

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT NURSING AND MIDWIFERY
(AMENDMENT) ORDER 2017

Wednesday 22 February 2017

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The Committee consisted of the following Members:

Chair: IAN PAISLEY

Beresford, Sir Paul (<i>Mole Valley</i>) (Con)	† Herbert, Nick (<i>Arundel and South Downs</i>) (Con)
† Collins, Damian (<i>Folkestone and Hythe</i>) (Con)	† Lefroy, Jeremy (<i>Stafford</i>) (Con)
† Cummins, Judith (<i>Bradford South</i>) (Lab)	† Madders, Justin (<i>Ellesmere Port and Neston</i>) (Lab)
† Day, Martyn (<i>Linlithgow and East Falkirk</i>) (SNP)	Mann, John (<i>Bassetlaw</i>) (Lab)
† Djanogly, Mr Jonathan (<i>Huntingdon</i>) (Con)	† Morris, James (<i>Halesowen and Rowley Regis</i>) (Con)
† Drummond, Mrs Flick (<i>Portsmouth South</i>) (Con)	† Nandy, Lisa (<i>Wigan</i>) (Lab)
† Dunne, Mr Philip (<i>Minister of State, Department of Health</i>)	† Stuart, Graham (<i>Beverley and Holderness</i>) (Con)
† Fitzpatrick, Jim (<i>Poplar and Limehouse</i>) (Lab)	Sean Kinsey, Jonathan Whiffing, <i>Committee Clerks</i>
† Greenwood, Lilian (<i>Nottingham South</i>) (Lab)	
† Hall, Luke (<i>Thornbury and Yate</i>) (Con)	† attended the Committee

Eighth Delegated Legislation Committee

Wednesday 22 February 2017

[IAN PAISLEY *in the Chair*]

Draft Nursing and Midwifery (Amendment) Order 2017

2.30 pm

The Minister of State, Department of Health (Mr Philip Dunne): I beg to move,

That the Committee has considered the draft Nursing and Midwifery (Amendment) Order 2017.

It is a great pleasure to serve under your chairmanship this afternoon, Mr Paisley.

The Nursing and Midwifery Council is the independent regulator for nurses and midwives throughout the UK. It sets the standards of conduct, performance and behaviour for more than 657,000 nurses and almost 35,000 midwives. To improve public protection and to address concerns expressed during investigations into systemic failures in the care of mothers and babies at the University Hospitals of Morecambe Bay NHS Foundation Trust, the draft order separates midwifery supervision and regulation, giving the NMC sole responsibility for midwifery regulation. It also makes a series of changes to modernise the regulation of nurses and midwives.

Specifically, the draft order does three things: it removes the statutory system of supervision and local investigation that is unique to midwifery in the national health service; it removes the statutory requirement for the NMC to have a midwifery committee, which again I think is unique in the NHS; and it improves the efficiency, effectiveness and proportionality of the NMC's fitness to practise processes for both nurses and midwives. The Department of Health publicly consulted on the measures set out in the draft order and received more than 1,400 responses. The consultation highlighted concerns, in particular from within the midwifery profession, about the removal of both statutory supervision and statutory requirement for a midwifery committee, but the proposed legislation is required to enhance patient safety, to modernise the regulation of midwifery and to improve the fitness to practise processes for both nursing and midwifery.

The principles of midwifery regulation are based on a model that was established more than 100 years ago, back in 1902, when midwives worked as independent practitioners. Under the existing statutory provisions, supervisors of midwives, who are established in each of the four nations of the UK, have a role in investigating and resolving fitness to practise concerns at local level—that is, within their nation. Among the professions in the NHS, that system of supervision and local investigation is unique to midwifery. There is a lack of evidence to suggest that the risks posed by contemporary midwifery practice require that additional tier of regulation. More significantly, a number of reports have been critical of the system of statutory supervision, in particular the role that supervisors of midwives have in conducting investigations.

Following the completion of a number of investigations into complaints by the families of those affected by the tragic events at the Morecambe Bay trust, the Parliamentary and Health Service Ombudsman highlighted potential conflicts of interests in midwives investigating other midwives. The report stressed that the existing arrangements do not always allow information about poor care to be escalated effectively into hospital clinical governance systems or to the NMC. A subsequent report by the King's Fund highlighted confusion resulting from local investigations being carried out in parallel with employer-led investigations. Similar concerns were expressed about the effectiveness of the statutory supervision of midwives in Dr Bill Kirkup's report on the Morecambe Bay investigation.

Given the evidence set out in those reports, I am confident that separation of regulatory investigations from the supervision of midwives will be a positive step in enhancing public protection. To ensure that midwives continue to have access to support and development, the four UK nations through their chief nursing officers have collaborated to develop new non-statutory models of supervision to deliver those elements. While taking account of the requirements in each country, the four countries have been working within UK-agreed principles to develop employer-led models of supervision. Those models will have no role in fitness to practise matters concerning midwives. The new models of midwifery supervision will be introduced following the removal of the current statutory requirements and will build on the systems and processes for good governance and professional performance already in place through employers.

The second change the order will make is to remove the statutory requirement for the NMC to have a specific midwifery committee. The role of the midwifery committee is to advise the NMC council on matters affecting midwifery. The statutory requirement for the regulator to have a committee for a specific profession is unique to the NMC. In effect, it reflects a historical accident. The removal of that requirement does not prevent the NMC from establishing committees or groups in relation to midwifery; it simply removes the statutory requirement to do so.

The NMC is working to ensure that appropriate non-statutory routes are put in place so that the NMC council can continue to obtain expert advice on midwifery matters. To that end, it has already established a strategic midwifery panel to advise the NMC council on key midwifery issues and to develop strategic thinking on the future approach to midwifery regulation. The panel has representation from each of the four countries in the UK and the Royal College of Midwives. The NMC has also appointed a senior midwifery adviser to provide expert advice on midwifery issues. The NMC still has a statutory duty to consult persons who appear likely to be affected by any proposed rule changes and when establishing standards and guidance, including consulting midwives and those with an interest in midwifery.

I assure the Committee that the Government value the contribution made by all midwives to ensuring the informed and safe delivery of maternity services and the best outcomes for mothers and their babies. I hope the Committee is reassured that the changes are consistent with our commitment to the continued development of the midwifery profession.

The third set of changes concerns the NMC's fitness to practise processes. In 2015-16, the NMC brought 1,732 cases to a conclusion before a panel at a hearing or a private meeting. The cost of those fitness to practise cases was more than £58 million—about 76% of the NMC's budget. The changes in the order will enable the NMC to take proportionate action to address less serious concerns more efficiently and effectively while maintaining public protection.

The Department believes that the principles of better regulation centre on giving greater autonomy and flexibility to the regulatory bodies to enable them to deal more effectively with fitness to practise cases. Changes include new powers for the investigating committee to agree undertakings with the registrant or issue a warning or advice to a registrant, and replacement of the conduct and competence committee and the health committee by a single fitness to practise committee, where both conduct and health issues can be considered. Those changes will ensure that the NMC is able to respond to fitness to practise allegations in a more efficient and proportionate way, benefiting patients, midwife registrants and employers as well as nurses.

The NMC will need to amend its fitness to practise rules before some of the changes come into effect. The order of council with the proposed changes to the fitness to practise rules will be laid in Parliament for consideration. The changes that the order makes to the governing legislation of the NMC will ensure that the regulation of nurses and midwives continues to be fit for purpose, with patient safety at its heart. I commend the order to the Committee.

2.38 pm

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to serve under your chairmanship, Mr Paisley.

Few professions, if any, carry the respect, trust and affection of the nation like nursing and midwifery. We hugely value the role that all nurses and midwives play in caring for people who are sometimes in the most vulnerable conditions. In the current climate of an underfunded health and social care sector that is struggling to keep up with demand, we know that they are working harder than ever to hold our health service together.

As we have heard from the Minister, the proposed changes in the order affect two main areas: regulation and fitness to practise legislation. While we do not oppose the order in its totality, we have some concerns about the proposed changes to midwifery regulation that are reflected across the sector. I hope that when the Minister responds he will be able to allay any fears we may have about potential negative impacts.

It is fair to say that the current fitness to practise legislation is outdated and costly. As we know, about three quarters of the Nursing and Midwifery Council's budget is spent on fitness to practise work, despite less than 1% of nurses and midwives being referred to it. That is against a backdrop of significantly increased registration fees in recent years, at a time when public sector pay has failed to keep up with the cost of living. That very significant call on the NMC's resources is made because it is required to hold hearings in almost all cases and to hear the evidence even if there is no disagreement about the facts. Those hearings often take a number of days and are costly and time-consuming to organise.

We all know from speaking to constituents the immense strain those investigations bring, not only for the professionals who are being investigated but for the families, who often feel that the time the proceedings take only exacerbates an already very difficult situation. Even when the allegations are admitted, the case must go to a full adjudication. As we have heard, there are also elements of duplication in investigations.

We agree that the draft order will allow case examiners to streamline the system and have authority to issue warnings or agree undertakings with nurses or midwives. I understand—and hope—that that will avoid the need for hearings to take place in all cases where the facts are not in dispute and the circumstances are less serious, which of course would enable a resolution to be reached much more quickly. That would enable those under investigation to focus on the future more quickly than they can now. As the Minister said, the proposed changes will also bring the Nursing and Midwifery Council into line with other professional regulators, including the General Medical Council, which already has these powers.

Although we support the changes enabling swifter resolution in less serious cases, I am sure the Minister will be unsurprised by our request for an assurance that the right balance is struck between efficient and proportionate regulation, maintaining public confidence and protection at all times. With such changes to any system, it is vital to get that balance right. I would welcome hearing what the Minister has to say on that. There are also proposals to reduce the number of interim hearings, which will reduce costs, associated bureaucracy and the length of time that matters take to be concluded, as well as some of the undoubted stress individuals feel.

The Minister referred to the other significant changes specifically related to midwives, and acknowledged that there has been significant unease, about, if not outright opposition to, some of the changes that the Government are proposing. Although we often speak of nurses and midwives as one, it is important to remember that nursing and midwifery are, of course, two distinct professions with very different qualifications and roles. Given that in England the Nursing and Midwifery Council regulates many more nurses than midwives, it is easy to understand why midwives may be anxious that their voice will be lost if these change are pursued. Currently, their voice is amplified by the NMC's midwifery committee, which advises the council on policy issues affecting midwifery practice, education, statutory supervision and ethical issues. As the Minister acknowledged, there has been concern in the profession about the proposal to abolish the legal requirement to have a committee—indeed, 91% of the midwives responding to the consultation were strongly opposed to the change. The Royal College of Midwives has warned that there can be effective midwifery regulation only if the body that sets the standards for the regulations has a good understanding of the context in which midwives work.

Although the consultation response has not led to any change in the legislation that is being proposed, I note that the concerns have been recognised by the NMC, which intends to reconstitute the midwifery panel, which will have a remit to provide strategic input into policy or regulatory proposals affecting midwifery. I also understand that the NMC has stated in clear terms that it remains obligated in law to consult midwives on matters that affect their profession and that legal

[Justin Madders]

requirement will not be affected by the draft order, as the Minister also acknowledged. The NMC has also indicated that it will be holding twice-yearly listening events where all midwifery views from across the UK can be aired. I understand the NMC is committed to creating midwifery-specific expert groups when it reviews matters such as pre-registration education standards.

This is not the statutory footing that the RCM would have wanted, but I understand that it has responded positively to the proposals. However, that is no reason for us not to keep a watching brief on the issue. Although the Minister has expressed his support for continuing to give midwives an opportunity to speak on these issues, I ask him to set out specifically the steps he will be taking to monitor and safeguard the distinct voice of the midwifery profession in the sector.

The order will also formally separate regulation and supervision, which, as we know, was a recommendation of Dr Bill Kirkup's report into the Morecambe Bay NHS Foundation Trust. The report found that the hospital displayed

“a potential muddling of the supervisory and regulatory roles of Supervisors of Midwives”,

which was a significant factor in the poor response to the failings that occurred. We owe it to the families affected by Morecambe Bay to ensure that the recommendations are implemented. Therefore, we welcome the transfer of supervision to the organisations that employ midwives. That will provide much needed clarity about who needs to take action when things go wrong.

It is also vital to ensure that concerns about a potential loss of support and development are addressed. I therefore ask the Minister whether the Government will consider making available earmarked funding, either centrally or through NHS bodies, for the training and education of those midwives who will be undertaking roles in the new system of supervision. Also, what steps do the Government intend to take to monitor the roll-out of the new system? When he responds, will the Minister indicate whether he would be prepared to give an undertaking to report to Parliament on the effectiveness of the new arrangements following the first year of their operation?

It is clear where responsibility for supervision will rest following the implementation of the changes, but it is less clear whether the NMC will continue to be required to produce standards and guidance for midwives. Can the Minister confirm that that will be the case and that all changes, standards and guidance will continue to be subject to extensive consultation with the profession?

Removal of statutory supervision removes the requirement for local supervising authority midwifery officers, which are currently very senior positions at a national level in Wales, Scotland and Northern Ireland and at a regional level in England. The Royal College of Midwives has expressed concern that removing those positions will leave a significant gap in midwifery leadership within the profession, particularly in England, as the devolved Administrations already have well-established senior midwifery positions. I therefore ask the Minister to consider the proposal to appoint a chief midwifery officer at the national level and directors of midwifery within NHS England regional teams.

In conclusion, we do not oppose the measures. However, it is vital to ensure that public protection will not be weakened and that the distinct voice of the midwifery profession can be heard loud and clear. I would welcome any assurances that the Minister can give on that and answers to the specific points that I have raised today.

2.47 pm

Jim Fitzpatrick (Poplar and Limehouse) (Lab): It is a pleasure to serve under your chairmanship this afternoon, Mr Paisley. I rise to seek reinforcement of the reassurances already articulated by the Minister and to echo some of the questions raised by my hon. Friend the Member for Ellesmere Port and Neston, the shadow Minister. I should point out that, as MP for Poplar, the historic location for the BBC flagship drama, “Call the Midwife”, it would be remiss of me not to speak, having been placed on this Committee. Indeed, my Whips Office or the Speaker's office have demonstrated a sense of humour by placing me on this Committee and making it an obligation to make a contribution to this debate.

In Poplar, we still have several nuns' residences. I have met constituents who were delivered by the nuns and midwives in Poplar in the '40s, '50s and '60s. Although the BBC series is a historical drama, it is still relevant in east London today.

I must confess I was slightly confused by the two briefings I received: one from the Royal College of Midwives and the other from the Nursing and Midwifery Council. On first reading, I thought one was in favour and one was opposed, but further and closer inspection demonstrated that that is not entirely the case. The RCM raised a couple of questions, as my hon. Friend has already explained. He said that it was concerned about the removal of the additional tier of regulation for midwives, which includes the supportive supervision at a regional level, the removal of the midwifery voice on the NMC in the new replacement structure, and the fact that the new systems will be non-statutory, which will make their existence in the long term potentially more fragile. The RCM seeks reassurance from the Government that the new systems will be enforced, particularly in the long term.

The NMC was much more supportive of the Government's proposals. The briefing from Kerry Racher, the senior parliamentary officer of the NMC, indicated that the NMC forcefully welcomed many of the changes that the Government propose, and indeed advocated them. It quotes a number of reasons why it supports the changes. It says that they are changes that were requested following a number of critical incidents; the Minister referred to Morecambe Bay.

The NMC has long maintained that the legislation is out of date, which the Minister referred to a lot in his remarks. It has worked closely with the Department of Health to bring forward these changes and it welcomes the Secretary of State's announcement that the Government would accept all the recommendations in Dr Kirkup's report into Morecambe Bay. Finally, it says:

“The changes to midwifery regulation will strengthen public protection.”

In conclusion, I would welcome additional reassurance from the Minister because the two perspectives do not seem irreconcilable. I am reassured that my hon. Friend has indicated that the Opposition will not oppose these changes. I am grateful, Mr Paisley, for the opportunity to make these brief remarks.

2.50 pm

Martyn Day (Linlithgow and East Falkirk) (SNP): It is a pleasure to serve under your chairmanship, Mr Paisley. I thank the Minister for his clear and concise explanation of the order. I will not oppose the order and, indeed, I welcome the changes in general because I believe that they strengthen public protection and bring midwifery regulation into line with that for other healthcare professionals.

2.51 pm

Mr Dunne: I welcome the support of the hon. Member for Ellesmere Port and Neston, who speaks, again, with great clarity and thoughtfulness on behalf of Her Majesty's Opposition, and the support of the spokesman for the SNP, the hon. Member for Linlithgow and East Falkirk. That support is much welcomed. I will try to address their points in a second. I would first like to make a suggestion to the hon. Member for Poplar and Limehouse, who gave us an interesting insight into some of the activities in his constituency. He should put himself forward to be a dad in the next series of "Call the Midwife". I am sure he would be given a part if he could spare the time.

The hon. Member for Ellesmere Port and Neston specifically asked whether we are striking the right balance between efficiency and a proportionate response to regulation. He will not be surprised to hear me argue that we are. In essence, many of the measures are designed to bring regulation of midwives up to date with regulation of other professions across the NHS.

Removing a unique statutory provision to have a committee within the NMC is an efficiency issue. The proportionate nature of the change is that it provides more flexibility to the NMC in its fundamental role in addressing fitness to practise. We think that that is the most meaty issue in the order and that is where we will need to continue to monitor the effectiveness. That will be done on a routine basis through NHS England, in response to another question put by the hon. Gentleman.

The hon. Gentleman also asked whether we intended to appoint a chief midwifery officer. At present, the chief nursing officer is the professional lead for both nursing and midwifery and we intend that to continue. That role is supported by the head of maternity in NHS England, which will continue to be the case. What will be new is the structure of regional leadership for midwife

professionals across England. There will be a regional maternity lead and a deputy regional maternity lead in each of the four NHS England regions. Those leaders will take up position once the new law changes, which, provided the order is approved today, will be from the beginning of the new financial year, 1 April.

The hon. Gentleman asked whether we would be funding training requirements for new supervisors. Of course, each nation will have its own responsibilities for funding trainers. In England, the standard NHS contract, which has already been entered into for 2017-18, sets out that providers must have systems in place to ensure that staff receive appropriate continuing professional development supervision and training in accordance with the clinical supervision of midwives guidance issued by NHS England. That matter has been considered in that contract, and I believe arrangements have also been put in place in each of the other nations.

The hon. Gentleman also asked whether there would be any negative impacts on midwives from the arrangements, given concerns raised in the consultation response. The important point is that we do not see the measures as downgrading midwives' status in the NHS in any way. We absolutely recognise the important role they play in one of the most fundamental things that the NHS provides—enabling babies to be brought into the world in a safe environment. Midwives should not see the order as downgrading their status; we do not think it does. It puts them on a statutory footing similar to that of other professions. We shall continue to provide midwives with the professional training, support and recognition that they have always had.

As for a parliamentary review of the procedures, I am not inclined at this point to give the hon. Gentleman a commitment. We shall certainly carry out a review within the Department. NHS England, as I have said, intends to conduct monitoring. He may want to make a diary note and consider whether he would want to bring the matter to Parliament in a year or so. I should rather approach the matter in that way than give a commitment now.

I thank hon. Members for their contributions. I hope that I have addressed the questions that were asked.

Question put and agreed to.

2.57 pm

Committee rose.

