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OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT NURSING AND MIDWIFERY
(AMENDMENT) ORDER 2018

Wednesday 20 June 2018

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The Committee consisted of the following Members:

Chair: MR NIGEL EVANS

† Barclay, Stephen (*Minister for Health*)
 † Debbonaire, Thangam (*Bristol West*) (Lab)
 † Goodwill, Mr Robert (*Scarborough and Whitby*)
 (Con)
 † Harper, Mr Mark (*Forest of Dean*) (Con)
 † Jones, Andrew (*Harrogate and Knaresborough*)
 (Con)
 † Jones, Mr Marcus (*Nuneaton*) (Con)
 † Madders, Justin (*Ellesmere Port and Neston*) (Lab)
 † Morris, Grahame (*Easington*) (Lab)
 † Morton, Wendy (*Aldridge-Brownhills*) (Con)
 Nandy, Lisa (*Wigan*) (Lab)

† Norris, Alex (*Nottingham North*) (Lab/Co-op)
 † Phillipson, Bridget (*Houghton and Sunderland
 South*) (Lab)
 Reynolds, Emma (*Wolverhampton North East*) (Lab)
 † Seely, Mr Bob (*Isle of Wight*) (Con)
 † Sheerman, Mr Barry (*Huddersfield*) (Lab/Co-op)
 † Throup, Maggie (*Erewash*) (Con)
 † Villiers, Theresa (*Chipping Barnet*) (Con)

Claire Cozens, *Committee Clerk*

† **attended the Committee**

Third Delegated Legislation Committee

Wednesday 20 June 2018

[MR NIGEL EVANS *in the Chair*]

Draft Nursing and Midwifery (Amendment) Order 2018

2.30 pm

The Minister for Health (Stephen Barclay): I beg to move,

That the Committee has considered the draft Nursing and Midwifery (Amendment) Order 2018.

It is always a pleasure to serve under your chairmanship, Mr Evans. Health Education England's "Shape of Caring" review made a series of recommendations to strengthen the capacity and skills of the nursing and caring workforce. A key recommendation was to explore the need for a defined carer role to act as a bridge between the unregulated healthcare assistant workforce and the registered nursing workforce. The amendments that we are proposing to the Nursing and Midwifery Order 2001 put in place provisions to regulate a nursing associate role that satisfies that recommendation.

In short, the proposed amendments to the 2001 order give the Nursing and Midwifery Council statutory responsibility for regulating the nursing associate profession in England and extend its powers and duties under the order to nursing associates in respect of the key functions of registering nursing associates in England and setting the standards of proficiency, education and training, and continuing professional development and the conduct of nursing associates in England.

Mr Barry Sheerman (Huddersfield) (Lab/Co-op): During my time as Chair of the Select Committee on Education there was great controversy about teaching assistants and whether they diluted the profession. I can see that nursing associates need to be registered, to have that recognition of being regulated, but will nursing associates mean a watering down of the profession? Will we have a large number of them as substitutes for highly qualified nurses?

Stephen Barclay: I am grateful to the hon. Gentleman for raising that point. I think we can all see the value for children in school that teaching assistants offer alongside teachers. They are a good example of how, in education, the need for a diverse workforce has developed, and that is exactly what today's order addresses. It is a response to what employers have said they want, which is more flexibility in their workforce, to ensure progression for staff who want to progress into nursing, but who in the past might have felt trapped in a healthcare assistant role by having young children or otherwise been constrained from going to university. Our proposal gives them a ladder between the two roles, as part of a flexible workforce that responds to employers in the way that happens in education, as the hon. Gentleman correctly said.

Mr Sheerman: Is the plan to expand the nursing profession by enabling people to join as nursing associates before becoming better qualified and ending up as fully qualified nurses?

Stephen Barclay: The hon. Gentleman is right to probe on this, because that is the essence of the Government's proposal. The nursing associate role is a stepping stone. Some people will progress to nursing associate and stay in that role, but some, having done the foundation year of their degree, might want to do the following two years and become a nurse. We want to respond constructively to that aspiration, which his constituents will have, as do mine. Some will start as healthcare assistants, gaining valuable experience in that role, but some will want to progress to nursing associate and some will want to become a registered nurse. The draft order is about ensuring flexibility in the workforce to enable that.

Mr Sheerman: I have checked, and the starting qualification for a nursing associate is GCSEs grades 4 to 9 in English and maths. The lower end of that range is very low indeed, is it not? Indeed, it is the same starting qualification for teaching assistants. Is the Minister happy with that?

Stephen Barclay: Yes, I am, and it is helpful of the hon. Gentleman to raise this issue. The qualifications that nursing associates will undertake are to be set by the NMC, so people will need to go on courses that satisfy the NMC. However, they will also gain valuable hands-on experience alongside their foundation training. Our proposals are about creating a ladder from the nursing associate role. Some will stay at that level, because they feel that, educationally, that is the level they have attained, and they want to continue as a nursing associate—

Mr Sheerman *rose*—

Stephen Barclay: I will just finish my point and will then happily take one further intervention, after which I will make some progress.

Quite rightly, some people will want to continue as a nursing associate, playing a valuable role on a ward and freeing up those who have done three years at university level to focus more on skilled roles. That is part of the flexibility that employers have asked for. Others, having had a taste in the foundation year, will want to do a further two years. The system allows that progression, which I am sure the hon. Gentleman's constituents will want.

Mr Sheerman: The Minister said that he would allow me one last intervention, and this will be my last. The great criticism of nursing has been that it became an academic and university qualification. Everybody said that something had gone wrong. If we tie this change to graduate apprenticeships, which nursing is moving towards, it could mark the beginning of a return to a much more hands-on, experience-driven qualification. That is most interesting, so I thank the Minister for his responses.

Stephen Barclay: I am grateful to the hon. Gentleman. I see exactly what he is driving at, and I have a great deal of sympathy with that point. It is slightly beyond the scope of this legislation, which covers those who satisfy the foundation-course level after their first year. If they want to become a registered nurse, they will need to satisfy, as now, the three-year-degree level. The legislation does not say that people do not have to reach the educational attainment of a registered nurse. Rather, it

allows them to continue to earn, to gain hands-on experience and to do that in stages, which may provide flexibility to, for example, those with young children or other caring responsibilities. It allows that stepping stone.

The hon. Gentleman touches on a point slightly beyond the scope of today's order, which is whether someone could gain a nursing qualification without a degree—I think that was within his question. That is not what this legislation does. It requires—

Mr Sheerman: On a tiny point of information, it is fascinating to think that we could get back to the days when people had much more hands-on training and went right through to a degree, but with no debt.

Stephen Barclay: The hon. Gentleman absolutely sees my enthusiasm for this order, and that is why I hope that colleagues on both sides of the Committee will support it. Alongside the apprenticeship levy, it offers an alternative to a student loan and what we might see as a more conventional degree. That is not to say that we will not continue with that route, because obviously it will remain a main pathway into nursing, but it is good to give flexibility to employers and to school leavers and others who see the opportunity to go into nursing. We are conscious that, currently, many people who want to do nursing are rejected when they apply, so having different pathways is a key part of the system.

Grahame Morris (Easington) (Lab) *rose*—

Stephen Barclay: I did say that I would make some progress, but I am conscious that I have not taken an intervention from the hon. Gentleman, so I will take one more and then, with the leave of the Committee, I will make some progress.

Grahame Morris: It is interesting that the Minister is setting out arguments for a kind of continuing professional development. We are talking about an additional grade of people who could go on to become registered nurses, but I wonder how that might be possible, given that Health Education England's budget for workforce development, which is largely used for continuing professional development for nurses, has been cut by more than 60% in the last two years, from £205 million down to £83.45 million in the current year. How does that square with that ambition?

Stephen Barclay: The hon. Gentleman raises an important point, because continuing professional development is key. When two thirds of what we spend on the NHS goes on staff, how we effectively train them is key. That is in part why my right hon. Friend the Prime Minister made the commitment she did on Monday on the funding settlement—again, that is slightly beyond the scope of today's deliberations. It is also why the Government have committed to, for example, 1,500 new doctors being trained, opening five new medical schools and other initiatives, including, as I said a moment ago, the apprenticeship levy, as other vehicles.

One piece of feedback that I get from nurses when I go out to visit hospitals is the importance of CPD, which I am looking at very closely, because of the need for a wider skills mix. To take GPs, for example, it is important to look at whether all the activity that they are currently doing is necessary or whether some of

those tasks could better be performed by others, if there were a wider skills mix. However, that is slightly beyond the scope of today's deliberations, so I will make some progress.

The draft order amends the offence provisions in the Nursing and Midwifery Order 2001. The amendments provide that a person commits an offence in connection with the nursing associate part of the register, nursing associate qualifications or the use of the nursing associate title when not entitled to. The offences were drafted to reflect the fact that nursing associates will be regulated in England only.

The draft order makes provision to allow admission to the register to those who complete or commence their training by 26 July 2019 through the pilot courses run by Health Education England or through an apprenticeship route. It excludes nursing associates from being given temporary prescribing rights in a time of national emergency, such as a pandemic flu outbreak. It also removes the screener provisions from the 2001 order, as they are now redundant.

The draft order makes consequential amendments to the Nursing and Midwifery Council's rules and to other legislation, and closes sub-part 2 of the nurses part of the register by amending the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004, which determines the parts of the NMC's register and the titles that may be used by those included in that register. The Department carried out a full public consultation across the United Kingdom on the proposed amendments and received 373 responses. There was broad agreement on the proposed legislation to regulate nursing associates in England.

Health Education England has established two pilot groups of 1,000 nursing associate trainees, who are due to complete their training in early 2019, and the Health Secretary has announced plans for up to 5,000 additional nursing associates to commence training via the apprenticeship route in 2018, and up to 7,500 a year thereafter. The draft order will insert a new provision in the Nursing and Midwifery Order 2001 to allow applicants who have started or completed a nursing associate qualification through either the HEE pilot or the apprenticeship route by 26 July 2019 to have their qualifications recognised.

In summary, these are important changes to the governing legislation of the Nursing and Midwifery Council that will see the nursing associate role regulated. Nursing associates will support nurses so that they can focus on the more clinical aspects of patient care, and will support the increase in nurse numbers by providing a clear pathway into the nursing profession, which the hon. Member for Huddersfield alluded to.

Grahame Morris: I am grateful to the Minister for giving way; he is being generous. What is his estimate of the current number of vacancies for registered nurses in the system?

Stephen Barclay: The Health Committee's estimate of 11% is at odds with the actual working vacancy rate of 1%—obviously, if one factors in places filled by agency and bank staff, one gets a different number. However, that is an interesting point, because the whole draft order is about how we get additional staff into the workforce to support nurses—it is about how we provide more resource to work alongside nurses. If the hon.

[Stephen Barclay]

Gentleman's point is that we need more nurses in our workforce, that will be achieved both by increasing the clinical profession, which the Government have done—we can run through how many more people there are in the profession compared with 2010—and by creating new pathways into nursing. That is what the draft order does, and that is why I commend it to the Committee.

2.43 pm

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to serve under your chairmanship, Mr Evans. As the Minister said, the draft order amends the Nursing and Midwifery Order 2001 to provide the Nursing and Midwifery Council with the necessary legal powers to regulate the nursing associate profession. Committee members will be relieved to hear that the Opposition do not oppose the draft order. We understand the importance of bringing nursing associates under the auspices of the NMC as soon as possible.

As we heard, the nursing associate role was created in response to the "Shape of Caring" review in 2015 as a defined care role to act as a bridge between unregulated healthcare assistants and the registered nursing workforce. Now that the role has been created, we agree with the Royal College of Nursing, which stated in its response to the Government's consultation on these provisions that

"there must be absolute clarity that the nursing associate...is not a separate profession, but a new role within the nursing family that works under the delegation of the Registered Nurse".

It went on to ask for "urgent guidance" to be published on "the precise relationship between" nurse associates and registered nurses

"in terms of delegation and accountability".

Although bringing both roles under the same regulatory umbrella is a step in the right direction, will the Minister confirm whether we can expect such guidance to be issued? It is particularly important to try to achieve clarity and consistency given the varied roles that associates are taking during the implementation phase, not least for their benefit and for patient safety.

Let me turn to the amendments to the 2001 order, in particular the appointment of nursing associates to relevant panels. It is worth noting that the discretion afforded to the NMC for practitioners is slightly wider than it is currently for nurses and midwives. I presume that is to take account of the initial paucity of nursing associates with relevant experience to sit on panels. The NMC hopes that sufficient associates will emerge in due course to take a more active role in the process. Does the Minister intend to keep an eye on that, to ensure that in time these roles will always be judged by relevant peers?

The Opposition support the proposed approach to education and training for nursing associates. However, as my hon. Friend the Member for Easington said, there are concerns about continuing professional development across the board. As we heard, Health Education England's budget for workforce development has been slashed by 60% over the last two years, from £205 million to £83.49 million in 2017-18. We had an announcement about increased spending in the NHS this week, but I understand that there was nothing

specifically for training. I know this is slightly outside the scope of the order, but I would be grateful for some clarity from the Minister on that.

There is also a worrying shortage of qualified registered nurses to supervise the training of nursing associates. We are certainly in favour of the approach but urge the Minister to step up the availability of continuing professional development to ensure adequate supervision and training.

Mr Sheerman: My hon. Friend pushed the Minister early in his remarks on whether the Royal College of Nursing was fully consulted and on board. What is his interpretation—is it on board and in favour of all this?

Justin Madders: It is fair to say it is on board the train. On whether it is fully behind this, it is a question of ensuring that it is done in the right way. I will go on to outline where its main concerns lie.

As the Minister will know, there is a question about substitution. I commend his ingenuity in claiming that the vacancy rate in the nursing profession is only 1%, which must be a record for the public sector. I am sure he will be talking to his ministerial colleagues about how he has managed to achieve that. There is clearly an issue with the level of money spent on agency and bank nurses in the NHS, so we must remind ourselves that the real figure is much higher.

As my hon. Friend the Member for Huddersfield said, there is anxiety about substitution, particularly in the context of the high vacancy rate we believe there is. The fact is, more nurses are leaving the profession than joining it, and there is also a demographic challenge in that one in three nurses are due to retire in the next decade. In that context, there is well-founded anxiety that nursing associates could be used as a substitute for registered nurses.

I appreciate what the Minister said about providing a bridge or a ladder between particular roles, but there may be concerns, as some trusts have acted in, shall we say, a quite remarkable or coincidental way. The Warrington hospital trust agreed to reduce the number of full-time equivalent nurses on its wards by 23.58, and at the same time created 24 new nursing associate roles. That seems quite a remarkable coincidence and shows why there will be legitimate questions about whether the order will continue to be fit for purpose if it turns out that nursing associates are taking on more of the nursing role.

Grahame Morris: My hon. Friend makes an important point. If nursing associates are going to be used to replace registered nurses, that is a huge concern. Everything that we have learned about some of the terrible things that have happened—including the announcement in today's statement—shows that numbers are important, but so is the right skill mix. We have to ensure that we have an appropriately skilled nurse workforce to ensure that we deliver high standards of care in hospitals and social care settings.

Justin Madders: My hon. Friend is absolutely right. We need to keep a close eye on that. It is not fair on the professionals involved, and it is certainly not fair on patients, if people are asked to do things beyond their capacity or competence. The order would be a fool's errand if we found that that became commonplace.

Was the Minister aware of the issue in Warrington, and has he made inquiries about any risks or trends in substitution? Does he intend to put safeguards in place to prevent it from becoming commonplace?

Mr Sheerman: Today of all days, with the vote that we will all be involved in shortly, someone should put on record the question of how far the order, which I have read carefully, applies to nursing associates coming from Spain. My chief executive at the Calderdale and Huddersfield trust said that at one stage, the hospital could not have been run without young Spanish nurses, although they are much diminished in quantity now. Under the present visa regulations, could those Spanish nurses come in as nursing associates to train here?

Justin Madders: I think my hon. Friend's question is directed at the Minister, rather than me.

Mr Sheerman: I think I was being naughty.

Justin Madders: I repeat the question that my hon. Friend has posed. There is provision in the order to take account of European economic area nursing associates, I think, but my understanding is that there is not a uniform description or role that fits the narrative across the board. We are still developing that, so comparisons are not necessarily easy to make. I urge the Minister to look carefully at the guidance on delegation and accountability for both roles, so that the scope of practice reduces any risk that staff are carrying out activities and duties beyond their professional remit.

We do not oppose the order or what it seeks to achieve, but I would welcome some reassurance from the Minister on the issues that have been ventilated. The nursing associate role has the potential to make an important contribution to the NHS, but—this needs to be reinforced—it can never be a substitute for the role of a registered nurse. I appreciate what my hon. Friend the Member for Huddersfield has said, because the role will allow people to enter the profession or the nursing world without being saddled with the debts that the Government's current policy commits them to. Of course, the Opposition are committed to reinstating the nursing bursary, which I hope will reverse the trend we have seen in the past couple of years of a downward trajectory in the number of applications and a narrowing of the groups that have applied, but I do not see that as inconsistent with what the Government are trying to achieve today.

2.54 pm

Stephen Barclay: I am grateful to the hon. Gentleman for his support for the role of nursing associates. He raised several important issues, which I will address.

Let me first respond to the point that the hon. Member for Huddersfield raised about the Royal College of Nursing. Under the heading "Our position", the RCN has said in a briefing note:

"We support the introduction of the nursing associate...role and the plans to regulate it."

It goes on to raise several points, some of which the hon. Gentleman gave good visibility to. I hope that gives the general tenor of the RCN's support for the role, although that support is not unqualified and it has some questions—I do not want to mischaracterise its support. I hope that addresses that issue.

The hon. Member for Ellesmere Port and Neston raised the replacing of nurses, and he is absolutely right that it would be a concern if that were the intent behind the draft order. He will be aware that the CQC has oversight of staffing models, and that it will therefore be for trusts to discuss with the CQC how they will satisfy the necessary models.

Members referred to the harrowing report that Bishop Jones published today. I recently went up to Liverpool Community Health NHS Trust, on which the Kirkup report contained some shocking revelations, highlighted, as the hon. Gentleman knows, through the tenacious campaign of the hon. Member for West Lancashire (Rosie Cooper). We have also seen what happened at Morecambe, after the tireless work of James Titcombe following the death of his baby, Joshua, and at Mid Staffordshire. Too many such cases sadly come before the House, and I know there is consensus on both sides of the House that we must ensure that the right staffing and the right regulatory system are in place.

Grahame Morris: The Minister is absolutely right about ensuring that standards are maintained. I served for five years on the Health Committee, which oversees, and has an annual hearing with, the Nursing and Midwifery Council. A point of contention was always the level of fees that its members must pay, because it is linked to professional standards and professional development. Will the Minister clarify what level of fees will apply to nursing associates? Is that set out in the draft order?

Stephen Barclay: From memory, the fee is the same as for a nurse in the NMC, which is £120, although I am sure that my colleagues will correct me if my memory is misplaced on that. That is a flat rate applied by the NMC across the board.

The hon. Member for Huddersfield and the Opposition Front Bencher also raised the issue of overseas staff. This will be a new role, and the Prime Minister's announcement on tier 2 visas applies to existing roles, such as doctors and nurses, whereas this role is not currently in place. However, the opening of the nursing associate part of the register will provide a new registration route for overseas nursing staff whose competence and qualifications fall short of those of a registered nurse, providing that they can demonstrate that they meet the same high standards expected of a nursing associate trained in England. Again, just as it is a ladder for his constituents, it is a pathway through which European staff could potentially enter the NHS. *[Interruption.]* My memory was correct: the NMC has consulted on applying a fee of £120.

The hon. Member for Ellesmere Port and Neston mentioned the guidance. The Department is working with arm's length bodies, NHS Employers, healthcare environment inspectorates and the regulators—the NMC and the CQC—to develop guidance. That will obviously need to be in place before the first tranche of nursing associates come out of their training in January '19. I also note his point on panels. It is a perfectly fair observation, and I take it on board.

Justin Madders: I think the fee is still out for consultation.

Stephen Barclay: It is.

Justin Madders: The figure is proposed to be set at the same rate as for a nurse. I understand that, once the NMC sets up this process, the costs will be broadly similar to those for a nurse, but the fact is that this role is designated to be on “Agenda for Change” band 4, whereas nurses are in band 5. Does the Minister agree that there is possibly an argument that the proposed fee should be slightly lower to reflect that?

Stephen Barclay: I see exactly the point that the hon. Gentleman raises. The NMC is consulting on that, and I think that consultation should be allowed to run its course, but I am sure that his points will have been heard by those undertaking it.

Agency spend was raised. Again, that is an area of considerable focus within the Department. It is part of the transformation that the Prime Minister signalled with the investment announced on Monday, and there

is a lot of work on, for example, e-rostering and how to give staff greater predictability and flexibility, and how we can use technology to facilitate that, because that also has an impact on retention rates.

I hope I have addressed the hon. Gentleman’s points. I am grateful for his and the Opposition’s support for the new role. It is important that we increase the number of people able to access roles in the NHS, and this is a valuable pathway to enable that. I commend the draft order to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Nursing and Midwifery (Amendment) Order 2018.

3 pm

Committee rose.