

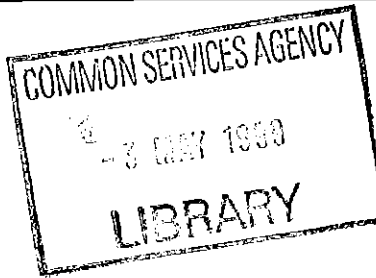


THE SCOTTISH OFFICE

Department of Health

**NHS
MEL(1999)12**

NHS Management Executive
St. Andrew's House
Edinburgh EH1 3DG



Dear Colleague

REVIEW OF THE NURSES, MIDWIVES & HEALTH VISITORS ACT

Government Response to the Recommendations

1. This letter encloses:
 - (i) a copy of the report of the independent review by JM Consulting: "The Regulation of Nurses, Midwives and Health Visitors: report on a review of the Nurses, Midwives and Health Visitors Act 1997"; and
 - (ii) a copy of the Government response (Annex A).

2. Annex A includes details of the Government's response to the report's recommendations, and highlights a number of issues on which we would welcome comments. It also explains what will happen next in terms of consultation on new legislation.

Background

3. In August 1997 the Government commissioned independent consultants, JM Consulting Ltd to undertake a review of the Nurses, Midwives & Health Visitors Act 1997. Their report was submitted a year later.

Changes to the regulatory structure in Scotland

4. Of particular interest in Scotland will be the proposal to abolish the National Board for Nursing, Midwifery and Health Visiting for Scotland (NBS) along with the other four bodies which form the current regulatory structure.

9 February 1999

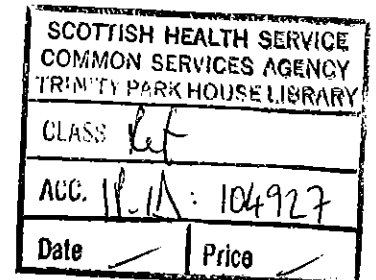
Addressees

For action
 Chief Executives, NHS Trusts
 General Managers, Health Boards
 Executive Nurse Directors,
 NHS Trusts
 Directors of Nursing, Health Boards
 Heads of Academic Departments
 of Nursing
 National Board for Nursing,
 Midwifery & Health Visiting for
 Scotland
 United Kingdom Central Council
 for Nursing, Midwifery & Health
 Visiting
 Professional Organisations
 Council of Deans & Heads of
 UK Faculties for Nursing,
 Midwifery & Health Visiting
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 Patients' Organisations
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The report proposes, and the Government accepts, that there should in future be a new single, integrated, regulatory Council for the whole of the UK. The report proposes measures to ensure that the new Council liaises effectively within Scotland:

"The Council should meet, on a rotating basis, in England, Scotland, Wales and Northern Ireland. It should have offices in all four countries and a senior officer based in each, so that liaison with national interests is assured."

5. The report recognises that functions currently carried out by the NBS could in future be carried out either by a Scottish arm of the new Council, or by a separate Scottish body on behalf of the Council. The Government believes that how this is taken forward should be a matter for the Scottish Parliament to decide. The Government response states that:

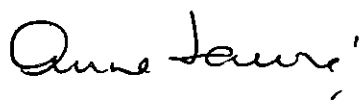
"Each country will be free, if it wishes, to establish national arrangements outside the statutory framework for policing the standards set by the UK body. For Scotland and Wales, the Government would expect the new Council to commission educational quality assurance work in relation to nursing, midwifery and health visiting from bodies whose structure and other functions would be determined by the Scottish Parliament and the National Assembly for Wales."

The National Board for Nursing, Midwifery and Health Visiting for Scotland (NBS)

6. The NBS has played an outstanding part in assessing and promoting quality in nursing and midwifery education in Scotland since its inception in 1983. Its officers and staff have maintained high standards of professionalism and efficiency, and a commitment to a sound research base. Nursing and midwifery education in Scotland has been by far the richer for their contribution.

7. The future of this work in Scotland is now set to be determined by the newly elected Scottish Administration within the framework of new UK-wide legislation. Today's Government response makes it clear that the Scottish Administration will have considerable flexibility to choose appropriate arrangements as it sees fit. In doing so, it will be able to build on the achievements of the NBS, preserving continuity as appropriate and developing an enhanced role to meet the needs of Scotland.

Yours sincerely



MISS ANNE JARVIE
Director of Nursing

GOVERNMENT RESPONSE TO THE REVIEW OF THE NURSES, MIDWIVES AND HEALTH VISITORS ACT

SUMMARY

In August 1997 the Government commissioned independent consultants JMConsulting Ltd to undertake a review of the Nurses, Midwives and Health Visitors Act. Their report was submitted a year later and a copy is enclosed with this response.

The report identifies a number of weaknesses in the current Act and makes recommendations for new legislation. We believe that the criteria and principles proposed are sensible, and that the recommendations reflect the broad consensus view of the many organisations and individuals who were consulted during the review.

This document highlights the key recommendations and our response to each. The review team clearly sought opportunities to consult widely at an early stage in their work and we do not therefore propose to consult again on all the recommendations. However, there are some issues in this response on which we would welcome views. These are highlighted within the text, and page 11 lists them together with details of where to send comments.

There are many demands on the legislative timetable and a number of changes to the legislation regulating various health professions which the professions and the Government would like to see introduced. It is widely accepted that there is a need to find a way to implement these changes and a power has been included in the Health Bill, currently subject to Parliamentary scrutiny, to effect changes to primary legislation by Order. The Government accepts that there should be some limitations on the scope of the power. It may not be used to abolish a statutory body. The Government considers that the repeal of an Act requires primary legislation. We therefore propose an amendment to the Health Bill to make provision to repeal the Nurses, Midwives and Health Visitors Act 1997. The repeal provision would not be brought into effect until replacement arrangements are in place. Other safeguards, which will be statutory requirements, are full consultation with interested parties, publishing the Order, at least three months before it is put before Parliament, and the use of affirmative procedures for Parliamentary scrutiny.

Following consultation on the issues raised in this document, subject to the enactment of the Health Bill, the Government will publish specific proposals for new legislation.

INTRODUCTION

JM Consulting were commissioned to conduct an independent review of the Nurses, Midwives and Health Visitors Act 1979 (as amended 1992 and consolidated 1997). The terms of reference are given at Appendix A of their report. In putting their recommendations to Government, the review team highlighted weaknesses in the current system of regulation established by the Act. In proposing new legislation, they state that there should be:

- a clear line of accountability for regulatory arrangements
- a scheme that is valued and respected by professionals being regulated
- arrangements that clearly indicate that public safety is the main purpose
- flexibility to respond to changes in education and practice

Many of the recommendations in the report reflect issues of good practice and are addressed to the statutory bodies, employers and the professions. Others require new legislation to replace the existing regulatory structure with one that is more modern and responsive.

The following pages summarise the main recommendations and our response to these. In some cases, we are seeking further views on the recommendations. These are clearly highlighted in the text and summarised on page 11.

CONSTITUTION

Recommendations

Establish a Nursing and Midwifery Council to replace the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (UKCC) and the four National Boards.

The Council to have 24-27 members as a central strategic body, with equal representation of elected nurses and midwives from each UK country, a professional majority and a minimum of one third lay members.

Two joint (nursing and midwifery) policy committees to deal with Registration Standards and Professional Development; and a third with Resources and Planning.

The Council to decide, having due regard to each profession, the structures and rules for the committees, ensuring that neither one profession can be outvoted by the other on matters solely affecting that profession.

The appointment of a Director of Nursing Regulation and a Director of Midwifery Regulation.

This new Council to have ultimate control of the regulatory process and ownership of setting and monitoring standards.

Each country to be free, if it wishes, to establish national arrangements outside the statutory framework for implementing the standards set by the Council.

Response

We accept the majority of these recommendations. However, we do not agree with the recommendation that health visitors should cease to have representation on Council. We propose that there should be equal representation of elected nurses, midwives and health visitors from each country. We would emphasise the importance of the Council's responsibility to ensure that its procedures do not allow any one of these professions to be outvoted by the others on matters of sole concern to that profession. The Council should choose a President and Vice-President from among its members.

IMPROVING ACCOUNTABILITY

The new Council will remain accountable to Parliament through the Secretary of State for Health. We propose that the Secretary of State for Health should have a default power (as in other schemes). However, this would not apply to individual decisions on admission to the register or on unfitness to practise.

FUNCTIONS: Education***Recommendations***

The Council should define standards in terms of outcomes of courses of education leading to registration as fit to practise.

The Council should develop policies to ensure that these outcomes are achieved.

The Council should ensure that the functions of (i) accreditation of institutions and (ii) quality assurance of courses are carried out to an appropriate standard, either directly, or by commissioning another body to do this work on its behalf.

Response

The functions of approving institutions and courses are currently undertaken by the National Boards. Under the new arrangements a single UK-wide statutory body will have ultimate responsibility for setting and monitoring standards of education. We envisage that national arrangements may be made for overseeing the implementation of the standards set by the UK body. For Scotland and Wales, the Government would expect the new Council to commission educational quality assurance work in relation to nursing, midwifery and health visiting from bodies whose structure and other functions would be determined by the Scottish Parliament and the National Assembly for Wales. Within Northern Ireland it will be up to the Northern Ireland Assembly, once it is fully operational, to determine the arrangements. No separate body is envisaged for England, although it would be open to the Council to collaborate with the Quality Assurance Agency.

FUNCTIONS: Fitness to practise***Recommendations***

The report credits the current Council on its work to date and suggests that the new Council should have additional powers in dealing with misconduct, poor performance and health issues. It also suggests that the Code of Conduct and other guidance should be revised and consolidated, allowing decisions of conduct committees to be linked to this.

Response

This is in line with the Governments' commitment to work with the professions to strengthen and modernise professional self regulation.

The new register will include marks against registrant's entries to indicate enrolled nurse status, specialisms (within nursing) and higher level qualifications. A further level of public protection can be afforded by making it possible for these marks to be removed (for example, on the grounds of unfitness to practise or failure to meet periodic reregistration conditions) without the practitioner being removed from the register.

The intention will be to place an explicit duty on the Council for dealing with cases of poor performance, conduct and health. We propose to give the Council:

- a sanction of conditional registration.
- the scope to deal with cases through mediation and conciliation before moving to formal proceedings.

We would welcome views on introducing a sanction of 'reprimand' based on a lower level of proof.

Views are also invited on introducing arrangements for interested individuals (such as victims of abuse or their advocates) to appeal against decisions not to strike off a practitioner, or to restore him, and to be present at restoration hearings.

FUNCTIONS: Fitness to Practise: Midwifery Supervision

Recommendation

At present, midwifery is regulated under detailed rules made by the Council and supervised by Local Supervising Authorities and the report suggests that the new Council should have discretionary powers to make rules for statutory supervision.

Response

In the longer term it may be the case that arrangements for the supervision of midwives, and those concerning other professions, will change as clinical governance develops. For the time being, however, it is proposed that the Council will continue to have a duty to make rules on midwifery practise, and that the role of Local Supervisory Authorities will continue.

SUPPORT WORKERS

Recommendation

The Government should establish a short review, with the aim of introducing a practical scheme of regulation.

Response

The review further exposed concerns about the threat to public protection posed by some unregulated support workers. The Government will commission a short review, as recommended. This review will take account of the Government's proposals for a General Social Care Council in England published in the Social Services White Paper *Modernising Social Services*.

Scottish Office Ministers will publish a White Paper in March setting out proposals for a new regulatory framework for residential and nursing homes and for domiciliary care. The proposals will also include provision for regulating the workforce and for their education and training.

COSTS AND IMPLEMENTATION

Recommendations

Consideration of opportunities to streamline the organisation and introduce proper discipline on costs.

Implementation group to be established to implement those arrangements not requiring legislation and to manage the transition to the new arrangements.

Response

The new Council will be funded from registrants' fees. However, there may be occasions where the Health Departments might wish to commission special projects, and there may also be a case for assistance with transitional costs.

We do not believe that the bodies which are to be dissolved should have a decisive influence over their successors. We propose a Steering Group to handle the implementation, with an independent chair, and would welcome views on the composition of such a group.

NEXT STEPS

Following discussions with the regulatory bodies, the Government is including a power in the Health Bill, currently going through the Parliamentary process, to enable legislation regulating the professions to be amended or replaced by Order. However, the scope of the power will be subject to statutory limitations.

We propose that the Nurses, Midwives and Health Visitors Act 1997 be repealed under the Health Bill. Replacement legislation, by Order, will be subject to full consultation, the publishing of the Order in draft, and the use of affirmative procedures for parliamentary scrutiny.

Subject to views on the issues raised in this document, specific proposals for new legislation will be published for consultation, giving the opportunity for debate on all the issues.

COMMENTS ON ISSUES HIGHLIGHTED IN THIS DOCUMENT

The issues on which we have invited comments are :

FUNCTIONS: General

We would welcome views on whether the duty to collaborate with other stakeholders should be reciprocal.

FUNCTIONS: Protection of Title/Function

We would welcome your views on the suggestion that the title of 'nurse' be protected

FUNCTIONS: Fitness to Practice

We would welcome views on introducing a sanction of 'reprimand' based on a lower level of proof.

Views are also invited on introducing arrangements for interested individuals (such as victims of abuse or their advocates) to appeal against decisions not to strike off a practitioner, or to restore him, and to be present at restoration hearings.

Comments should be sent, within six weeks of the date of this circular, to:

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EH1 3DG

