EXPLANATORY MEMORANDUM TO

THE NURSING AND MIDWIFERY (AMENDMENT) ORDER 2008

2008 No. {DRAFT]

1. This Explanatory Memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order makes a number of amendments to the Nursing and Midwifery Order 2001 ("the 2001 Order"), which makes provision for the statutory regulation of nurses and midwives. In particular, the amendments relate to the governance arrangements of the Nursing and Midwifery Council ("NMC"), and its committees. The membership of the NMC will cease to be mostly elected and will become fully appointed. This Order also makes a number of other miscellaneous and consequential amendments.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The NMC was established under provisions set out in the 2001 Order and maintains a register of nurses and midwives who are both qualified and fit to practise. Before the amendments introduced by the current Order, Schedule 1 of the 2001 Order provided for the constitution of the NMC, the membership of which has been made up of twelve elected 'registrant members' who are nurses or midwives who are registered with the NMC, twelve 'alternate members', who also have to be registered with the NMC and who are able to attend Council meetings if the registrant member they shadow is unable to do so, and eleven lay members. Schedule 1 also sets out the constitutional arrangements for the NMC's statutory committees, and there are provisions elsewhere in the 2001 Order dealing with other governance issues such as the production of annual accounts and reports.

4.2 The White Paper "*Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century"* ("the White Paper") set out a programme of substantial reform to the system for the regulation of health care professionals. This was based on the results of consultation on two reviews of professional regulation published in July 2006: *Good doctors, safer patients* by the Chief Medical Officer for England, and *The regulation of the non-medical health care professions* by the Department of Health. The Order concentrates on implementation of the proposals set out in Chapter one of the White Paper, entitled, *Assuring independence: the governance and accountability of the professional regulators.*

4.3 Orders in Council under section 60 of the Health Act 1999 can be used to regulate health care professions, and in particular those that are currently regulated by the NMC, the General Medical Council, the General Dental Council, the General Osteopathic Council, the General Chiropractic Council, the General Optical Council, the Health Professions Council and the Royal Pharmaceutical Society of Great Britain. It is anticipated that this Order will be the first of three Orders in Council that will take forward the first set of White Paper changes to the governance arrangements of these regulators, although fewer changes are likely to be made in respect of the Royal Pharmaceutical Society of Great Britain, because of the anticipated establishment of the General Pharmaceutical Council to take over its regulatory functions.

4.4 The opportunity has also been taken to make a number of other changes to the 2001 Order to take account of developments elsewhere – in particular, of the passing of the Safeguarding Vulnerable Groups Act 2006 and the equivalent legislation in Scotland and Northern Ireland, and of emergency planning for dealing with emergencies such as an outbreak of pandemic influenza. The Order also contains some minor and technical amendments and consequential amendments to and revocations of subordinate legislation.

5. Territorial Extent and Application

5.1 The Order extends to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Health Services, Ben Bradshaw, has made the following statement regarding Human Rights:

"In my view, the provisions of the Nursing and Midwifery (Amendment) Order 2008 are compatible with the Convention rights."

7. Policy Background

7.1 This Order makes a number of amendments to the 2001 Order. The governance changes are to meet the following policy objectives:

- Extension and harmonisation of the health care regulatory bodies' duties of co-operation. The White Paper highlighted the need to ensure closer co-operation and co-ordination between regulatory bodies and employers, and the need for regulators to consider the interests of stakeholders. Accordingly the NMC is given revised duties of co-operation with other bodies and individuals, which will be in line with the revised duties given to other health care regulatory bodies.

- Reconstitution of the NMC as a fully appointed body. The NMC is to be reconstituted as provided for by Order of the Privy Council ("the constitution Order"). The constitution Order will provide for a fully appointed council, rather than a mix of elected professional members and appointed lay members, as at present. It will also do away with the present system of alternates for the registrant members. It is anticipated that the new council will have parity of membership between lay and professional members to ensure that purely professional concerns are not thought to dominate its work – although the numbers of each will be in the constitution Order. Regulators must be seen to be independent and impartial in their actions. Doubts based on a perceived partiality have threatened to undermine patient, public and professional trust in the health care regulatory bodies more generally. The composition of the regulators is central to these perceptions. The regulators may be seen as partial to their professionals because the professionals form the majority on the councils, or may be seen to be partial because their councils are thought to be elected to represent the particular interests of health professionals. Hence the moves to parity of membership and having independently appointed councils rather than professional members being elected by the profession.

- Extending the terms of office of the NMC's existing registrant members on a transitional basis, until either the new constitution order comes into force or they have served a maximum of four years since they were elected, which would be at the end of 31st July 2010. Up until now, a quarter of the registrant members have come up for re-election each year, and so there is also a provision cancelling the annual elections that would otherwise have taken place in 2008 and 2009. A further transitional provision will ensure that alternate members need not be replaced in by-elections, pending the introduction of the new constitution Order, unless there is also a vacancy in respect of the member they shadow. Essentially, these provisions are to ensure as

smooth as possible a transfer to the new arrangements – and without the need for unnecessary expense on elections or by-elections.

- Revision of the constitutional arrangements for the statutory committees. Their constitutions will now be set out in rules. The committees have powers to determine their own procedures in standing orders, but these powers are subordinate to the powers for these procedures to be determined by rules or standing Orders of the Council. It is intended that these arrangements will be very similar to those for the other health care regulatory bodies.

- Revision of the annual reporting requirements so that for the first time they are required to include a description of the arrangements that they have in place to ensure that they adhere to good practice in relation to equality and diversity, and a strategic plan. The NMC's reports and plans are laid before Parliament and so for the first time the NMC will be required to report to Parliament on its future direction. Alongside the move, more generally, to greater independence of the health care regulatory bodies from Government, it is important to strengthen the accountability of regulators to Parliament. This will ensure that there will continue to be checks and balances on the regulators exercise of their functions.

7.2 The other main changes will meet the following policy objectives:

- Enabling the Registrar of the NMC to make temporary annotations to its register during the sort of civil emergency where other civil contingency arrangements will be in place. These annotations will allow suitably experienced registrants to order drugs, medicines and appliances that they would not otherwise be able to order. This is part of a much wider package of measures to ensure that the Government would be able to respond flexibly in an emergency and to facilitate the distribution of, for example, anti-viral drugs in an emergency caused by pandemic influenza. The existence of these powers is a purely precautionary measure. They do not reflect any change of risk level perceived by the Government. Mention is made of the recent consultation exercises on the wider package of measures in paragraph 7.5.

- Enabling inclusion of a person in a barred list kept by the Independent Barring Board, or the adults' or children's lists kept by the Scottish Ministers, to be considered a reason for finding a registrant's fitness to practise is impaired or for turning down an application for registration.

Consultation

7.3 The provisions set out in this Order were originally contained in the Health Care and Associated Professions (Miscellaneous Amendments) Order published in draft for public consultation on 22 November 2007. It is in response to representations from the NMC as part of that consultation exercise that these provisions have been brought forward in a separate Order.

7.4 A report on the consultation, in so far as it relates to the provisions included in this Order, has been laid before Parliament and is attached to this Memorandum.

7.5 The Department consulted more widely on its proposals for responding to an influenza pandemic as part of a separate consultation exercise, *Pandemic flu: a national framework for responding to pandemic influenza*, which closed on 22nd February 2008. That consultation document described the Government's strategic approach for responding to an influenza pandemic published jointly by the Department of Health and the Cabinet Office. It provided background information and guidance to public and private organisations developing response plans. It updated and expanded upon health advice and information contained in previous plans issued by UK health departments and was intended to replace those documents. There was also a public consultation exercise by the Department on possible changes to medicines and associated legislation for use during a pandemic, which closed on the same day.

Consolidation

7.6 There are no plans to consolidate the legislation amended by these Regulations.

8. Impact

8.1 An Impact Assessment is attached to this Memorandum.

9. Contact

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Summary: Intervention & Options

Department /Agency:	Title:	
DH	Impact Assessment of Nursing and Midwifery (Amendment) Order 2008	
Stage: Implementation	**Version:** 2.0	**Date:** 2 April 2008

Related Publications: Nursing and Midwifery Order - consultation results and Government response, Nursing and Midwifery Order - explanatory memorandum

Available to view or download at:

http://www.dh.gov.uk

Contact for enquiries: Stuart Griffiths **Telephone:** 0113 254 5249

What is the problem under consideration? Why is government intervention necessary?

Modernisation of the regulation of nursing and midwifery professions:

Purpose of professional regulation is to ensure patient safety, set standards of competence for those registered and maintain a system to investigate and where necessary restrict or prevent practise by those professionals whose fitness to practise is called into question, or found to be impaired.

Government intervention is necessary to update and reform the system of regulation in order to maintain and improve public confidence

What are the policy objectives and the intended effects?

In order to exercise their functions effectively and command the confidence of patients, the public and the professions, the healthcare professions regulators (including the Nursing and Midwifery Council) need to be seen to be independent and impartial in their actions. This Order makes changes to the governing structures of the NMC including a move to fully appointed council, and changes to make it more accountable to Parliament. This is intended to ensure that purely professional concerns are not thought to dominate their work.

What policy options have been considered? Please justify any preferred option.

The policy options were discussed in two consultation documents published in 2006: "Good doctors, safer patients" and "The Regulation of non-medical health care professions, a review by the Department of Health". The White Paper "Trust, Assurance and Safety ", set out a series of reforms based on the results of this consultation, which were further tested in the consultation on the Health Care and Associated Professions (Miscellaneous Amendments) Order. The evidence base attached refers to the preferred option identified through those consultations.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? June 2011

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Ben Bradshaw.....Date: ***16th April 2008***

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS

One-off (Transition) **Yrs**

£ 0

Average Annual Cost (excluding one-off)

£ 0

Description and scale of **key monetised costs** by 'main affected groups' This Order makes a number of changes to the administrative arrangements for the Nursing and Midwifery Council. Minimal changes to their costs

Total Cost (PV) **£**

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS

One-off **Yrs**

£ 300k

Average Annual Benefit (excluding one-off)

£ 0

Description and scale of **key monetised benefits** by 'main affected groups' Provisions in this Order will avoid the need for the NMC to hold elections in 2008 or 2009 pending the introduction of the new constitution.

Cost of appointments to new Council will offset the savings achieved by no longer holding elections

Total Benefit (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' Enhanced confidence in regulation through removing perception that professional interests dominate work of regulators, greater focus on patient safety in setting standards. Improved protection for vulnerable groups by allowing exchange of information between regulators and vetting and barring scheme

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£**

What is the geographic coverage of the policy/option?				UK
On what date will the policy be implemented?				May 2008 onwards
Which organisation(s) will enforce the policy?				NMC
What is the total annual cost of enforcement for these organisations?				£
Does enforcement comply with Hampton principles?				Yes
Will implementation go beyond minimum EU requirements?				No
What is the value of the proposed offsetting measure per year?				£
What is the value of changes in greenhouse gas emissions?				£
Will the proposal have a significant impact on competition?				No
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ Decrease of £ **Net Impact** **£**

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

Background

The UK Government's programme for reforming the regulation of all health care and associated professions was first set out in *The NHS Plan – A Plan for investment, a plan for reform.* This made clear that regulation should be strengthened and specified that regulatory bodies must change so that they

- are generally smaller, with much greater patient and public representation in their membership;
- have faster more transparent procedures;
- develop meaningful accountability to the public and the health service.

Although good progress has been made, the need for further reform was identified in the two reviews of professional regulation published for consultation in July 2006: *Good doctors, safer patients* by the Chief Medical Officer for England, and the Department of Health's *The regulation of the non-medical health care professions.*

The White Paper *Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century* set out a substantial programme of reform to the United Kingdom's system for the regulation of health care professionals, based on consultation on the two reviews mentioned above. It is complemented by *Safeguarding Patients,* the UK Government's response to the recommendations of the Fifth Report of the Shipman Inquiry and to the recommendations of the Ayling, Neale and Kerr/Haslam Inquiries, which set out a range of measures to improve and enhance clinical governance in the NHS.

The draft Order is the first in a series of Orders that will take forward the reforms identified in the White Paper. This Order concentrates on the reforms set out in Chapter One of the White Paper (*Assuring independence: the governance and accountability of the professional regulators)* but also includes measures that are required to deliver other legislative requirements and some items that have been identified by the regulators as needing urgent reform**.**

The reforms set out in the Nursing and Midwifery (Amendment) Order were included in the draft **Health Care and Associated Professions (Miscellaneous Amendments) Order** which was published for consultation on 22 November 2007.

The amendments in this Order are to the administrative arrangements for the Nursing and Midwifery Council. No additional costs have been identified.

The Nursing and Midwifery Council made representations in response to that consultation for the amendments in respect of their Council to be brought forward in a separate Order. These representations have indicated that the cancellation of this year's elections will mean savings to the NMC of £300k

Temporary annotations with regard to emergencies involving loss of human life

This amendment is part of a package of measures that in due course will include measures under the Civil Contingencies Act 2004, which makes provisions for emergency regulations in a situation (such as pandemic illness) where there is substantial loss of life.

The amendment provides for the Registrar at the Nursing and Midwifery Council to be given powers to annotate the entry of a person or category of persons to indicate that he is qualified to order drugs, medicines and appliances for the duration of the emergency.

These powers will only be used in should an emergency occur, or is about to occur. There are therefore no immediate costs to the NMC.

Possible costs:

No additional nurse registrations but some nurses may have their records annotated to allow them to order drugs etc.

Some impact for nurses, but will be no new fees so individual costs kept to a minimum.

Minimal costs to NMC for annotating register.

It is difficult to fully assess the potential costs and benefits of annotating the register of nurses until the nature and extent of any emergency is known. Estimates prepared in advance of Parliamentary scrutiny of the Civil Contingencies Bill suggest that compliance costs should be relatively insignificant.

A full Regulatory Impact Assessment prepared for the Civil Contingencies Bill can be found at http://www.co-ordination.gov.uk/upload/assets/www.ukresilience.info/riav1.pdf

Safeguarding Vulnerable Groups

The amendments proposed will add to the reasons that a persons fitness to practise may be considered impaired

i) the Independent Barring Board including a person in a barred list

ii) Scottish Ministers including a person in the children's list or the adults' list.

These amendments are linked to amendments made to the Safeguarding Vulnerable Groups Act 2006 put forward in the "Health Care and Associated Professions (Miscellaneous Amendments) No 2 Order" which went out for consultation shortly after the Order from which the provisions in this Order derive.

The effect of the proposed new provisions, once a set of changes is made to the NMC's rules would be that regulators would be able to take action against someone who appears on a barred list without needing to prove again the facts that led to a person appearing on that list. A similar approach is already undertaken with criminal convictions, where regulators are already able to take action without needing to prove the substance of the allegation that led to the criminal conviction. The amendments should help to speed up the process for dealing with the practice of health care professionals who have already been the subject of an investigation that has led to serious adverse findings against them.

A detailed regulatory impact assessment for the Safeguarding Vulnerable Groups Act can be found at:
http://www.everychildmatters.gov.uk/socialcare/safeguarding/independentsafeguardingauthority/

Annual Reports and Strategic Plans

These amendments update the provisions requiring the NMC to produce annual reports and strategic plans.

The NMC currently prepares annual accounts and an annual report, which it sends to the Privy, who then in turn lay the report and accounts before Parliament.

The amendments make further provision as to the content of these reports, including information on how its has monitored the effects of its policies and activities on the diverse range of people they affect and a new requirement to produce a strategic plan

It will be a requirement that the NMC should lay a copy of its annual report and strategic plan before the UK Parliament.

The NMC already produces annual reports. The change therefore is to strengthen the accountability of the NMC to the public through Parliament and to the registrants who provide the bulk of a regulators funding.

The NMC currently produces a business and strategic plan as part of its duty to consult the Privy Council on the way in which it proposes to exercise its functions. The new requirement to lay a strategic plan before Parliament will therefore add minimal costs to the NMC

No additional costs have been identified.

Composition of Councils

Chapter one of the White Paper *Trust, Assurance and Safety* puts forward a number of proposed changes to the size and structure of Councils. This includes a move to smaller, more board-like Councils with greater consistency of size and role across the professional regulatory bodies; parity of membership between lay and professional members as a minimum; council members to become independently appointed.

The amendments put forward in this Order will allow the Privy Council to provide by Order for the numbers of lay and registrant members on the NMC, their terms of office, arrangements for appointing a chair, and provisions with respect to the suspension or removal of members.

At present the NMC consists of a number of lay members appointed by the Privy Council (who in practise delegate this task to the Appointments Commission) and a number of registrant members who are elected by the registrants themselves. In future all members of the Council will be appointed by the Privy Council.

Details of the membership, and constitutional arrangements for the NMC is currently set out in the governing legislation. The proposed amendments will remove the constitutional details from the primary legislation and provide for the Privy Council to set out this detail in an order. All organisations need to adapt to changing circumstances over time. These amendments will make it easier for changes to be made to the NMC’s overall governing structure in the future.

The costs of appointing all the members of the Council will be off-set by the savings achieved by no longer running elections. The NMC have estimated the costs of running an election in 2008 at £300,000.

The Government is in discussion with the NMC about the size and composition of the new Council, in preparation for making a constitution order under these provisions.

Registration of member's private interests

This amendment will require the NMC to maintain a register of the private interests of their Council members. It is intended to improve patient safety by ensuring that Council members do not have any conflict of interest.

Minimal cost implications.

Duty of Co-operation and duty to consider the interests of stakeholders

The amendments here are intended to embed the duty of consideration of key stakeholders with an interest in the work of the NMC, particularly employers, education and training providers, healthcare providers and managers. The current reforms of the health system are making stronger links between systems regulators and professions regulators and it is necessary that this is supported by a corresponding duty on all professions regulators to co-operate with and consider the interests of all stakeholders in their deliberations

Minimal cost implications.

Appointments to committees

This is a facilitative measure to allow the NMC to make arrangements with another body for that body to assist them in exercising its appointments functions. It is a facilitative measure giving greater flexibility to the NMC.

Admin function of regulator covered by running costs.

Statutory Committees of the Nursing and Midwifery Council

The amendment will remove detailed requirements from the legislation about the membership of the NMC's statutory committees (ie the committees mentioned in the Nursing and Midwifery Order), quorum and deputising arrangements for the chair. In future the Council will be able to make provision for these aspects through the use of Rules, again increasing the Council's independence.

Minimal cost implications.

Temporary measures pending introduction of new NMC council

12 members of the NMC are appointed by the Council on being elected under the terms of its election scheme. Elections are held each year for 1 quarter of the registrant members. The Council is also required to appoint an alternate member for each registrant member.

Amendments in this order will change this system so that all members of the Council are appointed by the Privy Council, thus removing the need for registrant members to be elected. However, it will be some time before the composition of the new council can be introduced following Parliamentary approval of this Order. Under current provisions the NMC are required to elect members each year and the next election will need to be held before a new Council can be appointed. To ensure continuity and stability during this period of change this Order makes a

number of temporary measures pending the introduction of the new Council. These amendments

- remove the need for the appointment of an alternate member for a particular registrant member, where this would require the Council to hold a by-election
- extends the terms of office of all members who hold office on 31 July 2008, so that their membership expires on 31 July 2010 or on the coming into force of an Order made by the Privy Council establishing the new Council.

No cost implications have been identified.

The NMC would save the cost of an election in 2008, which they have estimated at £300,000.

Specific Impact Tests: Checklist

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Competition Assessment

No issues have been identified

Small Firms Impact Test

No impact on small firms

Legal Aid

No legal issues identified

Sustainable development

No issues identified

Carbon Assessment

No impact

Other environment

No environmental issues identified

Health Impact Assessment

No issues identified

Race/Disability/gender equality

In drafting the Order we have considered the possible impact on equality issues (age, disability, gender, race, religion or belief, and sexual orientation) of each of the policies described in this Impact Assessment. It has been concluded that there is no impact, other than the benefit in requiring the NMC to report on these issues in its annual report

Human Rights

No issues identified

Rural Proofing

No issues identified

NURSING AND MIDWIFERY (AMENDMENT) ORDER

2008

Consultation Report

Executive Summary

1. The draft Nursing and Midwifery (Amendment) Order 2008 makes a number of amendments to the Nursing and Midwifery Order 2001 ("the 2001 Order"). These include:

   - A revised duty of co-operation and a new duty to consider the interests of stakeholders
   - Improved arrangements for accountability to Parliament
   - Powers enabling the Nursing and Midwifery Council ("NMC") to consider a persons fitness to practise as being impaired if that person has been included in a barred list kept by the Independent Barring Board or the children or adults lists kept by the Scottish Ministers
   - New constitutional arrangements (including a move to a fully appointed council, removal of the need for alternate members, and removal of the requirement for council members to be on certain committees)
   - New arrangements for the constitutions of statutory committees
   - New provisions in relation to emergencies involving or potentially involving large scale loss of human life or human illness
   - Temporary measures to extend the terms of members of the Nursing and Midwifery Council in post on 31 July 2008, pending the introduction of the new constitution.

2. These amendments were originally set out in the draft Health Care and Associated Professions (Miscellaneous Amendments) Order 2008, which was published for public consultation on 22 November 2007.

3. That consultation closed on 22 February 2008. As a result of representations made during the consultation it has been decided to bring forward the amendments to the 2001 Order in a separate Order.

4. This paper concentrates on the response to the consultation on the Health Care and Associated Professions (Miscellaneous Amendments) Order, as it applies to the 2001 Order only.

Introduction

This paper sets out the outcome of a consultation on a range of amendments to the Nursing and Midwifery Order 2001.

These amendments were originally contained in the draft Order, "The Health Care and Associated Professions (Miscellaneous Amendments) Order 2008" ("the original draft Order"), which was published for consultation on 22 November 2007. It has been decided to bring forward the amendments to the 2001 Order through a separate Order. This paper is therefore a partial response to the consultation on the Health Care and Associated Professions Order, but focuses on the responses as they apply to the 2001Order.

Background

The White Paper *Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century* ("the White Paper") set out a substantial programme of reform to the United Kingdom's system for the regulation of health care professionals based on the reviews *Good doctors, safer patients* and *The Regulation of the non-medical health care professions* which were published in 2006.

The original draft Order set out a range of amendments to take forward reforms identified in Chapter one of the White Paper, which concentrated on the governance and accountability of the professional regulators. It also included measures that are required to deliver other legislative requirements and some items identified by the regulators as needing urgent reform.

The original draft Order contained measures that would affect professions regulated by

- General Medical Council
- General Optical council
- General Chiropractic Council
- General Osteopathic council
- Nursing and Midwifery Council.

The measures included in the original draft order were intended to ensure a consistency of approach across all the regulators, and the consultation on the draft Order reflected this – seeking views on the amendments as they applied to all regulators rather than in respect of each regulator.

However, as a result of representations received from the Nursing and Midwifery Council during the consultation, it has been decided to bring forward the amendments to the 2001 Order earlier and therefore in a separate Order.

The draft Nursing and Midwifery (Amendment) Order 2008 reflects the comments that have been received as part of the consultation exercise.

Annex A sets out the consultation questions and provides a summary of the responses from those identified as having an interest in Nursing or Midwifery. Annex B and provides a summary of the responses received overall.

This paper is therefore a partial response to the consultation on the original draft Order.

Consultation Process

The consultation took place over a three-month period between 22 November 2007 and 22 February 2008.

Respondents were requested to fill in a form and submit it either electronically or by post. A number of responses were made in the form of a general letter rather than replies to specific questions.

64 responses were received by the closing date, and a further 3 by the end of February. Although outside the time limit, the comments made in the late responses have also been noted.

The responses represented a diverse mix of bodies/organisations, individual professionals and members of the public. They included all the primary stakeholders in the field of healthcare professional regulation.

A table showing all the respondents is attached.

Specific issues which arose in relation to the questions

Question 1: Do you support having, as a main objective for all the regulators, a provision giving greater emphasis to the importance of public protection?

This was given nearly 90% support. However, it is clear from the comments received that the support was for the principle of giving greater emphasis to the need and importance of public protection, rather than for the wording of the provision itself. In the light of those comments the Government has decided to withdraw the provision and will return to it at the next available opportunity.

Question 2: Do you agree that these standard duties will improve the co-operation and co-ordination between professional regulators and key stakeholders?

All regulators are required to have a proper regard for the interests of persons using or needing the services of registered professionals. However, some respondents commented that these provisions did not go far enough in that the duty to co-operate did not require regulators to co-operate with or consult patient representative organisations. The government has noted these comments. It supports the view that there needs to be greater patient and public involvement. However, it wishes to give further consideration to whether placing a duty on regulators to co-operate with patient representative bodies is the best way forward. The Government will stick to its original proposals for the time being, look at the current requirements on consultation applicable to all the regulators and if appropriate bring forward further legislation at the next opportunity.

Q3 Do you agree that Parliament should play an enhanced role in relation to the monitoring of regulatory bodies, facilitated by improved arrangements for notification by the bodies of information relating to their past and future activities.

The overall response to this question shows 57% in agreement. However, amongst the respondents identified as having an interest in nursing or midwifery this level is much lower at 27%. Most nurse respondents were unsure as to the benefit of this particular provision. The main concern expressed by these respondents was about the need for the NMC to be independent of government, and open and transparent in their processes. The Government agrees that the regulators should be more independent of government, which is the main thrust of the reforms set out in this Order.

Q4 Do you agree with the new, more flexible arrangements for establishing constitutions for the regulatory bodies.

Most respondents supported the move towards setting out the constitution of the regulatory bodies, including the NMC in a separate constitution order. However, there was concern about the balance between lay and professional members, and indeed between the number of nurses, midwives and health visitors on the new council.

The Government is taking forward legislation through the Health and Social Care Bill that would allow future Section 60 Orders to provide for the Councils of regulatory bodies to have a lay majority. However, this is only a facilitative measure intended to provide greater flexibility. Legislation will only be taken forward to create a council with a lay majority, if the regulatory body puts forward proposals itself.

The Government is working with the Nursing and Midwifery Council to develop proposals for the new constitution to be made under this Order. A draft of that constitution order will be published for consultation, subject to Parliamentary approval of this Order.

Q5: Do you agree with adding appearance on a barred list to the grounds for which a health professional's fitness to practise should be considered impaired.

This was given overall support. The regulatory bodies have rightly pointed out that the amendments set out in this order will not complete the process, and that consequential amendments will also need to be

made to their Fitness to Practise rules, to allow decisions of the barring board to be treated in the same way as criminal convictions.

These amendments are also linked to changes to the Safeguarding Vulnerable Groups Act 2006 and the Protecting Vulnerable Groups (Scotland) Act 2007 set out in the Health Care and Associated Professions (Miscellaneous Amendments) No 2 Order, which was published for consultation between 21 December 2007 and 25 March 2008. The Government will therefore be bringing forward the necessary amendments to Fitness to Practise Rules as part of that Order.

Q6: Do you agree with the strategy for standardising the order and rule making powers of the regulators, and with the move towards giving them greater flexibility over internal processes while increasing Parliamentary scrutiny of outcome

The Government has decided to withdraw these provisions for further consideration.

Q7: Do you agree that all regulators of health care professions should be under a legal duty to maintain registers of the private interests of their council members.

This was given over 80% support.

Q8: Do you agree the regulators should have the option of engaging other bodies to assist them with their appointments functions

Overall support of over 80%. Some respondents raised issues on the need for the process of appointment to be impartial, open and transparent. The Government is clear that all appointments to regulatory bodies need to be made through a clear, open and transparent process.

Questions 9 to 12 are not relevant to the Nursing and Midwifery Council and so are not included in this response

Q13: Do you agree that the NMC should be given reserve powers to annotate their register so that suitably experienced persons without the relevant qualifications will nevertheless be able to act as prescribers of prescription only medicines during an emergency

Most respondents supported this proposal. However there was concern about the meaning of “suitably experienced” and the need to ensure patient protection. The Government has noted these concerns.

The legislation is deliberately drafted in a way that would meet as wide a range of situations as possible. It is difficult to determine in advance what precise measures will be required in an emergency. The Government is in discussions with the NMC over the possibility of developing a protocol that would be a guide to use of this legislation in the event of it needing to be activated.

Q14: Do you agree to allowing the NMC to determine who should sit on its practice committees

The overall response to the consultation is in support of this provision. However, among the nurse respondents the level of support drops to 36%, with 57% disagreeing.

Many of the respondents disagreeing have raised concerns about the part of the register for Specialist Community and Public Health Nurses, and have suggested that there should be a separate SCPHN committee, as well as a Midwifery Committee. The government has made note of these concerns. However, it considers (as noted above) that regulatory bodies must be independent of Government, and should have greater responsibility for determining how it delivers its statutory functions. These proposals are consistent with this policy.

Additional issues

<u>NMC Elections</u>

In their response to the consultation, the NMC raised concerns about the timescale for implementing the changes set out in the draft Order, and how the NMC would manage its business in the interim. It urged

the Government to do all it could to ensure that these particular provisions were brought into force as a matter of urgency.

The NMC supports the move to a fully appointed council but commented that the need to hold an election in England during the summer of 2008 would be a very unhelpful distraction at a time when the NMC would need to focus its attention on managing the move to the new structure.

England is the NMC's largest constituency and the cost of the election (estimated at around £300,000) is a major consideration to the NMC. Given that those members elected in 2008 are likely to be in office for eight months or less, nurse and midwife registrants would, quite rightly, criticise the Council for wasting their money for what, in their eyes would be an unnecessary election. The NMC would also face additional cost in providing new members with an appropriate period of induction and getting them assimilated into the work of the Council

The NMC were also concerned that the potentially very short term of office would discourage candidates from standing. In such situations, there is always the possibility that, as in any election, this last election could become a focus for single-issue candidates. The risk of the Council's business being disrupted during the period leading up to the implementation of the new structure would be very high.

Given these concerns, the Government has agreed to bring forward the amendments to the 2001 Order, in a separate Order.

Part 3 of the NMC register

A number of respondents, including the Union UNITE raised concerns about the part of the Register for Specialist Community and Public Health Nurses (SCPHNs), and the rules around continuing professional development. Some have suggested that there should be a separate committee for SCPHNs, similar to that provided for Midwives.

The Government has noted these concerns. This Order is part of a programme of section 60 Orders that will take forward the amendments put forward by the White Paper. The Government will consider the comments in the context of these further orders.

Annex A:

Set out below are the questions included in the consultation on the Health Care and Associated Professions (Miscellaneous Amendments) Order, together with a summary of responses from those respondents identified as having an interest in nursing or midwifery.

Matters affecting all regulators

Q1. Do you support having, as a main objective for all the regulators, a provision giving greater emphasis to the importance of public protection?

Q.1 Number of responses to question: 15			
	Agree	Disagree	Unsure
Number	13	1	1
%	87	6.5	6.5

Q2. Do you agree that these standard duties will improve the co-operation and co-ordination between professional regulators and key stakeholders?

Q.2 Number of responses to question: 15			
	Agree	Disagree	Unsure
Number	9	0	6
%	60	0	40

Q3. Do you agree that Parliament should play an enhanced role in relation to the monitoring of regulatory bodies, facilitated by improved arrangements for notification by the bodies of information relating to their past and future activities?

Q.3 Number of responses to question: 15			
	Agree	Disagree	Unsure
Number	4	4	7
%	27	27	46

Q4. Do you agree with the new, more flexible arrangements for establishing constitutions for the regulatory bodies?

Q.4 Number of responses to question: 14			
	Agree	Disagree	Unsure
Number	7	1	6
%	50	7	43

Q5. Do you agree with adding appearance on a barred list to the grounds for which a health professional's fitness to practise should be considered to be impaired?

Q.5 Number of responses to question: 15			
	Agree	Disagree	Unsure
Number	12	3	0
%	80	20	0

Q6. Do you agree with the strategy for standardising the order and rule making powers of the regulators, and with the move towards giving them greater flexibility over internal process issues while increasing Parliamentary scrutiny of outcome?

Q.6 Number of responses to question: 15			
	Agree	Disagree	Unsure
Number	9	3	3
%	60	20	20

Q7. Do you agree that all regulators of health care professionals should be under a legal duty to maintain registers of the private interests of their council members?

Q.7 Number of responses to question: 15			
	Agree	Disagree	Unsure
Number	12	2	1
%	80	13	7

Q8. Do you agree the regulators should have the option of engaging other bodies to assist them with their appointments functions?

Q.8 Number of responses to question: 14			
	Agree	Disagree	Unsure
Number	12	2	0
%	86	14	0

Amendments to the Medical Act 1983

Q9. Do you agree that the General Medical Council should be given reserve powers to register suitably experienced people to help out as doctors during an emergency?

Q.9 Number of responses to question: 9			
	Agree	Disagree	Unsure
Number	5	1	3
%	55	12	33

Q10. Do you agree that the list of bodies that can provide primary United Kingdom medical qualifications should be an administrative list kept by the General Medical Council, and for which they are responsible, rather than being set out in statute?

Q.10 Number of responses to question: 9			
	Agree	Disagree	Unsure
Number	4	1	4
%	44	12	44

Amendments to the Osteopaths Act 1993

Q11. Do you agree that these UK trained osteopaths who have been working overseas should have their qualifications recognised when they return to the UK, provided they apply within the stated time limits?

Q.11 Number of responses to question: 7			
	Agree	Disagree	Unsure
Number	2	2	3
%	29	29	42

Amendments to the Chiropractors Act 1994

Q12. Do you agree that these UK trained chiropractors who have been working overseas should have their qualifications recognised when they return to the UK, provided they apply within the stated time limits?

Q.12 Number of responses to question: 7			
	Agree	Disagree	Unsure
Number	3	1	3
%	43	14	43

Amendments to the Nursing and Midwifery Order 2001

Q13. Do you agree that the NMC should be given reserve powers to annotate their register so that suitably experienced persons without the relevant qualifications will nevertheless be able to act as prescribers of prescription only medicines during an emergency?

Q.13 Number of responses to question: 15			
	Agree	Disagree	Unsure
Number	11	2	2
%	74	13	13

Q14. Do you agree to allowing the NMC to determine who should sit on its practise committees?

Q.14 Number of responses to question: 14			
	Agree	Disagree	Unsure
Number	5	8	1
%	36	57	7

Annex B:

Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 consultation questions and summary of responses

Matters affecting all regulators

Q1. Do you support having, as a main objective for all the regulators, a provision giving greater emphasis to the importance of public protection?

Q.1 Number of responses to question: 62			
	Agree	Disagree	Unsure
Number	55	4	3
%	89	6	5

Q2. Do you agree that these standard duties will improve the co-operation and co-ordination between professional regulators and key stakeholders?

Q.2 Number of responses to question: 62			
	Agree	Disagree	Unsure
Number	37	6	19
%	60	10	30

Q3. Do you agree that Parliament should play an enhanced role in relation to the monitoring of regulatory bodies, facilitated by improved arrangements for notification by the bodies of information relating to their past and future activities?

Q.3 Number of responses to question: 63			
	Agree	Disagree	Unsure
Number	36	16	11
%	57	25	18

Q4. Do you agree with the new, more flexible arrangements for establishing constitutions for the regulatory bodies?

Q.4 Number of responses to question: 61			
	Agree	Disagree	Unsure
Number	40	8	13
%	66	13	21

Q5. Do you agree with adding appearance on a barred list to the grounds for which a health professional's fitness to practise should be considered to be impaired?

Q.5 Number of responses to question: 62			
	Agree	Disagree	Unsure
Number	47	11	4
%	76	18	6

Q6. Do you agree with the strategy for standardising the order and rule making powers of the regulators, and with the move towards giving them greater flexibility over internal process issues while increasing Parliamentary scrutiny of outcome?

Q.6 Number of responses to question: 63			
	Agree	Disagree	Unsure
Number	43	9	11
%	68	14	18

Q7. Do you agree that all regulators of health care professionals should be under a legal duty to maintain registers of the private interests of their council members?

Q.7 Number of responses to question: 62			
	Agree	Disagree	Unsure
Number	54	7	1
%	87	11	2

Q8. Do you agree the regulators should have the option of engaging other bodies to assist them with their appointments functions?

Q.8 Number of responses to question: 61			
	Agree	Disagree	Unsure
Number	50	5	6
%	82	8	10

Amendments to the Medical Act 1983

Q9. Do you agree that the General Medical Council should be given reserve powers to register suitably experienced people to help out as doctors during an emergency?

Q.9 Number of responses to question: 54			
	Agree	Disagree	Unsure
Number	33	8	13
%	61	15	24

Q10. Do you agree that the list of bodies that can provide primary United Kingdom medical qualifications should be an administrative list kept by the General Medical Council, and for which they are responsible, rather than being set out in statute?

Q.10 Number of responses to question: 51			
	Agree	Disagree	Unsure
Number	30	8	13
%	59	16	25

Amendments to the Osteopaths Act 1993

Q11. Do you agree that these UK trained osteopaths who have been working overseas should have their qualifications recognised when they return to the UK, provided they apply within the stated time limits?

Q.11 Number of responses to question: 38			
	Agree	Disagree	Unsure
Number	24	2	12
%	63	5	32

Amendments to the Chiropractors Act 1994

Q12. Do you agree that these UK trained chiropractors who have been working overseas should have their qualifications recognised when they return to the UK, provided they apply within the stated time limits?

Q.12 Number of responses to question: 37			
	Agree	Disagree	Unsure
Number	22	1	14
%	59	3	38

Amendments to the Nursing and Midwifery Order 2001

Q13. Do you agree that the NMC should be given reserve powers to annotate their register so that suitably experienced persons without the relevant qualifications will nevertheless be able to act as prescribers of prescription only medicines during an emergency?

Q.13 Number of responses to question: 53			
	Agree	Disagree	Unsure
Number	27	14	12
%	51	26	23

Q14. Do you agree to allowing the NMC to determine who should sit on its practise committees?

Q.14 Number of responses to question: 54			
	Agree	Disagree	Unsure
Number	31	16	7
%	57	30	13

Annex C:

List of Respondents

Dr Ian Frayling	
Jane Pearson	NHS Blood and Transplant
Margaret Coats	General Chiropractic Council
Daniel Webster	Patient Liaison Group – Royal college of Surgeons
Duncan Forsyth	British Geriatrics Society
Jenny Higham	Imperial College London
Chris Derrett	
Oliver Dearlove	
Shaun Brookhouse	
Denice Wray	
Roisin Carruthers	
Wendy Scott	
Tahir Mahmood	Royal College of Obstetric and Gynaecology
Christopher Hallas	University College London
D Wieloch	
Alan Scally	
Mr MK Oak	
Nasim Mahmood	
Ros Tolcher	Southampton City PCT
Prof Paul Knight	Royal College of Physicians and Surgeons of Glasgow
Madeleine Anderson – Warren	British Association of Dramatherpists
Alison Highley	
Andrea Matthews	Community Health Councils in Wales
Ann Caldwell	Glodwick Health Centre
Claire Dent	
Ann Doveston	
Jane Naish	Royal College of Nursing
David Foord	NHS Direct
Carolyn Taylor	
I T Rowlands	
Prof Irving Taylor	Royal College of Surgeons of England
Suzanne Banks	Stoke on Trent PCT
Graeme Catto	General Medical Council
Mary-Lou Nesbit	Medical Defence Union
Alain Wainwright	Institute of Biomedical Science
*Sir Anthony Garrett	Association of British Dispensing Opticians
*Bob Hughes	Association of Optometrists
*Bryony Pawinska	College of Optomtrists
Susan Pirie	Association for Perioperative Practice
Prof Mike Greaves	University of Aberdeen
Jacqueline Foukas	British Medical Association
Peter Pinto	Nursing and Midwifery Council
Sushant Varma	
Evlynee Gilvarry	General Osteopathic Council
Jon Levett	General Optical Council
Terry Johnson	Voluntary Registration Council for Healthcare Scientists
Alison Ludlam	Wandsworth PCT
Peter Walsh	Action against Medical Accidents
Sally Aldridge	British Association for Counselling and Pscyhotherapy
Elaine Charters	Academy of Medical Royal Colleges
Dr Rodney Burnham	Royal College of Physicians
David Hewlett	Federation of Ophthalmic and Dispensing Opticians
Jan Armstrong	City Hospital, Sunderland, NHS Foundation Trust
Stephanie Croker	Medical Protection Society
Alastair Henderson	NHS Employers

Nick Bishop	Healthcare Commission
Richard Smith	Royal College of Ophthalmologists
Dr Philip Pearson	
Suzanne Rastrick	Dorset PCT
Gail Adams	Unison
Cheryl Adams	Unite – the Union

* joint response