Nursing and Midwifery Council (Constitution) Order 2008

Consultation Report : October 2008
Title: Nursing and Midwifery Council (Constitution) Order 2008

Author: DH/WD-Regulation

Publication Date: 26 Sep 2008

Target Audience: PCT CEs, NHS Trust CEs, SHA CEs, Care Trust CEs, Foundation Trust CEs, Medical Directors, Directors of Nursing, PCT PEC Chairs, NHS Trust Board Chairs, Special HA CEs, Directors of HR, Allied Health Professionals, GPs, Nurses, Midwives, Royal Colleges, Trade Unions.

Description: A summary response to the public consultation on the draft regulations setting out proposals for the Nursing and Midwifery Council (Constitution) Order 2008.

Cross Ref: Nursing and Midwifery (Amendment) Order 2008

Health Care and Associated Professions (Miscellaneous Amendments) Order 2008

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Nursing and Midwifery Council (Constitution) Order 2008

Consultation Report: October 2008

Prepared by Tina Townsend-Greaves
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Executive summary

On 7 July 2008, the Department published a consultation paper, Nursing and Midwifery Council (Constitution) Order 2008 accompanied by a draft Order to take forward the reforms identified in the White Paper, Trust, Assurance and Safety – the regulation of health professionals in the 21st Century.

The issues included in the consultation order were:

- Composition of the NMC
- Terms of office of MNC members
- Standing orders in respect of education and training of members
- Criteria for disqualification for appointment as a member of the NMC
- Circumstances in which a member of the NMC may be removed from office
- Circumstances in which a member of the NMC may be suspended from office
- Provisions for the appointment, terms of office and cessation of the office of the Chair of the NMC
- Deputising arrangements in respect of the Chair
- Quorum of the NMC
- Validity of proceedings where this may be in doubt
Introduction

This paper sets out the Government’s position on the outcome of the consultation on the draft Nursing and Midwifery Council (Constitution) Order 2008.

The consultation paper was published from the 7th July 2008 until the 1st September 2008 on the Department of Health’s website. The Department emailed a weblink of the consultation paper to interested professional bodies, patient groups and professionals.

Background

The White Paper Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century (published in 2007) set out a substantial programme of reform to the United Kingdom’s system for the regulation of health care professionals. This was based on consultation on the two reviews of professional regulation published in 2006: Good doctors, safer patients and The regulation of the non-medical health care professions.

Chapter One of the White Paper (Assuring independence: the governance and accountability of the professional regulators) including a number of recommendations in relation to the constitution of professional regulators. These included:

- The Councils of the regulatory bodies should have, as a minimum, parity of membership between lay and professional members to ensure that purely professional concerns are not perceived to dominate their work.
- To enhance public confidence in the health care professional regulators, Council members should be independently appointed.
- To enable Councils to focus more effectively on strategy and the oversight of their executives, they should become smaller and more board-like, with greater consistency of size and role across regulatory bodies.

In 2008 Niall Dickson chaired a Group examining aspects of the White Paper ‘Trust, Assurance and Safety’ and their reports recommended no groups should have guaranteed places on the Council and that members, including registrant once, should be appointed because of their experience, knowledge and judgement.

The recently published CHRE ‘Special report to the Minister of State for Health on the Nursing and Midwifery Council’ also recommended that there should be no representative members on the new Council and no reserved places for interest groups. All members, whether registrant or public, should be appointed against defined competencies and subject to appraisal.

The Nursing and Midwifery (Amendment) Order 2008 (the NMAO 2008) made a number of changes to the constitutional arrangements for the Nursing and Midwifery Council (NMC) which are consistent with these recommendations. Instead of the constitutional details of the NMC being set out in the Nursing and Midwifery Order 2001 (the NMO 2001) these details will now be set out in a separate Constitution Order made by the Privy Council.
The draft Order sets out the new constitutional arrangements for the NMC.

Consultation process

The consultation took place over a three-month period between 7th July 2008 and 1st September 2008.

Respondents were requested to fill in a questionnaire response form and return either electronically or by post to the Department. In total 76 responses were received, with 3 responses made in the form of a general letter reply rather than replying to the questionnaire. All responses were reviewed as part of the consultation process.

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

Annex B identifies all those who wished to be identified in responding to the consultation. Nine responses were anonymous or the individual did not wish for their names to be published and therefore their names are withheld.

Annex A shows a breakdown of the number of responses to each of the questions in the consultation document. Below is a summary of consultation responses received in response to the questions and the Governments position on these.

Q1. Do you agree that the Council of the NMC should consist of 7 registrant members and 7 lay members?

- The majority, 57% of those respondents who expressed a view did not support this proposal, with 39% agreeing and 3% unsure. 1% did not answer.

- A large number of respondents expressed the view that there should more than 14 members of the Council. Up to 24 members was suggested, with a preference for 8 lay and 8 registrant members comprising one nursing and one midwifery representative from each of the four countries.

- Several individuals felt that there should be preserved places on the NMC for nursing and midwifery representatives with a small number being in favour of a totally separate Council for midwives.

- Several individuals thought that there should be a majority of registrant members.

- Over recent years, most of the health professions regulators have made changes to provide greater reassurance that they are even-handed in their deliberations and decisions but perceived dependence, or attachment to, a particular interest has continued to weaken or threaten confidence in those actions. The composition of the regulators is central to those perceptions. Firstly, some are seen to be partial to
professionals as they form a majority on their Councils. Secondly, some are seen to be partial because their councils are thought to be elected to represent the particular interests of health professionals.

- This Order seeks to enhance public confidence by ensuring members are independently appointed; that there is parity between lay and professional members to ensure purely professional concerns are not perceived to dominate proceedings and to facilitate a smaller and more board-like Council able to focus more effectively on strategy and oversight of their executives in line with other Regulatory bodies.

- The Niall Dickson chaired Group recommendation there should be no guaranteed places on the Council and that members, including registrant ones, should be appointed because of their experience, knowledge and judgement. The recently published CHRE ‘Special report to the Minister of State for Health on the Nursing and Midwifery Council’ also recommended there should be no representative members on the new Council and no reserved places for interest groups, all members being appointed against defined competencies and subject to appraisal.

- In view of this the Government has decided not to change its proposals that the NMC Council should consist of 7 lay and 7 registrant members.

Q2. Do you agree that the Privy Council (Appointments Commission) should determine the duration of the term of office of each NMC member on appointment?

- The majority, 75% of those respondents who expressed a view supported this proposal, with 12% disagreeing and 13% unsure.

- Overall there was strong support that the Privy Council (Appointments Commission) should determine the duration of the term of office of NMC members on appointment as the consultees felt that this would maintain continuity whilst introducing new skills and competencies. The Government agrees with this.

Q3. Do you agree that no member should hold office for more than an aggregate of 6 years?

- The majority 92% of those respondents who expressed a view supported this proposal, with only 4% who did not and 4% unsure.

- Again, the majority were in agreement with this proposal feeling that it was important for the dynamic of the council that membership was refreshed. The Government agrees with this.

Q4. Do you agree that service on the NMC, either prior to or since 31 July 2006 should be included when calculating the total aggregate that any member may serve?

- The majority 76% of those respondents who expressed a view supported this proposal, with 15% who did not and 8% unsure. 1% did not answer.
• Amongst those disagreeing with the proposal there was little consistency in the reasons given for this. Opinions ranged from no credit for previous service to crediting a maximum of 3 years; members having the opportunity to serve for 8 years, and that having the right person in the job was more important than the time therein. There was small support to just to count service from 31 July 2006 onwards.

• Those agreeing with the proposal felt that it was fair and consistent, and whilst not very satisfactory, was probably the best idea at present.

• The Government, whilst recognising the need for continuity and stability feels that it is necessary for the NMC to develop and adapt to meet changing circumstances. The Government believes that the proposal to include service since prior to or since 31 July 2006 in aggregating a members service provides a reasonable balance between the need to allow current members to continue to serve on the council, and the wish to bring in new members.

Q5. Do you agree that the NMC should have the flexibility to make arrangements for the provision of education and training of Council members with another body?

• The majority 88% of those respondents who expressed a view supported this, with only 7% who did not and 5% unsure.

• Concerns were expressed that care should be taken to select suitable outside training providers and that financial considerations should not be the driving force.

• The overriding feeling was that a suitable programme of induction, education and training would enhance the Council. This provision would allow flexibility to select the most appropriate educational provisions. The Government agrees with this.

Q6. Do you agree with the reasons for disqualifying a person from appointment as a member of the NMC? If not, please specify which reasons you disagree with and explain why.

• The majority 77% of those respondents who expressed a view supported this, with 17% who did not and 7% unsure. 1% did not answer.

• There was concern that crimes committed overseas were treated differently to those committed in the British Isles. However the order includes the provision for disqualification if a person has at any time been convicted in the British Isles of a criminal offence, or elsewhere of an offence which if committed in any part of the British Isles would constitute a criminal offence.

• There was concern from those who disagreed that there may be former crimes that would no longer be deemed criminal today and that ex offenders and ‘spent’ crimes should not automatically preclude appointment.

• The Government has decided in light of consultation that spent convictions should not be a reason for disqualification as a member of the NMC and that the Privy Council
(Appointments Commission) should be left with the discretion as to how to treat overseas convictions.

Q7. Do you agree with the reasons given for removing or suspending members from office? If not, please specify which reasons you disagree with and explain why.

- The majority, 86% of those respondents who expressed a view supported this proposal, with only 7% who did not and 7% unsure.

- The majority agreed that those sitting in judgement of others demonstrate probity and integrity.

- Amongst those expressing reservations include the NMC who had concerns that the reference to physical or mental health in light of the Disability Rights Commission Report. However, they accepted that in this instance the provision relates to fitness to carry out duties rather than the level of an individual’s health. All appointments will be made by the Appointments Commission, who are required to follow guidance issued by the Commissioner for Public Appointments. The appointments procedure will provide those legal safeguards to ensure that there will be no negative impact on this group.

- Several individuals felt that further detail was required especially with regard to expected levels of attendance. However the Order specifies that regard should be taken of the minimum levels of attendance the Council have set in their standing orders and if there was reasonable cause for the absences.

- The majority agree with this question. The Government has made some technical adjustments in the light of further discussions with the NMC and other health professional regulators whose constitutional arrangements are also under review.

Q8. Do you agree that the term of office of the Chair should be determined by the Privy Council on appointment?

- The majority 79% of those respondents who expressed a view supported this proposal, with 17% who did not and 4% unsure.

- Amongst those expressing reservations their supporting comments reflected a feeling that the Council should elect it’s own chair.

- There was no disagreement with the proposed maximum term of office.

- In the interest of public accountability the Government agrees with the majority that the term of office of the Chair should be determined by the Privy Council on appointment.

Q9. Do you agree with the reasons why a member should cease to be a Chair?

- The overwhelming majority, 95% of those respondents who expressed a view supported this proposal, with only 1% who did not and 4% unsure.
• One individual felt that these should be extended to instances where they have lost the confidence of the profession they are regulating as well as their fellow Council members.

• Satisfaction was expressed that any vote of no confidence had to be through a majority of the whole Council and not simply a majority at a quorate meeting.

• The majority agree with this question. The Government agrees with this.

Q10. Do you agree with the deputising arrangements in respect of the Chair?

• The majority 89% of those respondents who expressed a view supported this proposal, with 11% who did not.

• Amongst the minority expressing reservation there was a feeling that a vice chair elected at the outset would be a better alternative.

• Overall, the majority were in favour, feeling that this option allowed flexibility, forward planning and consistency provided the competencies of the role of the Chair are reflected in the deputy Chair role. The Government agrees with this.

Q11. Do you agree that the quorum of the NMC should be 8?

• 46% of those respondents who expressed a view did not support this proposal, whilst 46% did and 8% were unsure.

• The majority who disagreed felt that 8 was insufficient. Suggestions for a more suitable quorum ranged from 9 to 80% of the Council. However many of these suggestions were linked to a desire to see an increase in the size of the Council from 14.

• There was also expressed a desire for a specified number of laypersons and registrants, nurses and midwives in any quorum.

• The Government notes these reservations. However, the Government’s view is that the proposed membership of 14 with no minimum number of registrant or lay participants is the correct one (see Q1). Overall responses favouring a membership of 14 supported a quorum of 8 and the Government agrees with this.

Q12. Do you agree with the provisions that prevent the NMC being invalidated?

• The majority 82% of those respondents who expressed a view agreed with this question, with only 3% who disagreed and 14% unsure. 1% did not answer.
Reservations were expressed about ideas being advanced where people present should be suspended, however it was accepted that this was consistent with the Council’s proposals. The importance of maintaining a schedule of meetings was also acknowledged.

The majority agree with this question. The Government agrees with this.

Conclusion

We are grateful to everyone who took time to respond to the consultation. Overall, the response was positive. However, in answer to the question about the size of the Council 43 of the respondents disagreed. Views on the size of the council varied from those suggesting that the current size should be retained to those that said it should be reduced to 16, with 8 registrant members comprising one nursing and one midwifery representative from each of the 4 countries plus 8 lay members. Several respondents considered that there should continue to be a registrant majority on the Council.

As regards the balance of lay and registrant members, the White Paper Trust, Assurance and Safety made clear in order to ensure that purely professional concerns are not though to dominate their work, the Councils of the regulatory bodies should have, as a minimum, parity of membership between lay and professional members. This point was also made clear in the consultation on the Constitution Order, and in the CHRE ‘Special report to the Minister of State for Health on the Nursing and Midwifery Council’. We do not consider that there is any justification for departing from our established position on the question of an equal balance of lay and registrant members, notwithstanding the opposition that has been voiced.

As regards overall size the proposed Council of 14 appointed members received more support than any of the proposed alternatives. It is in line with recommendations from the above bodies to facilitate smaller and more board-like Councils able to focus more effectively on strategy and oversight of their executives in line with other Regulatory bodies. This will disappoint in particular those seeking a larger Council, with specific representation for each home country and/or different parts of the NMC’s register.

The most divisive issue is that there will be no places reserved on the Council for registrants from each part of the register. The NMC register is divided into three parts, two for nurses (one of those being for specialist community public health nurses) and one for midwives. The greatest anxiety is on the part of midwives, who fear being regulated by a body on which the profession is not directly represented. However the directions do contain a ‘balance provision’ that points the Appointments Commission in the direction of having an appropriate range of backgrounds and experiences on the Council.

In the light of the CHRE Report, officials are anxious that all the members of the newly constituted Council should not see themselves as ‘representatives’ as such of any particular interest, and should see themselves instead as there to do the job of regulating both professions, nurses and midwives, whatever their particular personal background. It was a specific recommendation at the end of the CHRE Report that “There should be no representative members on the new Council and no reserved places for interest groups”. Despite the strength of feeling in some quarters, nothing has been said that persuades us to go against this recommendation.

The consultation and subsequent discussion with the regulatory bodies has raised a number of points on the disqualification criteria, which are reflected in revisions to the Order. For example, the disqualification criteria now exclude spent convictions as a reason for
disqualifying, suspending or removing a person from office, and the Privy Council (Appointments Commission) have the discretion as to how to treat overseas convictions.

The Order has now been granted Ministerial and Privy Council approval. It was laid before Parliament on 6 October.
Annex A:

Set out below are the questions included in the consultation on the Nursing and Midwifery Council (Constitution) Order 2008, together with a summary of responses.

Analysis

Q1: Do you agree that the Council of the NMC should consist of 7 registrant members and 7 lay members?

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<tr>
<td>Number</td>
<td>30</td>
<td>43</td>
<td>2</td>
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<tr>
<td>%</td>
<td>39%</td>
<td>57%</td>
<td>3%</td>
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Q2: Do you agree that the Privy Council (Appointments Commission) should determine the duration of the term of office of each NMC member, on appointment?

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<td>Number</td>
<td>57</td>
<td>9</td>
<td>10</td>
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<td>%</td>
<td>75%</td>
<td>12%</td>
<td>13%</td>
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Q3: Do you agree that no member should hold office for more than an aggregate of 6 years?

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<tr>
<td>Number</td>
<td>70</td>
<td>3</td>
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<tr>
<td>%</td>
<td>92%</td>
<td>4%</td>
<td>4%</td>
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Q4: Do you agree that service on the NMC, either prior to or since 31 July 2006, should be included when calculating the total aggregate that any member may serve?

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<tr>
<td>Number</td>
<td>58</td>
<td>11</td>
<td>6</td>
<td>1</td>
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<tr>
<td>%</td>
<td>76%</td>
<td>15%</td>
<td>8%</td>
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Q5: Do you agree that the NMC should have the flexibility to make arrangements for the provision of education and training of Council members with another body?

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<tr>
<td>Number</td>
<td>67</td>
<td>5</td>
<td>4</td>
<td>-</td>
</tr>
<tr>
<td>%</td>
<td>88%</td>
<td>7%</td>
<td>5%</td>
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</table>

Q6: Do you agree with the reasons for disqualifying a person from appointment as a member of the NMC? If not, please specify which reason you disagree with and explain why.

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</table>
Q7: Do you agree with the reasons given for removing or suspending members from office? If not, please specify which reasons you disagree with and explain why.

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<td>58</td>
<td>12</td>
<td>5</td>
<td>1</td>
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<tr>
<td>%</td>
<td>77%</td>
<td>16%</td>
<td>7%</td>
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Q8: Do you agree that the terms of office of the Chair should be determined by Privy Council on appointment?

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<tr>
<td></td>
<td>66</td>
<td>5</td>
<td>5</td>
<td>-</td>
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<tr>
<td>%</td>
<td>86%</td>
<td>7%</td>
<td>7%</td>
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Q9: Do you agree with the reasons why a member should cease to be Chair?

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<th>Support</th>
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<th>Not answered</th>
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<tbody>
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<td>72</td>
<td>1</td>
<td>3</td>
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<tr>
<td>%</td>
<td>95%</td>
<td>1%</td>
<td>4%</td>
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Q10: Do you agree with the deputising arrangements in respect of the Chair?

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<th>Support</th>
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<tr>
<td></td>
<td>68</td>
<td>8</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>%</td>
<td>89%</td>
<td>11%</td>
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</table>

Q11: Do you agree that the quorum of the NMC should be 8?

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<th>Number</th>
<th>Support</th>
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<td></td>
<td>35</td>
<td>35</td>
<td>6</td>
<td>-</td>
</tr>
<tr>
<td>%</td>
<td>46%</td>
<td>46%</td>
<td>8%</td>
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Q12: Do you agree with the provisions that prevent NMC proceedings being invalidated?

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<th>Number</th>
<th>Support</th>
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<tbody>
<tr>
<td></td>
<td>62</td>
<td>2</td>
<td>11</td>
<td>1</td>
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<tr>
<td>%</td>
<td>82%</td>
<td>3%</td>
<td>14%</td>
<td>1%</td>
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</table>
Annex B:

List of Respondents whom gave permission to list their names

UNISON Health Care
UNITE Health Sector
Nursing and Midwifery Council
Independent Midwives Association
Royal College of Midwives UK
Association for Improvements in the Maternity Services
Royal College of Midwives UK Board for Wales
NCT
Association of Radical Midwives
Senior Midwives, Cardiff & Vale NHS Trust
Salisbury Supervisors of Midwives
Supervisors of Midwives Group, Princess Royal Maternity, Glasgow
Supervisors of Midwives, Guy’s & Thomas’ NHS Foundation Trust
Supervisors of Midwives, Princess Alexandra Hospital Trust
Midwifery lecturers, Napier University, Edinburgh
CNO (England) Partnership Group with the Independent Sector
West Midlands Association of Hospice Nurse Managers
NES
Health and Personal Social Services, NI
Pharmaceutical Society of Northern Ireland
Health Professions Council
BMI Healthcare
The Queen’s Nursing Institute

Andrea Matthews  Board of Welsh Community Health Councils
Lynne Moody       Lincolnshire Teaching PCT
Caroline Oakley   Hywel Dda NHS Trust
Jane Naish       Royal College of Nursing

Julie Burgess
Alison Binns
Mark Heath
Kay Wooler
Jan Snodden
Ron Luton-Brown
Sandra Christie
Jackie Hutchinson
Debbie Barnes
Dr Jean White
Sharon Graham
Karen Selwood
Kevin McKenna
Mary Brady
Rick Robson
Rachel Byatt
Mark Madams
Mertha Nyamande
Carole Beetham
Theresa Jones
Jo Disney-Spears
Ann Flint
Jane F Evans
Elizabeth Mansion
Penelope J Smith
Jane Truman King
Sara McAleese
Suzanne Truttero
Deborah Purdue
Gail Bell
Alison Ewing
Lorna Campbell
Susan Whillock
Angela Horler
Louise Wilby
Kerry Taylor
Sue Jackson
Maddie McMahon
Angela Hewitt
Siobhan Scanlan
Dr Elizabeth Cluett
Wendy Randall