

# Review of midwifery regulation by the Nursing & Midwifery Council (NMC) – a briefing paper



*The Royal College of*  
**Midwives**

# Review of midwifery regulation by the NMC – a briefing paper

## Summary

This paper sets out the proposed changes to midwifery regulation by the NMC as a consequence of the decision made by Council in January 2015 to seek the removal the supervision of midwives from statute.

## Key messages:

- The NMC and Department of Health (DH) are currently working on the scope of the proposed changes but have not as yet consulted with the midwifery profession or the public regarding the detail of these changes.
- A paper considered by the NMC Midwifery Committee in June 2015 outlined that the changes would be more far reaching than just the removal of the supervision of midwives from statute, it would include the removal of the 'Midwifery' section of the Nursing and Midwifery Order 2001 (the Order) (see Annexe 1) which provides the legislation for:  
[The Midwifery Committee](#)  
[Rules as to midwifery practice](#)  
[Local supervision of midwives](#)
- The NMC has clarified that the proposed changes do not affect: the separate registration of midwives; direct entry to the register as a midwife; the protected title of a midwife; the protected function of attendance on a woman in childbirth (i.e. labour) or separate competencies and pre-registration education standards for midwives.
- The RCM supports the International Confederation of Midwives (ICM) *Position Statement on Legislation to Regulate the Practice of Midwifery* (see Annexe 2) and considers that the NMC proposals should not weaken midwifery regulation in the UK and that the NMC need to consider carefully, the impact any changes will have on the practice of midwives and protection of the public.
- The timeline for the removal of supervision from statute and the introduction of non-statutory supervision/peer support for midwives has yet to be finalised by the DH. Any proposed changes to midwifery regulation as currently set out in the Order will be subject to a period of consultation led by the DH. Meantime the current regulation remain in place.

## Background

In January 2015 the NMC Council took a decision to ask for a change in its legislation in order to remove the additional tier of regulation applying to midwives. The NMC legislation currently includes supervision as a statutory function with a regulatory role.

Following the Council's decision the Secretary of State for Health announced on 16 July 2015 that the government will change the legislation governing the NMC's regulation of midwives. The main effect of the changes will be to take supervision out of their regulatory legislation.

This is a change that the NMC requested following a number of critical incidents and independent reports confirming that the current arrangements are not appropriate for public protection. The changes will make sure that, as the regulator, the NMC is responsible for all regulatory decisions regarding midwives.

Supervision currently covers a wide range of activity beyond regulatory investigations, including support, development and leadership. The NMC considers that the decision to remove supervision from statute need not affect those activities – it simply confirms that those are not part of the regulator's role.

There is ongoing work to define and plan for a future for supervision outside of regulatory legislation. This is being organised by the Department of Health in England (as UK healthcare regulation remains a responsibility of the Westminster government). It involves the four UK Chief Nursing Officers and has input from the NMC, LSA Midwifery Officer UK forum and the RCM. This report is due to be considered and signed off by the DH and devolved administrations by the end of 2015.



## Proposed Changes to Midwifery Regulation

Since the Secretary of State for Health's announcement the NMC have been working closely with the Department of Health (DH) on the likely scope of the change. There has been no direct communication with the midwifery profession or the public by the DH or NMC regarding the detail of this piece of work. According to Article 3 (13) of the Nursing and Midwifery Order 2001 (the Order):

*The Council shall inform and educate registrants, and shall inform the public, about its work.*

The working assumption is that the intention is to remove all of Part VIII of the Order (see Annex 1 to this paper) as outlined in a paper considered by the [NMC Midwifery Committee](#) on 24 June 2015.

The NMC has advised on its website that the proposals for regulatory change will need to secure ministerial approval and clear various government processes before the parliamentary process begins. The midwifery changes will be the subject of a DH consultation. The DH is revisiting its timeline for the passage of this legislative change but it is anticipated that this will be completed by early 2017.

Following the Midwifery Committee meeting in June the RCM has met with the NMC on three occasions to raise concerns regarding their proposals. The RCM supports the International Confederation of Midwives (ICM) *Position*

*Statement on Legislation to Regulate Midwifery Practice* (see Annex 2 to this paper) and is keen to ensure that the NMC proposals do not weaken midwifery regulation in the UK. The NMC have clarified in the October 2015 Midwifery Committee papers that the proposed changes do not affect: the separate registration of midwives; direct entry to the register as a midwife; the protected title of a midwife; the protected function of attendance on a woman in childbirth (i.e. labour) or separate competencies and pre-registration education standards for midwives. The RCM discussions with the NMC have centred on:

### Removal of the Midwifery Committee

The RCM considers the advisory role of the Midwifery Committee to be essential within a regulator which is dominated by nursing (640,000 nurses on the register v approx. 40,000 midwives). This is also reflected in the members of Council, of the six registrant members no place is reserved for a midwife and currently there is only one midwife on Council, yet the NMC regulates two professions. The RCM's experience is that the approach to any regulatory change or development of standards is often dominated by the nursing agenda with little understanding of the context within which midwives practice. According to Article 3 (5) of the Order:



*In exercising its functions, the Council shall (a) have proper regard for — (i) the interests of persons using or needing the services of registrants in the United Kingdom, and (ii) any differing interests of different categories of registrants;*

It also states that:

*The Council shall have regard to any differing considerations relating to practising as a nurse or midwife which apply in England, Scotland, Wales or Northern Ireland.*

To date the Midwifery Committee has provided a 'sense check' for any regulatory changes that would apply to midwives and advised the Council giving consideration to the impact these changes would have on the protection of the public within the four countries of the UK. The RCM considers that the removal of the Committee from statute to be premature and the impact not fully thought through. The RCM is keen that the NMC puts forward proposals as to what would replace the statutory Midwifery Committee and how they will seek professional advice on matters that relate to the regulation of midwives in the context of protecting the public before the removal of the Committee from statute. It remains within Article 13 (12) of the Order that:

*The Council may establish such other committees as it considers appropriate in connection with the discharge of its functions and delegate any of its functions to them, other than any power to make rules.*

## Removal of the Rules as to Midwifery Practice

The current Rules which came into force on 1 January 2013 mostly contain Rules that relate to the supervision of midwives by the local supervising authority. With the removal of statutory supervision these Rules and their related standards will no longer be fit for purpose. There are also concerns that the definition of childbirth in Rule 2 has been misperceived to extend the protected function beyond labour, and into antenatal and postnatal care. Be that as it may, Rule 2 Interpretation contains definitions relating to midwifery practice and includes what is meant by 'childbirth' and 'postnatal period'.

To take the definition of the 'postnatal period' as an example. The Midwives Rules and standards is the only place where the postnatal period is defined as '*the period after the end of labour during which the attendance of a midwife upon a woman and baby is required, being not less than 10 days and for such longer period as the midwife considers necessary*'. Even with this definition in place we have seen the gradual erosion of care provided by midwives to women and babies in the postnatal period. The average number of postnatal visits by a midwife has fallen from 5 in 2006 to 3.1 in 2014 (NPEU 2014; 2010 ;2006). Over the same period of time we have seen increasing readmission rates of mothers and babies, increasing postnatal infection rates and postnatal morbidity. In 2013-2014 there were 43,343 perinatal and neonatal

emergency admissions to NHS hospitals in England (HSCIC 2015) - the average postnatal stay in hospital and care being provided by a midwife has been severely reduced in an almost inverse relationship. It is likely that with the current shortage of midwives that the provision of postnatal care will be further eroded and possibly provided by an unregulated workforce, if at all, with a resultant increase in maternal and infant morbidity and mortality.

This takes us back to a point made earlier that:

*In exercising its functions, the Council shall (a) have proper regard for — (i) the interests of persons using or needing the services of registrants in the United Kingdom, and (ii) any differing interests of different categories of registrants;*

Rule 5 is about the Scope of practice which requires that midwives must adhere to the standards set by the Council. The standards aligned to the Midwives Rules expand on this and set out the specific requirements for practice as they relate to midwives, this includes the skills clusters, competencies and standards set out in the pre-registration midwifery education standards and other practice related to midwives not sufficiently covered within the Code. The NMC may consider that Rule 5 and its related standards are a repeat of what is already contained within the Order and other generic standards however it should not be

underestimated that rightly or wrongly the Midwives Rules and standards have enabled a means by which to emphasise the duties of a midwife. Midwifery care provided by midwives as described in the Midwives Rules and standards is not about protecting the function but protecting women and babies as evidenced by the recently published Lancet series on Midwifery (Midwifery, The Lancet, June 2014).



The RCM considers that the NMC has not fully evaluated the impact on public protection that the removal of the Midwives Rules and standards may have. The ICM position statement states that *legislation to regulate midwifery practice should recognise the importance of separate midwifery regulation and legislation which supports and enhances the work of midwives in improving maternal, child and public health*. Other international regulators, such as the Nursing and Midwifery Board of Australia, achieve this through not only setting Standards for Midwifery Practice (as does the NMC) but also publishing a separate Code of Ethics and Professional Conduct for Midwives. It is unlikely that the NMC will undertake a similar approach (although the Order does allow for this) and we are in danger of taking a backward step in relation to how midwives (and midwifery) are regulated in the UK. The RCM is of the view that the Council is in a position to provide clearer guidance to employers and others on the role and responsibilities of midwives (and nurses) to ensure the public is protected and that care is provided by the most appropriate health care professional. As stated in Article 21 (2):

*The Council may also from time to time give guidance to registrants, employers and such other persons as it thinks appropriate in respect of standards for the education and training, supervision and performance of persons who provide services in connection with those provided by registrants.*



## Removal of the local supervision of midwives

The RCM has accepted the decision of the NMC to remove the supervision of midwives from statute.

However, the RCM remains concerned that with the increasing resource pressures on the maternity services as identified by the Heads of Midwifery Survey (RCM 2015), maintaining a system of non-statutory supportive supervision will become increasingly difficult. The RCM would expect for there to be an official statement from the DH/Secretary of State supporting the proposals put forward by the four Chief Nursing Officers in the UK for a framework for supportive non-statutory supervision and leadership to be put in place for midwives and for this to be evidenced as meeting the criteria for a well led organisation as defined by the system regulators.



# Annexe 1.Extract from the Nursing and Midwifery Order 2001 (SI 2002/253)

## PART VIII. Midwifery

### The Midwifery Committee

41. (1) The role of the Midwifery Committee shall be to advise the Council, at the Council's request or otherwise, on any matters affecting midwifery.

(2) The Council shall consult the Midwifery Committee on the exercise of its functions in so far as it affects midwifery including any proposal to make rules under article 42.

### Rules as to midwifery practice

42. (1) In addition to its functions under other provisions in this Order, the Council shall by rules regulate the practice of midwifery and the rules may in particular:

(a) determine the circumstances in which and the procedure by means of which a midwife may be suspended from practice;

(b) require midwives to give notice of their intention to practise to the local supervising authority (referred to in this Part as "the LSA") for the area in which they intend to practise;

(c) require midwives to attend courses of instruction in accordance with the rules.

(2) If rules are made requiring midwives to give the notice referred to in paragraph (1) (b), the LSA shall inform the Council of any notice given to it under those rules.

### Local supervision of midwives

43. (1) Each LSA shall:

(a) exercise general supervision in accordance with the rules made under article 42 over all midwives practising in its area;

(b) where it appears to it that the fitness to practise of a midwife in its area is impaired, report it to the Council; and

(c) have power in accordance with the rules made under article 42 to suspend a midwife from practice.

(2) The Council may prescribe the qualifications of persons who may be appointed by the LSA to exercise supervision over midwives in its area, and no one shall be so appointed who is not so qualified.

(3) The Council shall by rules from time to time establish standards for the exercise by LSAs of their functions and may give guidance to LSAs on these matters.

## Annexe 2. ICM Position Statement - Legislation to Regulate Midwifery Practice

### Background

Midwifery regulation is a part of a nation's laws that relate to the education and practice of midwifery. In order to protect the public, it is important to regulate and license midwives, and the practice of midwifery.

This includes regulation of education institutions and programmes providing midwifery education leading to registration of midwives. Regulatory mechanisms also include a set of requirements for the relicensing/ re-accreditation of registered midwives in order to demonstrate continuing competence throughout their careers. For the individual midwife, regulation provides processes which enable her/him to reveal that she/he has required skills to practise midwifery safely according to national requirements.

Midwifery regulation, sometimes called licensure, is the set of criteria and processes arising from the legislation that identifies who is entitled to legally practise as a midwife. It describes the competencies, standards for pre-registration midwifery education, registration processes, and mechanisms for relicensing

(re-accreditation) to ensure continuing competence. Midwifery regulation also includes codes of conduct and ethics relating to midwives and midwifery practice as well as complaints and disciplinary processes. Included in the regulatory framework are mechanisms for 'return to practice' for those midwives who have not worked for an extended period of time. There will also be procedures relevant to midwives who have been educated in one country applying for registration in another.

Regardless of the type of mechanism used, it is important to ensure that the regulation process is and continues to be transparent, fair and robust; it should therefore be evaluated periodically.

ICM believes that there should be appropriate legislation relating to the regulation of the practice of midwives in all countries. ICM also believes that professional associations should work with governments to find ways to establish, support and monitor midwifery regulatory frameworks based on the ICM Global Standards for Midwifery Regulation (2011) in order to enhance the accountability of midwives and midwifery services to the public.

# Position

Legislation which is enacted to govern the practice of midwives should:

- Recognise that all women have a right to be attended by a competent midwife.
- Provide the mechanism for a regulatory body that is governed by midwives with the aim of protecting the public.
- Recognise the importance of separate midwifery regulation and legislation which supports and enhances the work of midwives in improving maternal, child and public health.
- Ensure the profession is governed by midwives.
- Provide for consumer representation on the regulatory body.
- Adopt a 'Definition of the Midwife' and 'Scope of Practice of a Midwife' congruent with the ICM definitions, appropriate to the country within the legislation.
- Provide for entry to the profession that is based on competencies and standards and which makes no distinction between routes of entry.
- Require regular renewal of right to practise based on satisfactory education.
- Enable midwives to have access to ongoing education.
- Enable midwives to practise autonomously within the midwifery scope of practice in any setting.
- Set the Standards for Midwifery Education based on the ICM Global Standards for Midwifery Education (2011).
- Support the midwife in the use of life-saving knowledge and skills in a variety of settings in countries where there is no ready access to medical support.
- Provide for regular review of the legislation to ensure it remains appropriate and not outdated, as midwifery education and practice and the health service advance.
- Provide for transition education programmes in the adoption of new legislation requiring increased levels of competency of the midwife.



## Recommendations

Member Associations are urged to use this statement to achieve legislation which will be appropriate for the practice of midwifery in their countries.

Together with the ICM *Standards for Midwifery Regulation* (2011), it provides a benchmark for global standardisation of midwifery regulation, the basis for the review of existing regulatory frameworks and guidance and direction to those countries seeking to establish midwifery regulation where none exists.

## Related ICM Documents

ICM 2010 Core Document: Essential Competencies for Basic Midwifery Practice (amended 2013).

ICM 2011 Core Document: Global Standards for Midwifery Regulation (amended 2013).

ICM 2011 Core Document: International Definition of a Midwife.

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