

## **Submission from the Nursing and Midwifery Council to the Public Bill Committee regarding the Health and Care Bill**

### **About Us**

- 1 Our vision is safe, effective and kind nursing and midwifery that improves everyone's health and wellbeing. As the professional regulator of almost 732,000 nursing and midwifery professionals, we have an important role to play in making this a reality.
- 2 Our core role is to regulate. First, we promote high education and professional standards for nurses and midwives across the UK, and nursing associates in England. Second, we maintain the register of professionals eligible to practise. Third, we investigate concerns about nurses, midwives and nursing associates – something that affects less than one percent of professionals each year. We believe in giving professionals the chance to address concerns, but we'll always take action when needed.
- 3 To regulate well, we support our professions and the public. We create resources and guidance that are useful throughout people's careers, helping them to deliver our standards in practice and address new challenges. We also support people involved in our investigations, and we're increasing our visibility so people feel engaged and empowered to shape our work.
- 4 Regulating and supporting our professions allows us to influence health and social care. We share intelligence from our regulatory activities and work with our partners to support workforce planning and sector-wide decision making. We use our voice to speak up for a healthy and inclusive working environment for our professions.

### **Summary**

- 5 We are grateful for the opportunity to provide our thoughts on the Health and Care Bill. We broadly welcome the provisions in the Bill, including those around professional regulation. However, there are a number of areas where we have concerns or would appreciate greater clarity from the Government, including:
  - 5.1 We would appreciate more information on the criteria that the Government will use for reviews of professional regulation in healthcare, and how it intends to engage and consult with the public and stakeholders before changes are made;
  - 5.2 It is vital that the creation of a 'safe space' for the Health Services Safety Investigations Body (HSSIB) does not affect efforts by regulators to create a safety culture in healthcare; and

- 5.3 It is essential that regulators be able to operate independently of government and make their own decisions about the regulation of their respective professions. This is particularly important when we regulate professions that work in a sector that is devolved across the UK.

## Changes to professional regulation

### Regulated Professions

- 6 The Bill gives the Secretary of State new powers to remove a profession from regulation where it is no longer considered necessary for public protection. We note that the Government will be undertaking a review exploring which professions need to be regulated. While we will continue to engage with the Government throughout, it would be helpful to have more information on this as soon as possible - in particular, how the government will determine when regulation of a profession is no longer necessary. The current wording in the new section 60 (1)(bza) 'if the profession does not appear to Her [Majesty] to require regulation for the protection of the public' provides an indication but without any specifics. It would be helpful to have clarity on the criteria that will be used to inform these decisions and we would welcome reassurances from the Government about how these extended powers will be applied consistently.
- 7 Additionally, the move to expand section 60 of the Health Act 1999 to any group of workers, with the stated intention of including senior managers and leaders, could cover some nursing and midwifery roles. While we do not anticipate being required to regulate these roles, it may lead to a situation where some people currently on our register could in future also be affected by other regulation if they hold certain senior positions. It is therefore important that any expansion of regulated roles is subject to a statutory consultation to allow these possibilities to be fully explored by stakeholders.

### Delegation of regulatory functions

- 8 The Bill allows for the delegation of certain regulatory functions - the keeping of a register; determining standards of education and training for admission to practice and providing advice about standards of conduct and performance; and carrying out the fitness to practise function. The aims of this are to improve efficiency and consistency, and to reduce duplication, by enabling one regulator to undertake functions on behalf of others. We acknowledge the strategic value of these aims. We believe that many of the intended benefits can be best achieved through the separate reforms to our legislation the Government has committed to delivering, as set out in their consultation on regulating healthcare professionals, *Regulating healthcare professionals, protecting the public*. For these reasons, exercising a new power to delegate is unlikely to be a priority for the NMC in the immediate future.
- 9 We would welcome clarity from the Government about how the power to delegate functions will be implemented for individual regulators and what expectation there will be that the new power will be exercised.

## **Power to abolish regulators**

- 10 The Bill includes provisions allowing the Government to abolish regulators, where the profession either no longer requires regulation or will be covered by another regulator. It is important that in considering any plans to reconfigure regulation that thought is given to the overall coherence of the professions for which a regulator is responsible and to the particular requirements and challenges of each profession. There is value in a system of regulators that are able to specialise and understand their professions' particular challenges and to set and promote appropriate professional standards.
- 11 We believe that a statutory consultation with the public and stakeholders should be required before removing a profession from regulation or abolishing or merging a regulator.

## **Health Services Safety Investigations Body**

- 12 The Bill establishes the Health Services Safety Investigations Body (HSSIB), to investigate incidents that occur in England during the provision of health care services, or that may have implications for the safety of patients. We have previously supported the aims of the HSSIB bill and the duty placed on regulators and others to cooperate with HSSIB investigations and we welcome the inclusion of these provisions in this Bill.
- 13 We do have concerns about the presentation of the provisions in clause 106(2) of the Bill, which sets out the types of information, documents and equipment that must be made available to the HSSIB for investigations. In the Bill's explanatory notes and in the Government's wider discussion of this provision, this has been presented as the creation of a 'safe space' within which information can be shared without fear of disclosure. We are concerned that this could encourage a view that everything outside that space is not safe and the impact that this could have on the duty of candour.
- 14 Candour, openness, and learning are fundamental elements a safety culture. It is therefore essential that great care is taken to ensure that the HSSIB provisions don't unintentionally work contrary to the efforts regulators and system leaders are taking to foster safety culture in health and social care.

## **Workforce**

- 15 The Bill places a duty on the Secretary of State to publish a report every five years on workforce planning. We welcomed this at the time of the White Paper, and welcome its inclusion in the Bill, particularly the inclusion of professions working in both the NHS and social care. We are happy to share our data, intelligence and insight to help inform this report, and would welcome the report being published more frequently. We have previously highlighted the need for a sustainable plan to address gaps in the workforce and to ensure that staff get the support that they need, and this remains the case.

## **Data Sharing**

- 16 We welcome the inclusion in the Bill of a power for relevant health and social care bodies in England to require the sharing of information for the provision of health

and adult social care services. This aligns with our ambitions to improve how we share data to analyse and identify common issues that cross professional boundaries and support longer-term improvements in regulatory collaboration. Our work on maternity services with the CQC and GMC is an example of how we are exploring evidence and data sharing and cooperating to improve public safety. As the Government's approach moves forward we will look at how the new proposed framework can support our own aspirations to improve data sharing.

## **Integrated Care Systems**

- 17 The Bill proposes to establish statutory Integrated Care Boards (ICBs) and statutory Integrated Care Partnerships (ICPs). We note that the ICB will take on the commissioning functions of CCGs as well as some of NHS England's commissioning functions. We broadly welcomed these principles when set out in the White Paper, noting that cohesive cross-sector workforce planning at both a national and local level is essential if we are to move towards greater integration of local health and care systems and welcome their inclusion in the Bill.