

Better, safer regulation for the public

Our response to the Government's
consultation on the regulation of anaesthesia
associates and physician associates

nmc
Nursing &
Midwifery
Council

Introduction

We welcome the opportunity to respond to the Department of Health and Social Care's (DHSC) consultation on draft legislation for regulating anaesthesia associates (AAs) and physician associates (PAs).¹

We understand that as well as introducing statutory regulation for AAs and PAs this draft Order will form a template for replacing the existing legislation that sets out how other health and care professionals are regulated, including nurses, midwives and nursing associates registered with the NMC.

The NMC's existing legislation is complex, overly prescriptive and inflexible.² Making even small amendments can be a time-consuming exercise, requiring DHSC resource as well of that of the regulator, and ultimately the approval of Privy Council.

Society and nursing and midwifery practice have changed, but our governing legislation, written in 2001, has struggled to keep pace. Higher expectations of professionals among people who use health and care services, more people receiving complex care in their communities, increasing levels of vulnerability and need across society, and a growing awareness of the value of openness and reflection among professionals have all added a strain on our cumbersome and increasingly outdated framework.

1 [Regulating anaesthesia associates and physician associates](#)

2 [The Nursing and Midwifery Order 2001](#)

As the independent regulator for nurses and midwives in the UK, and nursing associates in England, it's vital we have the right tools to regulate well, so we can better support the professionals who are at the core of the UK's health and care services and help them to deliver the best possible care for people and communities. For this reason, we have long called for wholesale reform of our governing legislation.

With improved legislation we would:

- be able to adapt the way we regulate in the future to enable strategic workforce planning across the four UK nations and support innovation in nursing and midwifery practice
- have a register of professionals that is clearer and easier for people to understand
- strengthen our quality assurance of nursing and midwifery education
- make sure that people using the title 'nurse' are on our register
- act more rapidly to protect the public if someone cannot meet our required standards of proficiency and conduct.

This consultation represents a crucial opportunity to deliver these changes by creating a blueprint for a modern, flexible, and coherent framework that would enable us to regulate effectively for the public and respond to the changing needs of the health and care system well into the future.

Our response

We are grateful to the DHSC for the chance to work with them over the past two years on the development of this current draft Order as a vehicle for reforming our own framework.

We recognise the significant progress that has been made to produce legislation that reflects the proposals put forward in 2021.³ In developing our positions in relation to these reforms, we have also engaged regularly with our partner regulators and with other key stakeholders, including the Chief Nursing Officers, representative bodies, our Professional Strategic Advisory Group, and our Public Voice Forum.

While we recognise that the draft Order only applies to AAs and PAs, as a template for replacing our existing legislation it would go a long way in meeting our own vision and ambitions for reform.

In particular, we would welcome new powers to set and amend our processes and requirements in rules, which would no longer be subject to parliamentary and Privy Council oversight, but which would instead be approved by us, following public consultation, close engagement with our stakeholders, and robust, evidence-based policy development. Having powers to approve our own rules would represent a fundamental improvement, allowing us to achieve our goal of becoming a more modern, independent, fit for the future regulator.

³ [Regulating healthcare professionals, protecting the public](#)

We would also benefit from the less prescriptive drafting that's within the current draft Order. For instance, the new legislation would mean we could more accurately reflect our health and character requirements, which recognise that professionals with a range of health conditions can provide safe and effective care.

However, it's important to get the balance right between reducing unnecessary detail and making sure there is sufficient clarity around what the regulator is empowered to do. In some areas we are concerned that this has not been achieved. While certain key functions require greater clarity, others remain unduly restrictive. Elsewhere, we believe the drafting is overly complicated and appears to create processes that overlap, and gaps where provisions are not coherently joined together.

If unaddressed, this could lead to confusion, ambiguity, and some of the central benefits of the reforms remaining out of reach. Individual regulators may be disinclined to exercise certain powers or may draw different interpretations on how best to do so, thus undermining efforts to build a more consistent system of regulation.

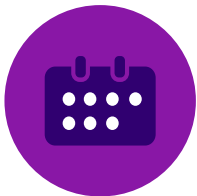
As a whole, the draft Order provides a clearer, more coherent approach to regulation. It largely aligns with our aspirations for regulatory reform and would provide us with the flexibility to pursue further improvements. Outlined below are some of the key benefits we believe the draft Order would provide for the NMC in addition to those noted above, and the ways in which it could be further improved to ensure these benefits are fully and effectively realised. Our full response to the consultation questions can be found in the annexe to this document.

Key benefits of the draft Order



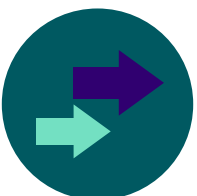
Ability to consider a broader range of evidence for our register requirements

With greater flexibility over our rules, we would be able to consider a broader range of evidence that proves someone can meet our requirements, so more nurses, midwives and nursing associates who are safe to practise can join our register.



A more accurate and up to date register

Powers to add, remove and amend information on the register relating to post-registration qualifications would enable us to make sure the register remains accurate, up to date and meaningful for the public. Where a qualification is no longer current, we would be able to update the register to reflect this change.



More streamlined processes for removing register entries

New provisions in the draft Order mean incorrect and fraudulent entries would be dealt with by the Registrar, rather than an Investigating Committee panel. They would also mean that professionals who have been convicted of certain very serious offences are automatically removed from the register, rather than taken through the fitness to practise process.



Greater flexibility to resolve cases without fitness to practise panels

More flexibility for case examiners to resolve cases where professionals accept the outcomes would allow us to conclude more cases at earlier stages. This means that professionals and members of the public involved wouldn't need to go through the stressful process of an adversarial and lengthy panel hearing, and health and care staff could more quickly return to the workforce where it is clear there is no risk to the public.



Earlier and more meaningful engagement with our fitness to practise function

We would be able to require professionals to provide us with relevant information at an earlier stage, and to engage more meaningfully and openly with our fitness to practise processes. For instance, if professionals wish to reject case examiner proposals and request a panel hearing, we could require them to set out how they intend to proceed, and which witnesses and evidence they wish to call upon. These changes would help to reduce delays and support our efforts to embed cultures of openness and reflection, which we know are more likely to keep users of health and care services safe.



Greater flexibility in our education quality and assurance processes

Powers to apply conditions and issue warnings as part of our education quality assurance function would allow us to address concerns in a way that is more proportionate and risk-focused. This would give us a greater range of tools to support learning environments and allow students to continue to meet our standards and keep people who use services safe.

Areas of the draft Order that could be improved



Clearer Rule-making powers

As noted above, we would very much welcome the Rule-making powers provided in the draft Order. However, it is essential that the extent and operation of these powers is clear. Currently, a number of the Rule-making powers do not provide us with this clarity, including around the nature and scope of some of the requirements we can impose and the consequences for failing to comply with those requirements.



More explicit first stage assessment and investigation

We support the DHSC's commitment, as set out in both the 2021 consultation and the current consultation on the draft Order, to a three-stage process for assessing fitness to practise referrals, with an initial assessment stage providing powers to investigate and close a referral, followed by the case examiner stage and then the final panel consideration stage. This approach is essential for preventing cases progressing into the fitness practise process without merit, delaying resolution for both the professional involved and for members of the public. We would strongly welcome new powers to adopt this proposed model.

However, the legislation lacks clarity on the nature and scope of the initial stage, particularly in relation to the regulator's capacity to exercise discretion at this point. We need to ensure that we can move away from the status quo, where all allegations of impairment must be referred to case examiners or fitness to practise panels. Given the importance of these powers, this should be made explicit in the legislation rather than implied.



Greater flexibility over revision and appeals processes

We need the flexibility to design fair, proportionate and accessible processes which allow us to make the correct decision for public protection. The current proposals for revising and appealing the decisions we make are overly prescriptive, duplicative, and disproportionate.

We are particularly concerned that professionals would have a right to both request a revision of case examiners' decisions and to appeal against the same decisions. This could create situations where multiple revisions and appeals are requested against the same decision, resulting in confusion and lengthy delays to cases being resolved.



More straightforward approach to register readmissions

The provisions for people applying to return to the register after being removed as a result of fitness to practise proceedings could also be simplified to avoid duplicating processes.

The current draft Order would require these people to satisfy a panel that their fitness to practise is not impaired, and the Registrar that they meet the broader registration requirements, including the requirement to meet the regulator's standards.

This would create a situation where two different decision makers may need to make two separate assessments on the same fitness to practise issue, with each decision then subject to two different appeal routes. We think this is unnecessarily complicated and that the Registrar should be able to make a single determination about the applicant's ability to practise safely and effectively, taking all matters into account.



Fees and budgets

As an independent regulator it is important that we are able to retain control over our ability to budget to meet short-term needs and longer-term changes to the way we work, so we can meet the evolving needs of the public we serve, and professionals we regulate.

We welcome the autonomy to make rules on fees and the power to charge for services, but we are concerned about the requirement to ensure that fees income does not exceed expenditure, taking one year with another. We think that this could restrict our capacity to plan and allocate resources to deal with unexpected operational pressures and to deliver our strategic plans.

While the consultation makes it clear that it is not the intention of the Government to remove regulators' ability to maintain reserves, we think more needs to be done within the drafting to avoid this. We are required to hold reserves sufficient to enable a certain period of operating expenditure to meet charity law and financial obligations. We believe that the current drafting does not provide a sufficiently permissive approach to take into account these points and should therefore be revisited.

Next steps

The current consultation document indicates that the DHSC plans to begin working with us, alongside the GMC and HCPC, to develop a subsequent set of legislation to replace our existing frameworks.

We strongly welcome this approach, and we are also pleased that the document highlights the preparatory work we have undertaken to make sure we are ready to implement the changes introduced by the new legal framework.

We look forward to continuing to work closely with the DHSC and our partners to make sure these reforms enable us to better support nurses, midwives and nursing associates to provide safe and effective care to people and communities.

What we do

Our vision is safe, effective and kind nursing and midwifery practice that improves everyone's health and wellbeing. As the independent regulator of more than 771,000 nursing and midwifery professionals, we have an important role to play in making this a reality

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 a tiny minority of professionals each year. We believe in giving professionals the chance to address concerns, but we'll always take action when needed.

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.

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.



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