

September 2020

## NMC response to the Department of Health and Social Care consultation on reducing bureaucracy in the health and social care system

### 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 more than 700,000 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 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 when nursing or midwifery care goes wrong – something that affects less than one percent of professionals each year.
- 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.

### Introduction

- 5 We welcome the opportunity to respond to the Department's consultation on reducing bureaucracy in the health and social care system.
- 6 We have all faced unprecedented challenges during the Coronavirus pandemic. In particular, nurses, midwives, nursing associates and other health and care professionals have been at the heart of the response to the crisis, protecting and caring for patients and the public in extremely difficult circumstances.
- 7 As the nursing and midwifery regulator we have put in place measures to support the professionals on our register during the pandemic, but also to ensure that we are able to continue to regulate effectively, and fulfil our overarching duty of public protection.

- 8 We welcome the call to learn from the challenges posed by the Covid-19 pandemic and to build back better. This aligns with our strategic objectives, our organisational values and our desire to become a modern responsive regulator.
- 9 We strongly support proportionate regulation, and prior to the crisis, had already taken a number of steps to reduce barriers and unnecessary bureaucracy. With the Department's support, we are also embarking on a programme of regulatory reform, which will be crucial in allowing us to progress further and meet our goals.
- 10 This response provides an overview of the progress we have made so far to reduce bureaucracy, and highlights the areas where we would like to undertake further work. It considers the **historical context** (paragraphs 11-14), how we have been **working within our existing framework** (paragraphs 15- 24), **our Covid-19 response** (paragraphs 25-29) and **the future – building back better** (paragraphs 30-37).

## **Historical context**

- 11 Our role, functions and powers are set out in the Nursing and Midwifery Order 2001 ('the Order'). This is supported by a number of other pieces of secondary legislation which stipulate in greater detail the governance structure and the operational rules which we rely upon to carry out our core regulatory functions.
- 12 Our legislation is very prescriptive and contains a significant amount of unnecessary procedural detail. Furthermore, amending our legislation (even in the case of minor amendments) is a time-consuming process which takes up to two years and involves lengthy collaboration with the Department, and Parliamentary and Privy Council time.
- 13 The length of the process is a barrier to us being able to adapt, evolve and modernise as a regulator. It has implications for nurses, midwives, nursing associates and other stakeholders, as we are unable to respond in a timely manner to the changing health and social care environment. The process is also resource intensive, drawing capacity away from other areas of work, both within the NMC and within the Department.
- 14 We have long called for fundamental changes to our legislation to allow us to bring it up-to-date and to build in the necessary flexibility so that we can respond more effectively and efficiently to new developments, challenges and opportunities. We welcome the Government's commitment to regulatory reform, which will facilitate this.

## **Working within our existing framework**

- 15 Despite our legislative constraints, we have worked hard to undertake significant regulatory development and improvement work in other areas to reduce unnecessary regulatory burdens. So far, we have undertaken improvements across our registration, education and fitness to practise functions.
- 16 We have simplified and automated many of our registrations processes, making it much more straightforward for those who meet our standards to join and re-join our register.

- 17 We have streamlined our requirements for overseas applicants, improved our supporting information and made our processes faster and more efficient. This included:
  - 17.1 an updated practical examination re-sit policy, which allows candidates to re-sit only the portion of the exam they failed (July 2018);
  - 17.2 enabling applicants to apply through an online system, providing them with a personal account to track their progress (October 2019);
  - 17.3 streamlined requirements to confirm a candidate's competence (October 2019);
  - 17.4 re-designed guidance, including easy-read guidelines and a pre-application checklist to assist applicants, employers and recruiters (October 2019);
  - 17.5 improved preparation materials, including mock exams and marking criteria (2018); and
  - 17.6 updated English language requirements (including introducing alternative forms of evidence (2017), and updating language test score requirements (2018 and 2019) .
- 18 We embarked on a major review of all of our education standards and our quality assurance (QA) processes in 2016. Since this time we have updated our
  - 18.1 prescribing standards (published May 2018);
  - 18.2 nursing (published in May 2018) and midwifery (published in October 2019) standards;
  - 18.3 standards for education and training (including standards for pre-registration nursing programmes published in May 2018 and standards for pre-registration midwifery programmes, published in November 2019); and
  - 18.4 our return to practice standards (published May 2019).
- 19 We also introduced standards for nursing associates and nursing associate education in time for them to become a regulated profession in 2019.
- 20 All of these standards are now outcome- and future- focused. This gives approved education institutions (AEIs) and practice learning partners the flexibility to design and deliver education programmes with creativity and innovation, helping them to meet the changing needs of patients now and in the years to come.
- 21 We also developed a new QA framework which we launched in 2018 and updated in 2019 to take our new standards into account. The new QA framework
  - 21.1 is outcome-focused, like our standards, giving us the flexibility to assure new and flexible models of educational programme delivery.
  - 21.2 adopts a risk-based, streamlined approach, removing the need for separate institutional and programme approval, and enhancing our ability to

recognise issues early on to make sure we can be proactive in addressing them.

21.3 incorporates the concept of indefinite approval (subject to the right to suspend or withdraw that approval if necessary) which means a reduction in the overall number of QA visits, enabling us to focus our resources on situations where the risks are greatest.

21.4 uses assurance data from different sources and seeks to avoid duplication making the process less burdensome for education institutions.

22 We introduced a new strategic direction for fitness to practise in 2018. In addition to moving towards a just culture in health and social care and ensuring people are at the centre of fitness to practise, the new approach includes a number of measures which reduce bureaucracy. For example, under the new approach we are working more closely with employers so that as many issues as possible can be resolved quickly and effectively at a local level.

23 We also want to encourage a culture of openness and learning where nurses, midwives and nursing associates can be open and honest about what has happened and talk to us as early as possible about what they have done to put things right. This proactive approach means that in many cases, a full public hearing may not be required. We know that the adversarial nature of hearings can have a significant impact on those involved, including patients and their families, the public and nurses, midwives and nursing associates.

24 Of course, there are further steps that we can also take within our existing framework to reduce bureaucracy and a number of these plans are outlined in our new strategy for 2020-2025. They include:

24.1 facilitating access to the register by supporting high quality new routes to registration, for example, by making our processes as straightforward as possible while still ensuring safe and effective practice.

24.2 continuing to improve the support we provide to our overseas applicants and those supporting them, for example by publishing step-by-step guides to our new test of competence for candidates and their employers.

24.3 making good use of the greater flexibility there will be for education and training when the EU Directive ceases to be EU law without compromising on standards or safety, by evaluating the evidence and consulting on opportunities.

24.4 improving our approach to fitness to practise investigations, including through learning about the impact of contextual factors and by continuing to embed our person-centred approach, to improve the experience and support for those involved, whether professionals or the public.

24.5 a new and more dynamic approach to developing professional standards, in order to respond rapidly to new professional challenges. This will include a set of common principles for standards and guidance development and best practice techniques, providing a consistent framework for developing and

evaluating standards. It will also allow us to make minor changes to our existing standards using the best current evidence.

- 24.6 strengthening our focus on customer service and making better use of automation, to support more timely responses for those using our services which are sensitive to their individual needs.

## **Our Covid-19 response**

- 25 At the beginning of the Covid-19 emergency, we worked alongside the Department to make a number of changes to the Order and to our rules. These changes allowed us to:
  - 25.1 introduce temporary emergency registration powers enabling us to grant temporary registration to over 14,000 professionals, bolstering the UK health and care workforce during the crisis.
  - 25.2 grant longer extensions to those that needed them to allow people more time to complete their revalidation and to pay their annual fee and to offer more than one extension if necessary.
  - 25.3 change our fitness to practise and registration appeals processes to enable us to respond to the circumstances. This included changes to allow us to hold remote panel events such as hearings, to serve notices by email instead of by post, to extend panel member appointments, to temporarily reduce the quorum of a fitness to practise panel event and waive the requirement for one panel member to be a registrant.
- 26 Following the introduction of these temporary legislative amendments the Department proposed that the sunset clause which applied to the changes to our rules (paragraphs 25.2 and 25.3) be removed, making these changes permanent.
- 27 On 29 July 2020 Council agreed to these changes and amended our rules. However, in light of the fact that due to the emergency period we had been unable to consult on the original amendments, Council committed to holding a public consultation on the use of these powers by 31 March 2021. Council also undertook not to use these powers beyond that date if such a consultation had not taken place.
- 28 In addition to legislative changes, we also introduced emergency education programme standards. This helped enable
  - 28.1 AEs and their practice learning partners to support their students during the emergency period,
  - 28.2 students to use their knowledge and skills appropriately during the emergency to support care while continuing their studies, and
  - 28.3 those students in their final six months to complete their training in placement settings.

- 29 As the impact of the pandemic evolves we are phasing out the majority of the emergency education standards on 30 September 2020. However, a number of emergency programme standards have been retained or slightly modified in the form of recovery programme standards. This will provide support to students returning to their normal studies and supernumerary placements.

## **The future – building back better**

- 30 The changes we made in response to Covid-19, both legislative and non-legislative, provided us with the additional flexibility we needed to enable us to regulate effectively during this period and to support the professionals on our register.
- 31 In some cases, these changes included measures that we might wish to retain beyond the emergency, such as the ability to send notices via email rather than by post. This has reduced the length of time before people receive their notice and has allowed us to reduce our print costs. Keeping the electronic service would also provide us with opportunities to make efficiency improvements as we build our new case management system.
- 32 However, in other cases, such as the power to reduce the quorum of a fitness to practise panel event or to waive the requirement for one panel member to be a registrant, we do not think that it would be appropriate to use these powers outside of an emergency situation, despite the added flexibility they bring.
- 33 As noted above (paragraphs 26 and 27), following the Department’s proposal we have recently amended the emergency changes to our rules to remove the sunset clause and make these powers permanent. We will, however, be consulting on the use of these powers by the end of March 2021.
- 34 These considerations highlight the importance of striking the right balance for us as a regulator between our overarching duty of public protection and ensuring proportionate regulation without unnecessary bureaucracy.
- 35 Our commitment to getting this balance right is reflected in our new strategy for 2020-2025. We want to build on the work that we have done over the past few years, including our response to Covid-19.
- 36 In order to do this, we think it is absolutely essential that the Government continues with, and commits to, the programme of regulatory reform arising out of *Promoting professionalism, reforming regulation*. As part of this we would like:
- 36.1 A single piece of legislation (instead of ten separate statutory instruments), which provides us with sufficient high-level powers and duties to mean that we have clarity about our regulatory role and reach, but enough freedom to develop our policies and processes without needing to go through complex and lengthy legislative change each time. This will allow us to swiftly flex our regulatory approach when needed. We believe that removing the requirement for the Privy Council to approve our rules would contribute to achieving this.

- 36.2 The ability for us to determine what our register looks like and how it works , so that it provides clarity for the public about who is caring for them, and better supports the workforce.
- 36.3 The ability to replace our resource-intensive registration process for non-UK trained applicants, so that we can have a streamlined process, which has applicants at its heart, to ensure that those who enter our register have met our standards.
- 36.4 A swifter and less prescriptive fitness to practise process, including greater flexibility to resolve cases at an earlier stage and increased case management powers for those matters which require a hearing. This would promote remediation, improve efficiency and reduce delays, increasing our ability to dispose of cases appropriately, save money and reduce the anguish our current process can cause for registrants and the public.
- 36.5 Further reforms that will better enable us to deliver on the wider just culture agenda. Our work on context is a necessary start, but having a wider range of disposal powers would better encourage early resolution through reflection and learning, and move us away from adversarial, drawn-out and resource-intensive processes. Removing the prescriptive requirements about how we manage cases that get referred to us, the consecutive stages they must go through, and even what we call them ('allegations'), will help shift perceptions that it is our role to assign blame, rather than understand why things go wrong and share our insights to prevent it happening again.
- 36.6 Removal of barriers to sharing information with families and patients through increased disclosure powers, giving a voice to those who are affected by our processes where this is appropriate.
- 36.7 Removal of barriers to sharing information to better enable collaboration and co-ordination with other regulators and address systemic risks, as well as reducing the burden on individuals and employers.
- 36.8 Powers to charge for the approval of nursing, midwifery and nursing associate programmes so that we can respond to new and diverse models of education delivery and increase the workforce, without adding to the financial burden of the people on our register through the payment of their fees.
- 36.9 Swifter and more streamlined education programme approval and monitoring processes through removal of requirements around notices and response period timescales.
- 36.10 A clear and proportionate system of assurance around our regulatory functions and processes. As a regulator our work is overseen by the Professional Standards Authority for Health and Social Care (the PSA), and we are also accountable to the Health Select Committee, the Charity Commission and the Scottish Charity Regulator. We believe that it is also important to review these structures in light of the other changes which are being considered as part of regulatory reform.

- 37 We believe that the aim of reducing bureaucracy appropriately can be swiftly met by the implementation of these proposals. Our experiences gained during Covid-19 have underlined the importance of empowering change and having the flexibility to improve, adapt and evolve. Our current legislative framework restricts this, adding unnecessary bureaucracy in the process. Comprehensive and considered regulatory reform is vital for us to ensure that we are an organisation fit for the future.