be alleviated by the new models of supervision being developed by the four countries.

### *New model of supervision*

The statutory requirement for a system of supervision is being removed from legislation to ensure that there is a clear separation between supervision and regulatory investigations and sanctions. This does not, however, mean that a model of supervision, focussing on support and development for midwives, will not exist in the future. In January 2016 the Department, on behalf of the four UK countries, published high level principles for a new non statutory model of supervision<sup>9</sup>. Any model of supervision should be able to be applied to all registered midwives whether they are in the NHS, the independent sector, self-employed or any other setting.

One of the original principles published in January set out that support and advice needed to be available on a 24 hour, 365 days of the year basis. The four government Chief Nursing Officers have since agreed that they would expect this to be covered by employers through routine managerial mechanisms rather than specifically through the supervision model.

The new model of midwifery supervision continues to be developed in each of the four countries through task forces working in collaboration with a range of stakeholders. However it must be noted that although the four countries are working to introduce a midwifery supervision model (based on the principles set out on page 13) the system will ultimately be the responsibility of each country to develop and operate.

### *Timetable for introduction on new model of supervision*

The four countries are working towards introducing the new models of midwifery supervision in line with the removal of the current statutory requirements. This is anticipated to be 31<sup>st</sup> March 2017.

### *Principles of supervision for midwives*

- it maintains and improves quality and thereby contributes to public protection
- it applies to all registered midwives regardless of their scope of practice or mode of employment
- a system of midwifery supervision is a vital aspect of contemporary midwifery practice and needs supervisors of sufficient expertise and experience to support registered midwives
- midwifery supervision should be at least an annual event

---

<sup>9</sup> <https://www.gov.uk/government/publications/changes-to-midwife-supervision-in-the-uk/proposals-for-changing-the-system-of-midwifery-supervision-in-the-uk>

- midwifery supervision is a proactive, developmental and supportive partnership between a midwife and the supervisor and links to effective clinical governance
- supervisors are in professional leadership roles and may or may not be in managerial roles or the supervisee's line manager
- supervisors need to be registered midwives themselves
- supervisors are adequately prepared and experienced enough to be both critical and supportive
- supervisors are selected by heads of midwifery and peer feedback should be used to inform the selection process
- supervisors can be selected for a fixed time period and consideration will be given to a system of refreshing their skills and rotating them in and out of supervisory roles periodically
- alignment with the NMC Code (2015) is essential
- alignment with the NMC revalidation process is essential and will be the same process for all its registrants
- the NMC should hold only information about practising midwives which contributes to protection of the public
- it is for employers to ensure that all their registered midwives are subject to supervision
- it is for all registered midwives to seek supervision even if they are self-employed or do not work regularly for one employer consistently
- any new system must not be more costly than the present system and should demonstrate efficient use of existing resources
- for the majority of midwives who are employed, there should be clarity about the legitimacy and distinctiveness of supervision as a facet of professional good practice and appraisal as a responsibility of the employer.

### *Removal of Midwifery Rules*

A number of respondents were also concerned about the removal of The Nursing and Midwifery Council (Midwives) Rules Order of Council 2012<sup>10</sup> as a consequence of the removal of statutory supervision provisions. There is no proposal to change the protected title of Midwife and the protected function of 'attendance on a woman in childbirth' will remain under the NMO. In addition, there are no proposed changes to the scope of midwifery practice. The NMC has written to stakeholders to provide reassurances about the scope of these changes.

The Department intends to move forward with the proposal to remove the statutory requirement for supervision from the NMC's governing legislation.

---

<sup>10</sup> <https://www.nmc.org.uk/globalassets/sitedocuments/legislation/legislation-updated/nmc-midwives-rules-2012---consolidated-text-effective-1-april-2013.pdf>

## Removal of statutory requirement for a Midwifery Committee

### Q2. Do you agree that the current requirement in the NMC's legislation for a statutory Midwifery Committee should be removed?

#### Background

The NMC regulates two professions, nurses and midwives, but is only required by its legislation to have a statutory midwifery committee. The committee advises the Council on:

- any matter affecting midwifery, such as policy issues affecting midwifery practice
- education and statutory supervision of midwives
- responding to policy trends
- research
- ethical issues affecting all registrants

No other healthcare regulator, irrespective of the number of professions it regulates, has a statutory committee for one of the professions it regulates. Abolishing the statutory midwifery committee would therefore bring midwives into line with all other regulated health care professionals.

The three UK Law Commissions published in 2014 an in-depth review of healthcare regulatory legislation<sup>11</sup>. This included the proposal that the regulators should be given broad rule-making powers to determine their own governance arrangements, including the ability to establish committees if they wish to do so, and that this should replace any statutory requirement to have particular committees. Amongst many recommendations, they concluded that all statutory committees, with the exception of fitness to practise and appointment committees, should be abolished. In its response to the Law Commissions' report, the Government agreed that the statutory status of the Midwifery Committee should be removed, although the NMC will still be able to set up a non-statutory committee under its standing orders if it wished to do so.

The government has a policy objective to streamline and rationalise regulatory legislation. Therefore it is considered that it would be appropriate to make this statutory change now at the same time as making changes to modernise midwifery regulation.

#### Consultation analysis

Response to Q2	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Yes	82	6%	19	17%	101	7%
No	1217	93%	83	76%	1300	91%
Not Answered	16	1%	7	6%	23	2%
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>

The vast majority of consultation responses received (91%) were not in favour of removing the

---

<sup>11</sup> <http://www.lawcom.gov.uk/project/regulation-of-health-and-social-care-professionals/>

requirement in statute for the NMC to have a midwifery committee.

The main themes of those that disagreed were:

- the potential loss of representation by midwives in the NMC (particularly as midwives represent a small percentage of those on the NMC's register);
- midwives and nurses being inappropriately treated as one profession;
- the detrimental impact this could have on the regulation of midwives and the profession as a whole.

Of those in favour, a number were regulatory bodies, including the General Medical Council (GMC), the Health and Care Professions Council (HCPC) and the General Osteopathic Council (GOsC). They agreed with the proposal on the basis that it would bring consistency with the regulation of other healthcare professionals. The Professional Standards Authority (PSA) highlighted that the Shipman Inquiry<sup>12</sup> also identified that in order for regulatory processes to function there needs to be a separation between public and professional interests.

### **Department's response**

Healthcare professional regulation has been moving away from the model of professional self-regulation to a model of independent professional regulation for many years. A statutory Midwifery Committee is not consistent with this approach.

There are a number of concerns that the removal of the committee will mean that the voice of midwifery within the NMC will be lost. The Committee exists to advise the Council on matters relating to midwifery, and is not a representative group for midwives. The proposed change does not affect the NMC's statutory duty to consult midwives and those with an interest in midwifery on relevant matters. The NMC is required under Article 3(5) of the NMO to take into account the views of those it regulates and others when exercising its functions and Article 3(14) places the NMC under a duty to consult with affected groups when establishing standards and guidance.

The proposed change does not prevent the NMC from establishing committees or groups on midwifery or any other subject under its standing orders; it simply removes the statutory requirement. The NMC has already established a strategic Midwifery Panel to advise the Council on securing appropriate midwifery input. This panel has four country representation and includes the Royal College of Midwives and a lay representative amongst others. As an additional measure, the NMC has appointed a Senior Midwifery Advisor to provide expert advice on midwifery issues.

The Department expects the NMC to provide assurance that appropriate arrangements are in place in relation to obtaining midwifery expertise. On this basis we intend to move forward with the proposal to remove the statutory requirement for the NMC to convene a midwifery committee.

---

<sup>12</sup> <http://webarchive.nationalarchives.gov.uk/20090808154959/http://www.the-shipman-inquiry.org.uk/fifthreport.asp>

## Changes to fitness to practise processes

Questions 3 to 11 of the consultation document were in relation to proposed changes that would enable the NMC to continue to keep their fitness to practise processes up to date and ensure that the system is as efficient and proportionate as possible. The changes proposed under this section will apply to both nurses and midwives. The Department considered a number of changes to the NMC's fitness to practise processes with a view to delivering:

- Maximum impact on patient protection and/or efficiency.
- Consistency with the vision for regulation in the future and with the current approach for other regulators.

The consultation document made the following proposals:

- giving the Investigating Committee and (through Rules, the Case Examiners) additional powers to make decisions in relation to agreeing undertakings, issuing warnings and giving advice
- establishing a Fitness to Practise Committee which will replace the Conduct and Competence Committee and the Health Committee and will hear allegations of impairment of fitness to practise on all grounds
- removing the requirement for the NMC to specify in rules the size of its Practice Committee panellist pool
- removing the requirement to hold hearings in the country of the registrant's registered address
- enabling the Fitness to Practise Committee to direct that a suspension order or an conditions of practice order need not be reviewed before its expiry
- introducing a power for the court on an application to extend or to terminate an interim order, to replace an interim conditions of practice order with an interim suspension order and vice versa
- extending the time limit for second and subsequent reviews of interim orders
- removing the requirement to notify certain persons when an allegation is referred to a Practice Committee

The Department believes that the principles of better regulation centre around giving greater autonomy and flexibility to the regulatory bodies to, for example, enable them to more effectively deal with fitness to practice cases.

In addition to the changes made through the Section 60 Order, the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 will need to be amended in order to implement the changes fully. The NMC ran a consultation on the proposed changes to the fitness to practise rules between 24 October and 19 December 2016. Further information can be found at the following link:

<https://www.nmc.org.uk/about-us/consultations/current-consultations/modernising-fitness-to-practise>

**Q3. Do you agree that, when the Investigating Committee or the Case Examiners determine that there is no case to answer but there are some concerns as to past practice or conduct, the Investigating Committee and Case Examiners should have the power to issue a warning or advice to a nurse or midwife?**

## Background

Currently there are no powers in the NMC's governing legislation that allow the Investigating Committee or Case Examiners to issue warnings or give advice to registrants.

The Department's proposals would enable the Investigating Committee or the Case Examiners to:

- Issue a registrant with a warning at the end of the investigation stage where there are aspects of the registrant's past practice or conduct that cause concern, but they consider there is no case to answer as to their current fitness to practise, and therefore a hearing is not necessary. Warnings will be published by the NMC.
- Issue a registrant with advice at the end of the investigation stage where they consider there is no case to answer, therefore a fitness to practise hearing is not necessary, but there has been a minor breach of professional standards under the Code. Advice will not be published by the NMC.

## Consultation analysis

Response to Q3	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Yes	684	52%	73	70%	757	53%
No	373	28%	19	17%	392	28%
Not Answered	258	20%	17	13%	275	19%
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>

Overall the majority of respondents (53%) agreed that the Investigating Committee or Case Examiners should be able to issue warnings or advice where they consider that there is no case to answer to. 70% of organisations agreed compared to 52% of individuals.

A number of themes emerged from comments made by respondents:

- Many thought this was a proportionate way of dealing with low level cases;
- A number of respondents questioned how the midwife or nurse would be monitored on the basis of the warning or advice and what the appeals process would be for registrants who were given a warning;
- Points were made both for and against the publication of warnings with some arguing that it was necessary in order to be transparent and others arguing that it would be unfair given that the registrant had been deemed fit to practise;
- Respondents felt that the Investigating Committee and Case Examiners needed to have the expertise (particularly in midwifery) to make effective decisions.

## Department's response

The proposal to give the NMC powers to issue a warning or give advice is consistent with the fitness to practise procedures of both the GMC and GDC.

The NMC will use this power where there might be a realistic prospect of proving the case, but not of establishing that fitness to practise is impaired. In such circumstances a warning relating to past practise or conduct may be necessary on the grounds of wider public interest.

The proposed legislative changes to the NMC's governing legislation set out that the Investigating Committee must notify the registrant of; details of the warning or advice, its reasons for issuing the warning or advice and the length of time that detail of any warning will be available publically. This will ensure that the NMC is transparent with the registrant about why a warning or advice has been issued.

The registrant issued with a warning or advice will not be monitored. As there is no case to answer this could be seen as a disproportionate use of resources. The NMC does however already have the power to take the allegation, which led to a warning or advice being issued, into account if it receives a further referral within three years of the no case to answer decision.

A number of concerns were raised relating to the expertise of the Case Examiners. Under the Nursing and Midwifery (Fitness to Practise) Rules 2004 an allegation of impairment of fitness to practise is looked at by one lay Case Examiner and one registrant Case Examiner who will either be a nurse or a midwife. Where cases involve clinical performance the NMC takes account of the professional expertise of the registrant Case Examiner when deciding which case to allocate to which Case Examiner.

The NMC has also set out that they will provide updated guidance for Investigating Committees and Case Examiners to use in their consideration of a case and the potential outcomes. The Department considers that the NMC's suggestion that warnings will be published for a period of 12 months is a proportionate amount of time to ensure a balance between professional standards being upheld and the potential impact on the registrant.

The Department intends to move forward with the proposal to give the NMC the power to issue a warning or advice to a nurse or midwife.

**Q4. Do you agree that, where the Investigating Committee or the Case Examiners determine that there is a case to answer in respect of an allegation, the Investigating Committee and the Case Examiners should have the power to agree undertakings with a nurse or midwife?**

## Background

The changes proposed will allow Investigating Committees or Case Examiners to agree undertakings with a registrant where there is a case to answer rather than refer them to a panel hearing.

This would mean some cases which are currently referred to a panel hearing will not be, if it is determined that the agreement and satisfactory fulfilment of undertakings would lead to the resolution of a case in a way that protects the public and addresses the concern about the professional.

Undertakings are a formal binding agreement between the regulator and the registrant that the registrant will undertake activities such as training or operate under supervision. This would have the aim of enabling nurses and midwives to return to unrestricted practice upon successful completion of the undertakings.

## Consultation analysis

Response to Q4	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Yes	734	56%	73	67%	807	57%
No	279	21%	17	16%	296	21%
Not Answered	302	23%	19	17%	321	22%
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>

The majority of respondents (57%) agreed with this proposal.

Key comments made in response to this question included:

- The importance of midwifery representation on the Investigating Committee and amongst the Case Examiners
- The need for support to be available for those concerned, with the aim of improving practice and safety rather than a focus on punishment.
- The role of the employer and the need for consistency across the UK in how Trusts support midwives to continue the agreed undertakings.
- Concern as to how the undertakings will be managed and monitored when statutory supervision of midwives ceases to exist.
- The difficulties that midwives currently face in accessing support to undertake additional education/training/supervision
- The need for the NMC to provide more detailed information on the process, including assurances around consistency and clarity on time limits for undertakings.

## Department's response

The proposal to give the NMC powers to issue undertakings is consistent with the fitness to practise procedures of both the GMC and GDC.

A number of respondents, including the PSA, expressed a view that all cases where it is decided that there is a case to answer should proceed to a panel hearing to ensure transparency and public confidence. However, the Department believes that the introduction of undertakings allows regulators to apply a more proportionate and flexible approach to regulation whilst upholding public confidence and transparency as details of the undertakings are published.

Case Examiners or the Investigating Committee would only recommend undertakings after they had seen the nurse or midwife's response to the investigation and the Investigating Committee or the Case Examiners would stop their consideration of the case when a nurse or midwife agreed to comply with the undertakings.

A dedicated review team will monitor the nurse or midwife's progress in completing the steps specified in undertakings. Where the review team highlights a concern in relation to the midwife's progress, the Case Examiners will be notified and may decide whether to vary the undertakings or direct that they should no longer apply. If undertakings are not complied with to the satisfaction of the NMC, it will consider whether it is appropriate to try and agree more restrictive conditions with the nurse or midwife or to send the case forward to a panel hearing.

To ensure public protection is maintained the NMC has stated that when undertakings are agreed, the nurse or midwife's entry on their register will be amended to show they are subject to undertakings. The details of the undertakings will be published, alongside a short summary of the incident(s) which led to the undertakings being agreed. Where the health of a registrant is an issue, the NMC is amended to provide that the NMC can withhold from publication any information concerning the physical or mental health of a registrant. The details regarding undertakings, including the consequences of a breach, will be set out in the NMC's amended fitness to practise rules which the NMC are currently consulting on.

The Department intends to move forward with the proposal to give the NMC the power to agree undertakings with a nurse or midwife where appropriate.

**Q5. Do you agree that the Conduct and Competence Committee and Health Committee should be replaced by a single Fitness to Practise Committee which will deal with allegations of impairment of fitness to practise on all grounds?**

**Background**

The introduction of a single Fitness to Practise Committee will mean that one committee will deal with fitness to practise concerns relating to conduct, competence and health.

Currently, if it comes to light within a Conduct and Competence Committee hearing that there is a potential underlying health issue, the case would need to be transferred to the Health Committee resulting in increased costs and delays. There would be additional hearing days which may result in further stress for a nurse or midwife already coping with health issues. Likewise, further delays can occur if a case is before the Health Committee and it considers that the allegation would be better dealt with by the Conduct and Competency Committee.

By having a single Fitness to Practise Committee, the likelihood of delays would potentially reduce as the Fitness to Practise Committee would be able to consider allegations of impairment on all grounds.

## Consultation analysis

Response to Q5	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Yes	511	39%	82	75%	593	42%
No	477	37%	10	9%	487	34%
Not Answered	327	51%	17	16%	344	24%
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>

There was a mixed response to this proposal, however of those that expressed a view a small majority agreed (42%). However, a much larger majority (75%) of organisations agreed with the proposals, with less than 10% disagreeing.

Some of the themes from the comments were:

- Concerns raised around competency and health being two separate issues and that fitness to practise reviews carrying more stigma;
- That the Conduct and Competence Committee would not have the relevant expertise in relation to health issues;
- Having one Fitness to Practise Committee would streamline the process, improve efficiencies and as a result improve the experience of those going through the process.

## Department response

The Department considers that this change will reduce unnecessary delays and improve the fairness of the process by ensuring all cases are heard by one committee. There will be no change to the current legislation regarding hearings being held in private if medical evidence is being considered.

The NMC has also advised that their training programme for panel members will include specialised training on the Equality Act 2010 and understanding health conditions and has further stated that it is committed to ensuring that existing good practice from the Health Committee is replicated in the new model.

The Department intends to move forward with the proposal to replace the Conduct and Competence Committee and Health Committee with a single Fitness to Practise Committee which will deal with allegations of impairment of fitness to practise on all grounds.

## **Q6. Do you agree that the requirement for the NMC to specify in rules the size of its Practice Committees is unnecessary and should be removed?**

### Background

The NMO provides that the NMC must specify in rules the size of the pool of panellists that can be used for Practice Committees. Currently the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules place a limit on the number of committee members available to sit at panel hearings, as set out below:

- in the case of the Investigating Committee, a maximum of 180 persons;

- in the case of the Conduct and Competence Committee, a maximum of 350 persons; and
- in the case of the Health Committee, a maximum of 120 persons, appointed by the Council.

Increasing volumes of hearings means that there may be difficulties scheduling cases efficiently if the current restrictions on the pool of panel members is retained. We therefore propose to remove the requirement that the NMC must specify in rules the size of the pool of panellists that can be used for Practice Committees. This will allow the NMC to increase its pool size, if necessary, without have to make amendments to its rules.

## Consultation analysis

Response to Q6	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Yes	244	19%	38	35%	282	20%
No	697	53%	49	45%	745	52%
Not Answered	374	28%	22	20%	396	28%
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>

The majority of respondents disagreed with this proposal. However, over a quarter of respondents did not answer the question and after consideration of the comments made in response to this question we believe that there was some misinterpretation of the proposal. From the responses received it appears that some respondents thought that this change was in connection was the number of panel members on an individual panel rather than being in connection with the numbers of the overall pool of Practice Committee members.

The proposal is not to remove the requirement of the number of panellists who must sit on an individual panel. The change is only in relation to the limit on the pool of available panellists. The requirement for there to be a minimum of three panellists on each panel will remain unchanged.

## Department response

The proposed change will give the NMC greater operational flexibility in meeting the future needs of its fitness to practise proceedings. It will no longer have to amend its rules should the size of the pool need to be increased due to an increase in hearings for example. This is consistent with the arrangements of other regulators.

There will be no change to the provision in the Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules 2008 which provides that the quorum for panels of Practice Committees is three and must include a registrant and a non-registrant member. Therefore, the Department does not agree that this proposal will impact on the diversity of the panel and may actually increase diversity as the NMC will be able to increase the number of potential panellists.

The Department intends to move forward with the proposal to remove the requirement for the NMC to specify in rules the size of the pool of panellists for its Practice Committees.

**Q7. Do you agree that the statutory requirement regarding the location of preliminary meetings and hearings of Practice Committees and hearings of appeals against the Registrar's decisions should be removed providing flexibility to hold these hearings in the most convenient location for all parties?**

## **Background**

Current NMC legislation requires all preliminary meetings and hearings of practice committees at which the registrant is entitled to be present to be held in the UK country of the registrant's address as it appears on the NMC's register.

This provision can lead to inconvenience and unnecessary costs for all parties. We propose removing this mandatory requirement giving the NMC flexibility to schedule hearings in the most convenient and cost effective location for all those involved in the hearing.

## **Consultation analysis**

<b>Response to Q7</b>	<b>Individuals</b>		<b>Organisations</b>		<b>Overall</b>	
	<b>Number of respondents</b>	<b>Percentage (rounded)</b>	<b>Number of respondents</b>	<b>Percentage (rounded)</b>	<b>Number of respondents</b>	<b>Percentage (rounded)</b>
Yes	789	60%	78	72%	867	61%
No	182	14%	11	10%	193	13%
Not Answered	344	26%	20	18%	364	26%
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>

The majority of respondents (61%) agreed with the proposal to give the NMC more flexibility to hold hearings in the most convenient and cost effective location for those involved.

Key comments centred around:

- Concern over who would decide which location was the most convenient for all involved was expressed by both those that agreed and disagreed with the proposal
- The possibility that the proposals could be used to benefit the NMC rather than the registrant involved, but the overall consensus was that the new rules should be applied sensibly so as not to disadvantage the registrant.
- The need for a commitment from the NMC to ensure the locations used are spread across the UK
- Acknowledgement of the potential efficiencies around cost, travel expenses and lost clinical days for both investigators and witnesses.

## **Department response**

The proposal to remove the requirement regarding the location of preliminary meetings and hearings of Practice Committees and hearings of appeals against the Registrar's decisions is consistent with the fitness to practise procedures of both the GMC and GDC.

The Department notes the concerns that have been raised in relation to ensuring that the location is the most convenient for all parties.

The NMC is an independent organisation who we would expect to develop decision making processes which are equitable. To ensure consistency in approach the NMC has said that it will put in place guidance to ensure discretion on where hearings are held is exercised fairly. The Department intends to move forward with the proposal to remove the statutory requirement regarding the location of preliminary meetings and hearings of Practice Committees and hearings of appeals against the Registrar's decisions therefore providing flexibility to hold hearings in the most convenient location for all parties.

## **Q8. Do you agree that all interim order reviews, including those where the court has granted an extension, should be held at six month intervals?**

### **Background**

An interim order temporarily suspends or restricts a nurse or midwife's practice while their case is being investigated. Current legislation requires an interim order to be reviewed six months after it is imposed, then at three month intervals for subsequent reviews.

The Department's proposal would amend the Nursing and Midwifery Order so all interim order reviews are held at six month intervals. This timeframe is considered to be more proportionate to all parties, both for the NMC in terms of reducing the number of review hearings that do not assist case progression and for the registrant in terms of attending hearings or supplying further information. This is also in keeping with the current practice of both the GMC and GDC.

### **Consultation analysis**

Response to Q8	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Yes	599	46%	69	63%	668	47%
No	292	22%	21	19%	313	22%
Not Answered	424	32%	19	17%	443	31%
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>

The majority of respondents that answered this question agreed.

Key themes that emerged included:

- the changes would streamline the process and the changes would improve transparency and fairness
- the proposal would be more cost effective for all parties involved.
- may cause further delays especially for those returning to practice, which could lead to a loss of earnings.
- concern from both those agreeing and disagreeing that should new evidence come to light, the interim order should be reviewed

### **Department response**

The proposal to give the NMC powers to hold interim order reviews at six month intervals is consistent with the fitness to practise procedures of both the GMC and GDC.

This proposal should reduce the burden on the NMC and registrants. The NMC has stated that making this change will be beneficial as it will mean that staff time that is currently spent scheduling three monthly reviews can be used to progress cases more quickly which is in the registrant's interests as well as that of the wider public.

Although interim orders will only be reviewed at six month intervals under the new provisions there will be no change to the provision in the NMO that requires a Practice Committee to review an interim order where new information relating to that order becomes available. Where a review is requested based on new information the NMC aims to schedule the review hearing promptly.

The Department intends to move forward with the proposal that interim order reviews should be held at six month intervals.

### **Q9. Do you agree that the court should have additional powers to replace an interim suspension order with an interim conditions of practice order (or vice versa)?**

#### **Background**

As set out under Q8 an interim order temporarily suspends or restricts a nurse or midwife's practice while their case is being investigated. There are two types of interim order: an interim suspension order (where the registrant cannot practise for a period of time) and an interim conditions order (where restrictions are placed on a registrants practice for a period of time).

Currently the court has the power to terminate an interim suspension order or to revoke or vary a condition imposed by an interim conditions of practice order when a registrant makes an application to the court or when the court is considering an NMC application to extend an interim order. In some cases however the court might consider that an interim conditions of practice order is more appropriate than an interim suspension order (or vice versa). However, the court has no power to replace one type of interim order with another.

This can leave a potential public protection gap in cases where an interim conditions in practice order is in place, but the court considers an interim suspension order is more appropriate to protect the public. It can also create unfairness to nurses and midwives where an interim suspension order is in place, yet the court considers an interim conditions of practice order is more appropriate.

We proposed to give the court the power to replace an interim suspension order with an interim conditions of practice order (and vice versa) when the NMC applies to the court to extend an interim order or a registrant applies to have an interim order revoked or terms varied.

#### **Consultation analysis**

Response to Q9	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Yes	658	50%	69	63%	727	51%
No	230	17%	18	17%	248	17%
Not Answered	427	32%	22	20%	449	32%

<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>
--------------	--------------	-------------	------------	-------------	--------------	-------------

Although the majority of respondents agreed (51%), a large proportion of respondents did not answer the question. In addition many respondents said that more information was required before answering the question.

The majority of organisations also agreed (61%), including Unison, NHS Improvement and the Professional Standards Authority (PSA).

Key comments from respondents included:

- some respondents felt that the power should only apply when new evidence came to light
- the approach appeared to be fairer to registrants
- it is important for the court to have these powers to ensure decision making can be made appropriately and within a reasonable timescale.
- Practice Committees should be following robust enough standards. Regulating bodies have a better understanding of cases so the decision should sit with them

## Department response

The proposal to give the court additional powers to replace an interim suspension order with an interim conditions of practice order (or vice versa) is consistent with the fitness to practise procedures of the GMC.

The Department believes it is right that there is the option for registrants to apply to court in relation to restrictions that have been placed on them through interim orders and that this proposed extension to the courts powers will enable a more flexible system to be applied. The courts will continue to have the power to terminate an interim suspension order and revoke or vary any condition imposed by an interim conditions of practice order.

A number of respondents had concerns that the NMC were better placed to make decisions on the appropriateness of sanctions rather than courts. Courts do place the decisions made by professional panels in high regard in terms of the nature of restrictions that should be in place. However, if the court was of the view that the interim order was either too restrictive or not restrictive enough they will assess the level of risk posed by the nurse or midwife for themselves using either the information already available from the previous interim order hearings (which would form part of the information before the court) or additional information provided by the nurse or midwife at the High Court hearing itself.

The Department intends to move forward with the proposal to give the court additional powers to replace an interim suspension order with an interim conditions of practice order (or vice versa).

**Q10. Do you agree that it is not necessary for the Practice Committee panel to review all conditions of practice or suspension orders but instead should have the discretion to direct whether an order needs to be reviewed before the expiry of that order?**

## Background

At the end of a fitness to practise hearing, if a panel determines that the nurse or midwife's fitness to practise is impaired it may impose one of a number of sanctions<sup>13</sup>.

In conditions of practice and suspension cases, it is currently a mandatory requirement for the NMC to carry out a review hearing before the expiry of the sanction. The NMC considers that the requirement to carry out a review hearing before the expiry of the period of sanction may not be necessary in cases where the sanction was imposed solely on public interest grounds. This is because in these cases there were no longer any public protection concerns when the sanction was first imposed but a sanction was considered necessary both on wider public interest grounds and to protect the reputation of the profession. In addition, the requirement to review all cases may not be an appropriate and proportionate use of resources.

The Department agrees that such a review may not be necessary in certain circumstances therefore the Department's proposals would enable the Practice Committee to apply discretion and direct whether a sanction should be reviewed before its expiry on a case by case basis.

## Consultation analysis

Response to Q10	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Yes	559	43%	57	52%	616	43%
No	309	23%	27	25%	336	24%
Not Answered	447	34%	25	23%	472	33%
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>

The majority of respondents that answered this question agreed with the proposals.

Key comments were:

- there was concern that if not all cases were reviewed, equality and fairness could be compromised.
- unless new evidence came to light there was no need to review each case. The proposals would benefit all involved by streamlining the process.

## Department response

The proposal to give the practice Committee panel discretion around whether to review conditions of practice or suspension orders before the expiry of that order is consistent with the fitness to practise procedures of the GMC.

---

<sup>13</sup> A striking-off order, a suspension order, a conditions of practice order or a caution order

Whilst the Department expects that reviews will continue to be required in most cases, the Department agrees that in certain circumstances it may not be necessary to have such a review, particularly in suspension cases where the order was made on wider public interest grounds and there was no clinical risk. In such cases there may be limited value in holding a review hearing. The Department believes that the principles of better regulation centre around giving greater autonomy and flexibility to the regulatory bodies to, for example, enable them to more effectively deal with fitness to practise cases.

We note that other regulators where panels have discretion as to reviewing orders, such as the GMC, can exercise their discretion in respect of both suspension orders and conditions of practice orders. The Department's proposal would enable the Fitness to Practise Committee to apply discretion and direct whether a sanction should be reviewed before its expiry on a case by case basis.

The NMC will continue to have the power to review orders at any time either of its own volition or on the application of the person subject to such an order. The NMC has stated it will produce guidance for the Fitness to Practise Committee panels to determine when it would be appropriate not to direct a review hearing.

The Department intends to move forward with the proposal to give the practice Committee panel discretion around whether to review conditions of practice or suspension orders before the expiry of that order.

**Q11. Do you agree that the requirement to notify specified persons, including governments of the four countries, when an allegation is referred to a Practice Committee panel for a hearing should be removed?**

**Background**

The NMO requires the NMC to make rules which include provisions requiring the NMC to notify specified persons (including governments of the four countries) when an allegation is referred to the Conduct and Competence Committee or Health Committee for a hearing.

It is considered that this requirement to notify the government of the four countries is unnecessary and administratively burdensome for the NMC due to the large number of registrants and high number of hearings.

**Consultation analysis**

Response to Q11	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Yes	365	28%	53	49%	418	30%
No	529	40%	31	28%	560	39%
Not Answered	421	32%	25	23%	446	31%
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>

The views of respondents were split on this proposal.

The common theme identified from those that disagreed was concern about public safety. A number asked in their comments what system was or would be used instead.

There were a number of common themes from those in agreement:

- the current systems added unnecessary bureaucracy
- unless an allegation was proven, relevant groups should not be notified
- a number agreed on the proviso that the NMC Register was kept up to date

### **Department's response**

As set out above, the Department and the devolved administrations believe that the current requirement for the NMC to notify them of referrals to their fitness to practise creates an unnecessary burden on the NMC. The requirement for the NMC to give such notification to the registrant's employer, and any body by which he is authorised to practise (where known) will remain.

The Department believes this is a more proportionate approach to disclosure. We would look to make similar changes to the legislation of the other health and care regulators as part of the process to streamline regulatory processes. In addition, the NMC provides a monthly 'changes to the register' list on their website which organisations and individuals are able to subscribe to.

The Department intends to move forward with the proposal to remove the requirement to notify specified persons, including governments of the four countries, when an allegation is referred to a Practice Committee panel.

# Costs and benefits and equalities considerations

During the development of our proposals we considered the costs and benefits and the possible impact they might have. We have used the consultation exercise in order to gather further evidence on any potential impacts in relation to introducing these measures and a full impact assessment can be found alongside this report.

In addition to considering the costs and benefits of the proposals, the Department of Health has considered the proposals in relation to the Equality Act 2010, and specifically, the Public Sector Equality Duty.

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

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

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

Figures are set out below where appropriate along with a summary of comments made by respondents and the Department's response.

**Q12. Will the proposed changes affect the costs or administrative burden on your organisation or those you represent, by way of:**

- An increase
- A decrease
- Stay the same
- Unsure
- Please explain your answer.

## Consultation analysis

Response to Q12	Individuals		Organisations		Overall	
	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)	Number of respondents	Percentage (rounded)
Decrease	35	3%	5	5% (4.5%)	40	3%
Increase	239	18%	21	19%	259	18%
Stay the same	68	5%	20	18%	89	6%
Unsure	493	37%	42	39%	535	38%
Not	480	37%	21	19%	501	35%

answered						
<b>Total</b>	<b>1,315</b>	<b>100%</b>	<b>109</b>	<b>100%</b>	<b>1,424</b>	<b>100%</b>

A large percentage (74%) of respondents were unsure/did not answer this question, with a number commenting this was because they were responding as individuals and were not involved or aware of organisational costs or administrative processes.

From those that answered the question, a high number of responses anticipated an increase in administration costs for Trusts in relation to the removal of statutory supervision. However a number thought there would be a decrease in costs pointing at a potential saving in relation to the current remuneration of Supervisors of Midwives.

### **Department response**

The additional comments we received as part of the consultation were fed into further considerations on the impact of the changes. An updated impact assessment has been produced published alongside this report.

**Q13: 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**

The majority of respondents (90%) did not answer this question but a number of respondents used the free text box as an opportunity to comment on the proposals as a whole. These comments have been considered in the round.

### **Department response**

The Department has considered the impact the proposals may have on the equality principles.

An equality assessment has been completed and it has been concluded that, overall, the measures will have either a neutral or positive impact.

The full Equalities Assessment document has been published alongside this document.

# 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.

## **Q14. Do you have any comments on the draft Order?**

### **Consultation analysis**

73% of respondents did not answer this question or answered 'no'.

Of those that did answer the question, the majority of comments provided were general comments in relation to the proposals rather than specific to the draft Order. We have therefore considered these comments alongside comments made under the remainder of the questions.

A number of comments were made in relation to the need for part 8 of the NMO to remain in particular Rule 5 which sets out that:

*A practising midwife who is responsible for providing care or advice to a woman or care to a baby during childbirth must do so in accordance with standards established and reviewed by the Council in accordance with article 21(1)(a) of the Order.*

Midwives (and nurses) must comply with the NMC's code (which sets out the standards of conduct, performance and ethics established by the Council under article 21(1)(a)) and the proposed amendments will not affect this. As mentioned under question 1 the protected title of 'Midwife' and the protected function of 'attendance on a woman in childbirth' will remain. The NMC has written to stakeholders to provide reassurances about the scope of these changes.

Since the draft Order was published as part of the consultation, a small number of technical amendments have been made. No substantive changes have been made to the draft Order as a result of the consultation responses received.

The Department intends to move forward with the proposal to remove the statutory requirement for supervision from the NMC's governing legislation.

# Conclusion

The Department is grateful to those who responded by taking the time to provide wide ranging comments on this consultation.

After consideration of 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 NMO will be made via a Section 60 Order<sup>14</sup> which is a legislative vehicle used to amend legislation relating to regulated health professions.

## **Removal of statutory supervision of midwives**

The Department acknowledges the concerns that respondents have expressed through this consultation in relation to the removal of the statutory elements of midwifery supervision. However, we remain of the view that the NMC should be responsible for all aspects of midwifery regulation to ensure public protection. This is in line with the regulatory system in place for all other regulated healthcare professionals and the findings of a number of reviews and reports (discussed in more detail on pages six and seven) support this view.

The Department recognises the contribution that LSAs, LSAMOs and SoMs have made to the midwifery profession and continues to value the benefits of supervision. In order to ensure that these benefits are retained, the four government Chief Nursing Officers have been charged with developing a new model of supervision for each UK country through task forces working in collaboration with a range of stakeholders. We believe that the concerns in relation to the potential loss of support and development put forward by respondents as part of this consultation can be alleviated by the new models of supervision being developed by the four countries.

## **Removal of statutory midwifery committee**

Healthcare professional regulation has been moving away from the model of professional self-regulation to a model of independent professional regulation for many years. As set out in the consultation document the Department does not think that a statutory Midwifery Committee is consistent with this approach.

The proposed change does not affect the NMC's statutory duty to consult midwives and those with an interest in midwifery on relevant matters. The NMC is required under Article 3(5) of its Order to take into account the views of those it regulates and others when exercising its functions. Article 3(14) similarly places it under a duty to consult with affected groups when establishing standards and guidance.

The proposed change does not prevent the NMC from establishing committees or groups on midwifery or any other subject under its standing orders; it simply removes the statutory requirement. The NMC has already established a strategic Midwifery Panel to advise the Council on securing appropriate midwifery input. This panel has four country representation and includes the RCM and a lay representative amongst others. As an additional measure, the NMC has appointed a Senior Midwifery Advisor to provide expert advice on midwifery issues.

---

<sup>14</sup> <http://www.legislation.gov.uk/ukpga/1999/8/section/60>

The Department expects the NMC to provide assurance that appropriate arrangements are in place in relation to obtaining midwifery expertise. On this basis we intend to move forward with the proposal to remove the statutory requirement for the NMC to convene a midwifery committee.

### **Fitness to practise changes**

These new powers are broadly in line with changes the Department has made to the legislation of the GDC and the GMC in recent years and will enable the NMC to apply a more proportionate approach to regulation whilst still maintaining public protection.

Although the NMC are an independent body, their performance, including their work in relation to fitness to practise proceedings are reviewed by the Professional Standards Authority on an annual basis. The Department therefore plans to move forward with the proposed changes to the NMC's fitness to practise processes.

The NMC ran a consultation on the proposed changes to the fitness to practise rules between 24 October and 19 December 2016. Further information can be found at the following link:

<https://www.nmc.org.uk/about-us/consultations/current-consultations/modernising-fitness-to-practise>