

NMC response to the National Audit Office (NAO) consultation ‘Reducing regulation’

About us

- 1 The Nursing and Midwifery Council (NMC) is the professional regulator for nurses and midwives in the UK. We exist to protect the public. We do this by holding and controlling access to the register of qualified nurses and midwives and setting standards of education, training, conduct and performance for nurses and midwives. If an allegation is made that a registered nurse or midwife is not fit to practise, we also have a duty to investigate that allegation and, where necessary, take action to protect the public.
- 2 We welcome the opportunity to respond to this NAO consultation¹ on reducing regulation.

What, in your experience, are the costs and benefits of regulations?

Public protection and the NMC

- 3 The main objective of professional regulation is protection of the public. The NMC is committed to protecting the public by ensuring that all nurses and midwives are capable of safe and effective practice. We do this in three ways. First, we set the bar for registration with us; an individual cannot work as a nurse or midwife in the UK without a valid registration with us. This includes the individual successfully completing one of our approved education programmes to show they have the required skills and competences, and meeting health and character, language competence and professional indemnity requirements to ensure they are fit for the positions of trust and responsibility they will be fulfilling.
- 4 Second, when registered, the individual is bound by our Code² of professional standards and behaviour, and every three years, the individual will need to ‘revalidate’³ with us. This is to demonstrate that they are up to date with the latest safe and effective practice methods and are abiding by the Code. So, there is a continuing and proactive safeguard in place beyond initial registration with us.
- 5 Third, where the standards of our Code are not met and there is a concern about a nurse or midwife’s fitness to practise, we provide objective oversight and accountability. We have a fitness to practise function⁴ to investigate allegations and an adjudication process to decide whether to take regulatory action or not. This could result, in the most extreme cases, in the nurse or midwife being struck

¹ <https://www.nao.org.uk/keep-in-touch/our-surveys/reducing-regulation-consultation-businesses-civil-society-organisations/>

² <https://www.nmc.org.uk/standards/code/>

³ <http://revalidation.nmc.org.uk/>

⁴ <https://www.nmc.org.uk/concerns-nurses-midwives/>

off our register to prevent them from working as a nurse or midwife and thereby preventing further harm and protecting the public.

Best practice approaches to regulation

- 6 We are supportive of the Better Regulation Executive's (BRE) best practice approaches to policy and regulation and seek to use the minimum regulatory force necessary to protect the public and deliver our regulatory functions within our legislative framework. In developing our approaches, we aim to utilise the themes and principles contained in the BRE's best practice approach - the better regulation framework manual⁵. And also, the best practice approaches set out in HM Treasury's Green Book⁶, Cabinet Office's overarching consultation principles⁷ and the PSA's right touch regulation⁸. These are key tools in ensuring our approaches are targeted, proportionate and effective.

Our legislation and the need for change

- 7 One issue with regulation is when it becomes overly detailed, prescriptive and inflexible. Our governing regulatory legislation is an example of this and we have been calling for significant change for some time⁹. The NMC's regulatory legislation is complex and prescriptive, meaning it is slow to change in the fast-paced healthcare environment we operate in. We have repeatedly called for substantial changes to the overarching legislation of the healthcare professional regulators to enable us to take more proportionate regulatory action when concerns arise.
- 8 We believe that regulatory legislation for healthcare professional regulators should be pitched at a relatively high level to set out a broad framework of functions with permissive powers for the regulators to determine how best to fulfil those functions. This would allow regulators to be proactive, innovative and agile in facing up to the changing challenges of the modern world and how we seek to protect the public. It would also allow us to be efficient with our approaches; the very prescribed approach to fitness to practise concerns currently set out in our regulatory legislation means that we have to spend approximately 75 percent of our annual budget on that part of our work.
- 9 Without this comprehensive change, we will be limited to continuing to rely on parliamentary time and resources of the Department of Health to progress smaller efficiency and effectiveness changes to our regulatory legislation, through powers in s.60 of the Health Act 1999 and the Nursing and Midwifery Order 2001. These typically take 18 months to complete and require significant time and resource.
- 10 While we welcome the recent decision by the Department of Health to consult on a number of interim changes to our legislation through such a section 60 Order, including changes to modernise midwifery regulation and improve our fitness to practise function, these changes do not remove the need for substantial reform.

⁵ <https://www.gov.uk/government/publications/better-regulation-framework-manual>

⁶ <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

⁷ <https://www.gov.uk/government/publications/consultation-principles-guidance>

⁸ <https://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>

⁹ <https://www.nmc.org.uk/about-us/policy/position-statements/legislative-change/>

- 11 Therefore we were also pleased to note the recent statement by Ben Gummer MP, the Parliamentary Under-Secretary of State for Health¹⁰ confirming that this Government remains committed to more fundamental reform of the regulation of health professionals and will be prioritising more autonomy, cost-effectiveness and flexibility for regulators while maintaining and improving our focus on public protection. We look forward to seeing more details of these plans.
- 12 In the meantime, we continue to be innovative in the way we regulate through our standards, such as our revised Code and the introduction of a proportionate model of revalidation, and we have made significant investment in our IT systems to allow many of our processes to be completed via our NMC Online service. We have also recently introduced Case Examiners into our fitness to practise process and we are committed to introducing the ability to pay our registration fees in instalments. All of these innovations within our current legislative constraints show our desire to ease the burden on the individuals we regulate whilst using the minimum regulatory force necessary to protect the public.

How does regulation impact on your organisation?

- 13 As set out above, our regulatory legislation dictates who we are as an organisation and what we exist to do: protect the public. We ourselves utilise regulation (standards and guidance) to set out how we will approach our functions in protecting the public. Our regulatory remit only extends to, and therefore only directly impacts on, individuals not organisations or business.

Oversight of the NMC

- 14 The NMC is accountable to parliament and is a registered charity. We welcome parliamentary oversight and accountability through the scrutiny of our annual accounts, appearances before parliamentary committees, consideration of our legislative changes, oversight by the Privy Council and other means. We also undertake internal audits of our functions.
- 15 We are also subject to oversight by the Professional Standards Authority (PSA) along with the other UK healthcare professional regulators. The PSA conducts an annual performance review of each of the healthcare professional regulators and also reviews fitness to practise decisions that we make. The PSA has recently introduced a levy on the regulators they oversee in order to fund these oversight activities¹¹. We provided our views on this levy, of which we pay the largest share of all the healthcare regulators. The PSA has also recently undertaken a review of the way in which it proposes to conduct its annual performance reviews¹². The new performance review process is now underway and we will be interested to see whether the new process is more targeted, proportionate and transparent and adds value in terms of our main objective of protecting the public.

¹⁰ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-12-17/HCWS417>

¹¹ <https://www.nmc.org.uk/globalassets/sitedocuments/consultations/nmc-responses/2014/nmc-response-to-dh-psa-levy-consultation---november-2014---final.pdf>; and
<https://www.nmc.org.uk/globalassets/sitedocuments/consultations/nmc-responses/2015/nmc-response-to-the-psa-fee-levy-consultation-15-july-2015.pdf>

¹² <https://www.nmc.org.uk/globalassets/sitedocuments/consultations/nmc-responses/2015/nmc-response-to-psa-performance-review-consultation-23-07-2015.pdf>

Do departments and regulators consult your organisation when measuring and evaluating the actual impact of regulation?

- 16 Please see our responses above. Departments may seek our views on matters such as introducing the PSA levy, new whistleblowing reporting duties, mandatory reporting requirements for female genital mutilation (FGM), the transposition of certain EU Directives (such as the recent revisions to the Mutual Recognition of Professional Qualifications Directive) or when they are changing our regulatory legislation. Our input is limited to our regulatory remit: regulation of individual nurses and midwives and the related public protection implications. We are not in a position to measure or evaluate the impact of regulation on organisations or businesses as it is outside of our regulatory remit. The same applies if we identify other relevant consultations that we wish to respond to.

The business impact target and why we should not be included

- 17 Please note that we will also be responding to the consultation being conducted by the Department for Business, Innovation and Skills (BIS)¹³ about the Business Impact Target (BIT). As this work is related to this overall 'reducing regulation' agenda we have summarised our position below.
- 18 Part 2 section 14 of the Enterprise Bill¹⁴ currently before parliament provides the Secretary of State for BIS with the power to list regulators who would be bound by the BIT defined in Section 22 of the Small Business, Enterprise and Employment Act 2015. The NMC is concerned that the Government is considering whether to include the bodies overseen by the PSA in the scope of the BIT.
- 19 The NMC statutory regulatory remit does not include any responsibility for regulating the businesses in which nurses and midwives work. It is the remit of the Care Quality Commission (CQC), and other system regulators across the four countries of the UK, to provide regulatory oversight of businesses and organisations that employ nurses and midwives. Our regulatory remit is the professional regulation of individuals only, to ensure they are fit to practise in order to protect the public. This is in contrast to some of the other healthcare professional regulators such as the General Optical Council (GOC) and the General Pharmaceutical Council (GPhC) which also regulate optical businesses and pharmacy premises respectively, as well as the individual professionals.
- 20 As the NMC's regulatory reach does not extend to the businesses and organisations at which nurses and midwives work it is not clear what the benefit of our inclusion in the BIT would be. It is our view that our inclusion can only result in the NMC having to commit time and resources without making any tangible contribution to achieving or measuring the BIT. We have written to the Minister of State for BIS, Anna Soubry MP, to set out this position.

11 March 2016

¹³ <https://www.gov.uk/government/consultations/business-impact-target-growth-duty-and-small-business-appeals-champion>

¹⁴ <http://services.parliament.uk/bills/2015-16/enterprise.html>