

NMC response to Department for Education consultation 'Social Work England: consultation on Secondary Legislation Framework'

Introduction

- 1 We exist to protect the public by regulating nurses and midwives in the UK. We do this by setting standards of education, training, practice and behaviour so that nurses and midwives can deliver high quality healthcare throughout their careers.
- 2 We maintain a register of nurses and midwives who meet these standards, and we have clear and transparent processes to investigate nurses and midwives who fall short of our standards. From 2019, we will also regulate the new profession of nursing associates.

Our response

- 3 We welcome the opportunity to respond to the Government's consultation on Social Work England's secondary legislation and its approach to regulation.¹
- 4 The Government has recognised that the regulation of health and social care professionals needs reform. Effective regulation is well placed to be an enabler of change. At a time when the health services across the UK are under pressure and workforce supply in some areas is uncertain, effective regulation can help to support the UK to maintain a well-qualified and competent healthcare workforce.
- 5 The Government has been reviewing in detail the regulation of healthcare professionals in an earlier consultation (*Promoting professionalism, reforming regulation*²) which we responded to in January 2018, urging legislative reform.³ This follows much work on the regulatory reform agenda, including a Law Commission report and draft Bill which outlined many helpful recommendations accepted by the Government at the time in 2015.
- 6 We recognise that Social Work England (SWE) and the proposed secondary legislation outlined here is pioneering this reformed approach to the regulation of health and social care professionals, building in the lessons learned from previous detailed work on how to make regulation fit for purpose.
- 7 In this response we identify a number of proposals which we believe represent examples of streamlined, proportionate and efficient regulation and that would ensure this model takes the regulatory reform agenda in the right direction.
- 8 We encourage the Government to reflect on a number of areas where we believe the outlined approach could risk undermining this progress. We would welcome

¹ [Social Work England - Consultation on Secondary Legislation Framework](#)

² Department of Health, October 2017. *Promoting professionalism, reforming regulation*

³ [NMC Response - Government consultation 'Promoting professionalism, reforming regulation'](#)

the opportunity to meet with the Department of Health and Department for Education to feed in our thinking to the detail of the legislation.

- 9 Our response is framed by our remit as the professional regulator for nursing, midwifery and from 2019, nursing associates. We have only responded to the consultation questions which we feel are most relevant to our remit.

Regulatory Rules

- 10 We welcome and agree with the Government's proposals here to set out in regulations core regulatory functions of setting standards of education, training, conduct and performance and ensuring the maintenance of those standards through education, registration, continuous professional development and fitness to practise processes.
- 11 We believe that regulatory rules, which set out procedures and requirements in relation to the regulator's key functions, should be created by the regulator rather than the Government. If these rules were created by the Government, then changing them would be a time-consuming process and require a lengthy period of collaboration with the Department of Health and Social Care (DHSC) including securing parliamentary and Privy Council time. The length of time that this process takes prevents regulators from responding in a timely fashion to the constantly evolving health and social care environment in which we operate. The proposed approach aligns with the Professional Standards Authority's (PSA) principles of right touch regulation⁴ and is something that we have long called for.
- 12 We further believe that many of our regulatory requirements can be set out in guidance issued by the Council following a period of consultation and not need to be in rules at all. A current example of this is the NMC's English language guidance, which we are able to amend without recourse to Parliament unlike the other detailed registration requirements set out in our rules. Our Registration Rules simply require the NMC to publish guidance on its requirements in this area, and for the Registrar to have regard to that guidance when considering applications to enter the register. We have found this approach to be beneficial and flexible, and would encourage it to be used in other areas.

Registration

Annotation of the register

- 13 We are pleased that the Government have agreed in these proposals with the Law Commission's recommendation that regulatory bodies should have the power to annotate the register in a way which supports public protection. We would like to improve the way we manage and maintain our own register. Again, it is something we have long called for.
- 14 To best protect the public, professional registers should reflect current practice. Many of the annotations and parts/sub-parts of our register are a historic record of how care was delivered in the past.

⁴ <https://www.professionalstandards.org.uk/publications/detail/right-touch-reform-a-new-framework-for-assurance-of-professions>

Routes to registration

- 15 As an England only body, Social Work England will need to accommodate routes to registration from outside England, including from devolved administrations, the EEA and outside the EEA. Our experience of introducing regulation for nursing associates, which is an England only role, leads us to encourage the Government to ensure these legislative proposals will enable proportionality in such routes, and allow the regulators to change and flex their processes in different circumstances.

Fees

- 16 As with all the healthcare regulators, we are funded by fees charged to the professionals we regulate through a registration fee. Nurses and midwives through their registration fees pay for the cost of regulation including the quality assurance process of education courses. As a matter of principle, we believe that registrant fees should be proportionate to the cost of the suite of regulation necessary to protect the public and regulators should be required to publicly consult to ensure this proportionality is achieved.
- 17 Since the introduction of Government led initiatives such as the new nursing associate role, the nursing apprenticeship route and changes to student funding which removes the cap on nursing and midwifery places in England, we have seen an increase in applications from non-traditional education providers seeking to be approved by us to run courses. Education providers are responding to a changing health and care landscape, local workforce needs and the move towards widening access by creating a variety of pathways to becoming a registered nurse, midwife or nursing associate. This includes work-based models, flexible part time pathways and apprenticeship routes. We expect this trend to continue.
- 18 We need to respond to this trend and adapt our processes accordingly to absorb the impact on our resources to quality assure a greater number of non-traditional education providers.
- 19 We are therefore pleased to note that here the Government has provided a mechanism to charge for the approval of courses. The power to be able to fund quality assurance of education by charging for approvals of programmes would help registrant groups who currently pay for this cost. The fees they pay can go directly to fund areas such as revalidation, education and standards development where our work can help prevent poor practice and promote good practice.

Fitness to Practise (FtP)

- 20 We welcome the broad decision-making framework articulated here which aims to achieve a flexible, efficient process that is less adversarial and more proportionate. Over the past five years, we've made a number of changes to our FtP processes so that we can deliver a more proportionate and efficient model. We need to go further and we will soon be consulting on how we can achieve this without waiting for new legislation through our new FtP strategy.
- 21 We welcome the broad approach the Government is taking here to encourage early remediation and resolution, to consensual disposals and to automatic removal where the regulatory concern involves a conviction of a criminal offence.

These measures will help deliver public protection in a more efficient and expeditious way.

- 22 There are a number of opportunities to take this further, which the Government may wish to reflect on. For example, while the proposals allow for a full suite of final outcomes at the case examiner stage, without the need for a hearing, there is no option for a social worker to request voluntary removal from the register, or for resolution at a later stage in the process without the need to hold a full fitness to practise hearing. .
- 23 We use voluntary removal when it is not in the public interest to hold a hearing and the public and patients will be best protected by the nurse or midwife's immediate removal from the register. This allows us to remain flexible and proportionate in our approach, particularly when the case progresses past the case examiner stage. We can also hold formal adjudication meetings instead of public hearings for preliminary matters, reviews and final hearings. Our new FtP strategy proposes the increased use of such meetings, as opposed to full public hearings, where issues are not in dispute or where the registrant is not engaging with us.
- 24 In addition, the proposals do not include any provision for the adjudicators to review final orders prior to their expiry. We agree that reviews are not required in every case and our legal framework now allows our fitness to practise panels to direct that a review of the final order is not required. However, there may be circumstances when adjudicators will want to review compliance and consider whether there is an outstanding risk to public protection because the social worker's fitness to practise is still impaired.
- 25 We would also encourage the Government to consider the extent to which prescribing in legislation the detail of every procedural aspect of the case examiner stage for Social Work England risks undermining its ability to provide a flexible and responsive process.
- 26 In addition, while we believe that regulators have an important role to play in supporting professionalism and could go further in supporting 'upstream' regulatory activity rather than only responding once harm has occurred, we must not conflate our remit with that of other professional bodies and must retain our primary focus of public protection.