Title: Nursing And Midwifery Council (NMC) Statutory Supervision and Fitness to Practise Section 60 Order
IA No: DH8067

RPC Reference No: RPC-3460(1)-DH
Lead department or agency: Department of Health
Other departments or agencies: N/A

Impact Assessment (IA)

Date: 13/07/2016

Stage: Final

Source of intervention: Domestic

Type of measure: Secondary legislation

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Summary: Intervention and Options

RPC Opinion: fit for purpose

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANDCB in 2014 prices)	**One-In, Three-Out**	**Business Impact Target Status**
£59.66m	£0.12m	0.0	In Scope	Qualifying provision

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

There are two issues which, because of legislative change need government intervention: the removal of supervision of midwives from statute and amendment to the NMCs fitness to practice procedures to make them more efficient.

Statutory supervision of midwives has a weak regulatory purpose due to the nature of professionals being both regulated and supervised by their peers. The dual role of the supervisor providing support as well as a regulatory function is a conflict of interest. Furthermore, the NMC lacks control over the initial investigative process in the event of a fitness to practise complaint being made about a midwife. Various reports question whether this is the most effective regulatory model for this profession, which brings into question whether it is in the public interest. There is a further requirement for an amendment to the NMCs fitness to practise procedures, as there is scope for efficiency savings and increased speed in which cases are handled. Public protection can be improved, as well as an improved experience for registrants undergoing a fitness to practise investigation.

What are the policy objectives and the intended effects?

The policy objective is to take midwifery supervision out of statute which will separate supervision and regulation of midwives, and thus give the NMC direct control of regulatory activity. As a result, midwifery regulation will be brought in line with the other healthcare professions. A single, clear, regulatory process, under the control of the NMC, will address the weaknesses identified in the current system. In terms of the fitness to practise amendments, the policy objective is to improve the efficiency and speed at which fitness to practise investigations are carried out. Thus, leading to public protection benefits, and efficiency savings.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

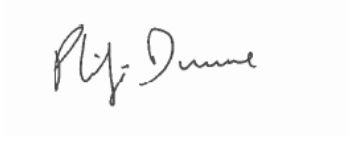
Option 1 – Do nothing.

Option 2 – Remove the additional layer of legislation to enable the NMC to take direct responsibility and accountability solely for the core functions of regulation. The current regulation in place for statutory supervision of midwives, and the extended role of the NMC over statutory supervision, should end. Alongside this is the introduction of secondary legislation, for improved fitness to practise procedures to improve efficiency of various fitness to practise processes. This is the preferred option in order to achieve the policy objectives.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** N/A

Does implementation go beyond minimum EU requirements?		N/A		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** No	**Large** No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 19.12.2017

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing: The NMC will remain without full control of regulatory processes for midwives i.e. statutory supervision will continue, and the NMC's fitness to practise processes will remain.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

Zero. This is the do nothing option and consequently no additional costs will be incurred by any party.

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

Zero, please see above.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

Zero. This is the do nothing option and consequently no additional benefits will accrue to any party.

Other key non-monetised benefits by 'main affected groups'

Zero, please see above.

Key assumptions/sensitivities/risks

Discount rate N/A

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	**Benefits:**	**Net:**	

Summary: Analysis & Evidence

Policy Option 2

Description: Introduce secondary legislation that will enable the NMC to make changes to the administrative proceedings of their fitness to practise activities. This would include the introduction Case Examiners with the power to agree warnings and undertakings with registrants.

Price Base Year 2015	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 45.98	High: 73.44	Best Estimate: 59.66.

COSTS (£m)	Total Transition (Constant Price)	Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.8		0.0	**0.8**
High	1.0		0.4	**4.1**
Best Estimate	0.9		0.2	**2.4**

Description and scale of key monetised costs by 'main affected groups'

The main cost anticipated from the removal of statutory supervision is down to the fact that the NMC will have to deal with an increase in the number of fitness to practise referrals, which will previously have been dealt with by Local Supervising Authorities. The NMC estimate the range of expected increases in fitness to practise referrals to be between 0 and 104, which provides a low and high estimate of the costs expected.

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

There is expected to be some negligible impact on universities that will have to amend course content following the removal of statutory supervision to remove any part of the curriculum of the Preparation of Supervisor of Midwives course related to regulation.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0		5.9	**50.1**
High	0.0		8.8	**74.2**
Best Estimate	0.0		7.3	**62.1**

Description and scale of key monetised benefits by 'main affected groups'

The main benefit comes from the introduction of a power for case examiners to agree undertakings and issue warnings to registrants. This results in more proportionate fitness to practise investigations and will avoid costly full hearings for cases that can be resolved at an earlier stage.

Other key non-monetised benefits by 'main affected groups'

The NMC expect to gain an increased understanding of the midwifery workforce as they will deal with all Fitness to Practise complaints under the new model. With the amendments to the Fitness to Practise procedures, the NMC expect a more streamlined process, which will result in efficiency savings and increased public protection and public confidence in the system of professional regulation.

Key assumptions/sensitivities/risks **Discount rate** 3.5

There are no official statistics on the number of nurses/midwives that operate in the private sector so the best available data had to be used.

The savings generated from agreeing undertakings at the case examiner stage is from an NMC estimate of a % reduction in the number of cases that will reach a full hearing following the new policy. This is dependent on the types of cases the NMC receives in future and assumes it follows recent trends.

There exists uncertainty around the future model of midwifery supervision which has made it difficult to quantify some impacts. This will only be made certain following the introduction of these policies.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.0	Benefits: 0.0	Net: 0.0	Yes	Out

Evidence Base

Issue Under Consideration

1. This policy proposal aims to address two main issues that arise for the Nursing and Midwifery Council (NMC) and the Nursing and Midwifery profession under current legislation. These are:
    - Midwives are the only regulated clinical profession, where registrants subjected to a fitness to practise complaint can be investigated by their peers. This raises issues of conflict of interest and is an unnecessary additional layer of regulation in the Nursing and Midwifery Order (2001).
    - Current regulations constrain the scope for the NMC to make efficiency savings and increase the flexibility during their fitness to practise procedures.

2. Midwifery has an historical framework of statutory supervision, based on a model from 1902. Over recent years, multiple reports have criticised statutory supervision of midwives.

3. Following an investigation into complaints about maternity services at Morecambe Bay NHS Foundation Trust, the Parliamentary and Health Services Ombudsman (PSHO) published a report named *'Midwifery Supervision and Regulation: Recommendations for Change' (December, 2013).* This report found that midwifery regulation is structurally flawed as a framework for protection. Two key principles were identified to form the basis of proposals to change the system of midwifery regulation. These were:
    - That midwifery supervision and regulation be separated;
    - That the Nursing and Midwifery Council (the NMC) should be in direct control of regulatory activity.

4. Following these recommendations, the NMC commissioned the King's Fund to carry out their own review of statutory supervision in the UK. The King's Fund's core recommendation arising from this review is that '*The NMC as the leading healthcare professional regulator should have direct responsibility and accountability solely for the core functions of regulation. The regulation pertaining to the NMC should be revised to reflect this. This means that the additional layer of regulation currently in place for midwives, and the extended role of the NMC over statutory supervision should end.'*

5. The current system allows for a perceived conflict of interest in that a midwife is investigated by peers when a complaint is made about their practice. Although changes to the Nursing and Midwifery Order 2012, went some way to tackling this, the problem still remains. Giving the NMC full control of regulatory activity and separating this from professional supervision will achieve the independence that professional regulation should encompass. This will bring midwifery regulation in line for all other healthcare professions.

6. Further to the removal of statutory supervision of midwives, the NMC have identified a number of areas, within the process of fitness to practice complaints, in which improvements can be made, both for the protection of the public and in terms of efficiency savings. The fitness to practise process is governed by statutory regulation and so, the NMC are restricted by this regulation when they carry out fitness to practise investigations. Therefore, there are costly procedures where there is scope for efficiency savings or scope for improvement in procedures. In order to improve public protection, a section 60 order must be completed in order to make changes to their fitness to practise process to achieve these savings.

7. A fitness to practise procedure is carried out when a concern is raised about a nurse or midwifes practice (often by an employer, member of the public or colleague). The NMC are then responsible

for investigating whether the professional has a case to answer, and then what action needs to be taken, whether it be as simple as providing advice to the professional under investigation, suspending them from practising, or striking them off the register altogether.

8. The NMC is responsible for regulating nurse and midwifery professionals working in the United Kingdom. The NMC is independent of: the professionals that it regulates; employers; and government. It operates solely to protect the public through maintaining a register. The rules and regulations under which the NMC operates are set by Government and Parliament, under the Nursing and Midwifery Order (2001) and subsequent secondary legislation. This system was originally designed in this way to ensure that the NMC operates in a way that delivers cost-effective healthcare regulation, and satisfactory levels of public protection. Also, legislation provides that, in addition to Parliament, the Privy Council is responsible for clearing any changes to the NMC's governing legislation, therefore making the regulator independent of government.

Rationale for Intervention

Statutory Supervision

9. As the professional regulator of midwives, it cannot be said that the NMC has clear oversight of all regulatory actions, due to the powers afforded to the Local Supervising Authority (LSA) and the Local Supervising Authority Midwifery Officer (LSAMO) to investigate and choose appropriate action in a fitness to practise case. The current system prevents some referrals being passed to the NMC, as a low level decision is made by the LSAMO not to investigate any further. Although there is an advantage here that low-level problems are proportionately addressed, it can lead to delays, or even prevent the appropriate referral of some cases.

10. Further to this, through consultation in the PHSO and King's Fund reports, it is clear that service users find the fitness to practise process to lack transparency and appear confusing. Often there are two investigations into the same issue occurring in tandem which may not necessarily provide the same outcome.

11. A major concern raised by the PHSO and King's Fund reports is that of a conflict of interest, or a perceived conflict of interest, which is damaging to public confidence in the regulatory system. Regulation of healthcare professionals should be totally independent by the nature of the intention of professional regulation. To have a system whereby it is possible for registrants whose fitness to practise may be impaired to be investigated by their peers goes against these core values of regulation, irrelevant of any mitigation attempts.

12. Removing this legislation and the additional layer of regulation over midwives will solve these issues by providing a transparent, clear, independent process for investigating fitness to practise concerns.

Fitness to Practise Procedures

13. The way the NMC operates in fitness to practise procedures is set out in the Nursing and Midwifery Order (2001). Following discussions with the NMC it has been identified that there is scope for improved public protection, confidence in the nursing and midwifery regulation, and efficiency savings. This can be achieved through changes to the fitness to practise processes that the NMC

must abide by. These improvements cannot be made by the NMC alone, without amendments to the Nursing and Midwifery Order via secondary legislation.

Policy Objective

14. The above amendments around statutory supervision and changes to the fitness to practise process will both contribute to the overall policy objectives of: improving public protection; increasing efficiency and stream line the fitness to practise procedures of the NMC; and increasing transparency and independence of professional regulation in order to improve public confidence in the regulatory system.

Options Considered

Option 1: Do Nothing

15. This would involve making no legislative change to the NMC's overarching legislative framework. Statutory supervision of midwives would remain, meaning midwives will continue to be regulated by their peers.

16. The current regulatory system for midwives is unlike any of the other professional regulators. The system has been found to be flawed by various reports. This has the potential to damage public confidence in the professional regulation of midwives, and the NMC if it is allowed to continue. The King's Fund review and PHSO report provide evidence to suggest that public safety may be at risk due to a conflict of interest between Supervisors of Midwives (SoMs) and the midwives that they investigate. Also, as a result of statutory supervision, the NMC lack control over the regulatory process and the investigation becomes blurred and confusing for women and their families. This is inefficient and undesirable from a regulatory point of view. Professional regulation by definition should be independent, clear and transparent.

17. Should statutory supervision continue, public confidence in the regulatory system of healthcare professionals could be diminished significantly which would have the potential to undermine the regulatory system for midwives in the UK. As a result, it is not considered satisfactory to do nothing.

Option 2 (preferred option): - Change legislation to; remove a layer of supervisory regulation to enable the NMC to take direct responsibility and accountability for the regulation of

midwives; remove the statutory requirement for the NMC to convene a Midwifery Committee and improve fitness to practise procedures.

Statutory Supervision

18. The preferred option ensures that the current regulation in place for statutory supervision of midwives, should end. The result is that:

    - The LSA will be removed from statute, along with the regulatory role of the LSAMO, an alternative, employer led, non-statutory model of midwifery supervision is currently being discussed and planned;
    - There will no longer be a statutory requirement for the regulatory role of the SoM though this role is expected to continue in the capacity of professional leadership and advice;
    - The NMC will take direct responsibility and accountability for the core functions of regulation.

19. This will remove the flawed system identified by the PHSO report and King's Fund review, of conflict of interest, falling public confidence, and issues surrounding public protection.

Fitness to Practise Procedures

20. The preferred option also entails a number of amendments to the fitness to practise procedures that a registrant, nurse or midwife, is subject to upon receipt of a complaint about their practice. A further piece of secondary legislation surrounding the fitness to practise process will grant the NMC powers to:

    - give case examiners the power to give warnings and advice at the investigation stage, and to agree undertakings at any time up to a final hearing and to review such undertakings at any time, including provisions to require all such decisions to be published to ensure transparency;
    - introduce a power for the Council to create a single pool of fitness to practise panel members in place of the current statutory practice committees, including the power to revoke or amend the current rules setting size limits on such panels;
    - extend the time limit for mandatory second and subsequent reviews of interim orders. Extend the time limit of a first review following a court's extension;
    - remove the current mandatory requirements for all fitness to practise hearings and preliminary meetings to be held in the country of the nurse's or midwife's registered address, to allow the NMC to arrange all hearings and appeals where they are most convenient and likely to result in the attendance of all the necessary parties at the least cost and inconvenience;
    - make the review of substantive orders discretionary, i.e. to be decided by the panel which makes the order, and not mandatory;
    - close a gap in the Nursing and Midwifery Order, to give the court the power to replace an interim suspension order with an interim conditions of practise order, and vice versa, on an application to the court in relation to such an order;
    - remove the requirement for the NMC to send notifications to specified persons, including the governments of the four UK countries;

21. The above amendments are necessary as the Nursing and Midwifery Order (2001) stipulates the processes the NMC should follow and how it should undertake its duties. It would be impossible for

the NMC to introduce any of these items, or for the government to grant new powers to do so, without legislation. Further detail of each fitness to practise change is provided below:

Undertakings, Warnings and Advice

22. The NMC introduced case examiners in March 2015 to make decisions as to whether there was a case to answer at the end of the initial investigation into a registrant's fitness to practise. There is currently no power for case examiners to consider other alternative means of resolving cases in a proportionate way, such as giving a warning, agreeing undertakings with the registrant, or providing advice. As a result, many cases go to hearings when they could have been dealt with in a more proportionate manner at an earlier stage. Currently undertakings and warnings are applied at the end of a full investigation, and if case examiners agree that there is a case to answer, then all of these cases must be referred to the Conduct and Competence Committee (CCC) or the Health Committee (HC) for a full hearing.

23. Ultimately this will provide a more proportionate response to fitness to practise concerns, and will free up the CCC and HC's time to deal with the more serious cases. This provision is currently applicable to the General Medical Council, the General Optical Council and the General Dental Council, and all have seen and expect to see a positive impact from this measure.

Single Fitness to Practise Panels

24. At the moment, the NMC are required to have two separate statutory practice committees to carry out their fitness to practise hearings. These are; the Conduct and Competence Committee, and the Health Committee. The alternative is a single fitness to practise panel. Having two separate panels increases costs, and means that some cases are passed backwards and forwards between the two. Furthermore the rules relating to these panels are out of date, and contain strict limits to the size of the pools of panel members. The NMC's ability to appoint new panel members is thus impeded.

Interim Order Reviews

25. An interim order is imposed to temporarily suspend or restrict a professionals practise while a fitness to practise complaint is under investigation. All interim orders have to be reviewed every three months after an initial six month period. This leads to unnecessary review hearings, which costs the NMC time, financial and human resource. Extending of the time limit for first and subsequent reviews of interim orders will lead to the reduction in the holding of unnecessary interim order reviews.

Location of Hearings

26. Currently, there is a mandatory requirement for all fitness to practise hearings and preliminary meetings to be held in the country of the nurse's or midwife's registered address. This mandatory rule applies even if the matters under investigation took place elsewhere in the UK and all the witnesses and registrant must travel a long distance to attend. If hearings and appeals take place in the most convenient location for all required attendees, then there is a travel cost saving which will accrue to the NMC as they have the responsibility to cover the costs of travel, accommodation and subsistence for staff, panellists, witnesses, shorthand writers, legal assessors, and possibly respondents if financial hardship can be demonstrated.

Substantive Order Reviews

27. A substantive order review is required on a conditions of practise or suspension order imposed is reviewed. At present, the NMC are required to review every substantive order imposed, even if the Conduct and Competence Committee made it on public interest grounds alone (i.e. in non-clinical misconduct cases, where there is no ongoing public protection concern). In such cases, there is often nothing for the panel to review. By making the review of substantive orders discretionary, and not a

mandatory requirement, this will remove the issue of holding reviews that the NMC feel are unnecessary, where there is some-times nothing to review.

Interim Order Appeals

28. There is a gap in the Nursing and Midwifery Order which means that the court has no power to replace an interim suspension order with an interim conditions of practice order and vice versa. At present the High Court in England and Wales, the High Court of Justice in Northern Ireland and the Court of Session in Scotland have the power to terminate an interim order suspension or revoke a conditions of practise order only. This would impact public safety where a court deems a suspension order is more appropriate than a conditions of practise order.

Notice Requirements

29. There is currently a requirement for the NMC to send notification to "specified individuals" including the four UK governments, to inform when an allegation is referred to the Conduct and Competence Committee, the Health Committee, and when a fraudulent entry case is considered by the Investigating Committee. This occurs before any findings have been made, and the NMC find the purpose of this unclear. As such it is seen as an unnecessary cost to the NMC.

Alternatives to Regulation

30. The Nursing and Midwifery Council (NMC) is responsible for regulating nurses and midwives. The Nursing and Midwifery Order 2001 establishes the NMC, sets out the NMC's primary purpose of protecting the public, the structure of the organisation and their functions and activities.

31. The purpose of statutory regulation is to protect the public by ensuring that all who practise as a health professional are doing so safely and the framework for this is established in legislation. Regulation is the optimal solution as the legislation sets out: what the NMC as a regulator may do; what registrants may expect from the NMC when registering for employment purposes; and what to expect where there is a fitness to practise concern raised. Also, in a wider sense, the public's expectations of what they may do if a concern about an individual's fitness to practise are clarified.

32. Within the current system, Departmental Ministers are accountable for the regulatory framework that the NMC operates within, even though the body itself is independent from government. Without such legislative framework there would be limited checks and balances, disproportionate costs may be incurred, registrants may be subject to an unfair framework or not know what to expect from the NMC. However, the major concern is that patient safety may be put at risk. It is within this context that an option providing an alternative to regulation is not appropriate, feasible, or provided.

<u>Costs and Benefits of the Options</u>

Option One: Do Nothing

33. Option one is the do nothing option against which all other options are measured. The additional costs and benefits generated by this option are therefore, by definition, zero.

Option Two (preferred option): *Change legislation to; remove a layer of supervisory regulation to enable the NMC to take direct responsibility and accountability for the regulation of midwives; remove the statutory requirement for the NMC to convene a Midwifery Committee and improve fitness to practise procedures.*

Monetary Impacts – Statutory Supervision

34. Option two entails removing a layer of secondary legislation that would enable the NMC to take direct responsibility and accountability, solely for the core functions of regulation. These impacts are

expected to accrue to the NMC themselves, as well as the host bodies of the LSAs which are: NHS England; Health Inspectorate Wales; Health Board South East and West of Scotland; Health Board North of Scotland; and Public Health Agency Northern Ireland.

35. Table 1 overleaf presents the high and low estimated costs and savings expected to accrue in year one as a result of the removal of statutory supervision, and the following paragraphs provide the detail behind the estimates.

Table 1: Summary of Estimated Year One Costs and Benefits of the Removal of Statutory Supervision of Midwives, and All Regulatory Power Transferring to the NMC – Option 2, 2015 Prices, £million

Impact	Best Case	Worst Case	Best Estimate
Transition Costs to NMC	0	0	0
Transition Costs to LSAs	0.24	0.24	0.24
Rise in FtP Referrals	0	-0.3	-0.15
Ending of QA Framework and LSA Annual Reports	0.23	0.23	0.23
Removal of Statutory Midwifery Committee	0.02	0.02	0.02
Approved Education Institutions - Preparation of Supervisor of Midwives Course	No Data	No Data	No Data
Impacts on LSAs	Cost Neutral	Cost Neutral	Cost Neutral

Source: DH Analysis of Stakeholder Data

Transition costs

36. **NMC -** The main impact to the NMC is around an increase in the number of fitness to practise cases that they expect to deal with. This will be an increase of 30 based on the assumptions in the following paragraphs. In 2014/15 the total number of FtP cases the reported to the NMC was 5541 so an increase of 30 cases, which are not expected to be serious, will represent a small impact on the NMCs resources. As a result the NMC expect that this can be soaked up without the need for additional recruitment, IT or estates costs incurred.

37. **LSAs –** The Department is working with stakeholders and Devolved Assemblies to establish the future model of midwifery supervision. As the Department goes on to discuss in paragraphs 53-56 this is still being developed; although there are some agreed principles the details still needs to be developed. The expectation is that the new model will be cost neutral; all funds from current LSA budgets will be reinvested into the future model of midwifery supervision, it will involve no redundancies or requirement for additional members of staff and as such no significant one-off costs are expected. At this stage however we are unable to quantify these costs given lack of design but we expect them to be low/insignificant. The one transition cost we expect is staff time in the project management and development of the new model of midwifery supervision. As the LSA host body in England NHS England responded to us with an estimate of costs for the project management and implementation of a new model of midwifery supervision. These are detailed in **Annex A**. The overall transition cost of this change is estimated at £94,000 in staff costs, and £150,000 in other costs totalling £240,000.

38. **Registrants -** There is expected to be no transition costs to individual registrants by implementing the new process.

Rise in fitness to practise (FtP) referrals that the NMC receive, expected to progress to a full hearing

39. The data for this was provided by the NMC (see **Annex B**). This is the key financial cost that is expected to accrue to the NMC as a result of the rise in the number of fitness to practise referrals that they expect to deal with following the move towards full regulatory control.

40. In 2015/16 the NMC received 30 FtP referrals from the LSA. This was 5% of the total number of 549 complaints that the LSA received. The NMC expect that in the short-run there will be a small increase in the number of referrals they receive, but this will adjust again to a steady state once the transition period is over. So of the 519 cases that were not referred to the NMC, the NMC estimate they will get something in the range of 0-20% (0-104) of these cases in addition to the 30 they received based on 2015/16 data. For these additional cases, the trends in the severity of these cases are assumed to be the same as the trends in severity of the current cases the NMC deal with. The average costs and trends for each stage are:

    - c. £150 for each referral closed at screening (currently FtP business planning assumes this will be c.60% of all cases referred to us).

    - c. £300 for each referral passed on to Case Examiners for assessment following initial screening (currently FtP business planning assumes this will be c.40% of all cases referred to us).

    - c. £284 for each Case Examiner assessment made, regardless of the conclusion of that assessment (the same 40% of cases as in 3.2).

    - c. £13,000 for each case that progresses to a full hearing from the Case Examiners (in 2013/14 20.5% of all referrals progressed to this stage).

41. As a result the NMC estimate additional costs of £0 - £310k from the increase in number of FtP referrals expected as a result of this policy change. The midpoint of this range was taken for the best estimate. (Note: in their response the NMC state this as a transitional cost, for the impact assessment this is recorded as an ongoing yearly cost as it is a permanent increase in the number of FtP investigations). The NMC are able to achieve lower costs as they can benefit from economies of scale from larger operations and expertise.

42. Further to the additional monetary costs, by dealing with all referrals for a fitness to practise complaint, the NMC are more able to have a complete oversight of the regulation of midwives. The fact that only around 5% of all LSA fitness to practise investigations are referred to the NMC means they may be unaware of serious issues and they do not have the required control over regulation. Though this will put increased costs onto the NMC they are convinced that the non-monetary benefits of improved and better regulation of this profession well outweigh the monetary costs.

43. The fact that the NMC only expects to take on a maximum of 104 extra complaints, this means 415 complaints must be dealt with and closed with no further action by employers. This is not expected to be a cost pressure on trusts as they currently have processes in place to deal with complaints. 415 complaints divided by all trusts will not result in a significant number of extra pressures for trusts to absorb. HSCIC report that there were 32,325 complaints around hospital and community health services in 2015/16. Of these 7544 were related to the nurse and midwives profession specifically.

The Ending of QA Framework and LSA Annual Reports

44. Currently the NMC carry out quality assurance framework to ensure compliance with the current supervisory structure. Annual LSA monitoring inspections and extraordinary reviews to assess compliance will no longer be required as there will be no external responsibility for the regulation of the midwifery profession. The NMC responded with a request for information on this which is attached in **Annex C.** From this response the saving estimated for the NMC is £233,000.

45. This estimate includes the staff costs involved in LSA quality assurance (£91,250p.a), the annual budget of the independent LSA review panel (£47,434p.a), the cost of extraordinary reviews (£12,000 per review with an estimate of 3 reviews per annum), NMC staff midwifery supervision related activity (£48,400p.a), and Local Supervising Authority Midwifery Officer Events (£10,000p.a.).

Approved Education Institutions

46. The NMC have approved 17 Higher Education Institutions to provide the Preparation of Supervisor of Midwives course (PoSoM). The NMCs role in education is to set the standards which shape the content and design of programmes for midwives. However, the NMC do not take part in writing the actual curriculum. This is all done by the Approved Education Institutions (AEIs).

47. It is recognised that these courses will be impacted by the removal of the regulatory role of the SoM. It is expected that these courses will be adapted to support the introduction of the new model of supervision in each UK country. They will contribute to underpinning better preparation of senior midwives in leadership roles and to contribute to improved clinical governance processes. In reality, two scenarios are possible. One is that universities and education commissioners might drop the

course or secondly that the course is amended to reflect the revised requirements discussed in the proposals paper published in January 2016.

48. In the scenario where there is complete removal of the PoSoM course, the impact of this would be a loss of fee income for universities and a benefit in terms of cost saving from not having to provide the PoSoM course; the net impact would be a loss in profits, assuming universities produce a surplus. There would also be a saving for those public sector organisations that fund the course.

49. Another, more likely scenario would result in a need to amend course content to remove the regulation part of the curriculum only. This is expected to be a minor admin cost only.

50. We have contacted the Council of Deans (who represent the AEIs) and HEE in order to attempt to obtain this data. So far we have been unable to get a response in order to estimate more accurately a cost of this impact. However, we do not expect this to be a significant cost, and suggest that it is most likely to be a negligible administrative change to course content. NHS Employers and HEIs regularly review courses and their contents as part of the commissioning process. Adjusting the course content would be absorbed into this process and would not be onerous on either side.

Impact on LSAs

51. Each LSA is responsible for ensuring that statutory supervision of all midwives, as required in the Nursing and Midwifery Order (2001) and the Nursing and Midwifery Council's (NMC) Midwives rules and standards (2012) is exercised to a satisfactory standard within its geographical boundary. There are currently four bodies which host the LSAs across the UK, in each of the UK nations. These are: NHS England; Health Inspectorate Wales; NHS Scotland; and the Public Health Agency in Northern Ireland.

52. There will no longer be a statutory requirement for the LSA to exist when statutory supervision of midwives is removed. This will result in a saving for the bodies that fund the LSA. However the policy direction is to develop a new model of supervision to ensure the continuity of professional leadership and development for midwives. This is expected to be cost neutral as it is intended that the cost savings will be redistributed into a new model.

53. We have attempted to quantify this by contacting the LSAs and host bodies for estimates. The response from NHS England states that they spend £2million deploying the LSA function across England. Wales estimates they spend £154,000 on the LSA function (though this estimate did not include a budget for meetings with all Wales SoMs). Scotland estimates that the LSA structure costs them £273,000 per annum. Northern Ireland did not provide a full estimate of the costs they incur.

54. There is difficulty in fully quantifying an impact before the future model of supervision is designed. However, the principles are described in the proposals published in January 2016. We are currently working on the basis that the funds that are currently expended on statutory supervision will be distributed into the new model of employer led midwifery supervision.

Impacts on Individual Roles

Impact on LSAMO Role

55. In addition to the removal of the LSA, the LSAMO role will also be removed from statute. Thus, the regulatory role of the 12 LSAMOs who exist currently across the UK becomes redundant. However, there is likely to be a replacement role, as the LSAMOs took on responsibilities beyond the regulatory function, and in practise provide a leadership role for the midwifery profession. We estimate thus that this role will continue but in a new form and with a new title. As explained in the consultation response from NHS England *'the dissolution of the LSAMO's role will be replaced by regional*

professional advisors.' Further local led development of the responsibility of the role is required before we will be in position to quantify numbers in this new role and/or cost savings. No firm plans are currently available to enable quantification of this impact at this stage

Impact on the SoM Role

56. With the removal of statutory supervision, there is no longer a requirement written into regulation for the role of the Supervisor of Midwives (SoM). These are experienced midwives responsible for assisting midwives with professional development and advice, providing profession leadership and dealing with early stage fitness to practise issues. There are estimated to be around 2,500 SoMs. The SoM is remunerated for this additional responsibility. The King's fund independent review into midwifery found that this was an average of £750 per year. The regulatory role of the SoM will no longer be required, however, there is an expectation that this role will continue in a capacity of professional guidance. The major concern from the consultation amongst midwives was around losing this role. The department is working with the NMC and employers to develop midwifery supervision in the future. As suggested in the policy report *'Proposals for changing the system of midwifery supervision in the UK (January 2016)*' it is imperative that a new system of supervision is developed to replace the old model of statutory supervision.

Non-monetary Impacts – Statutory Supervision

Health Impacts

57. With the removal of the conflict of interest the changes to the Nursing and Midwifery Order are expected to lead to improved public protection. This inevitably would lead to improvements in health

outcomes at the point of care for mothers and their babies. However, estimating these impacts would be difficult and dependant on many assumptions and uncertainties.

58. In addition to this and the above monetary impacts associated with the removal of statutory supervision of midwives, there are some quite significant non-monetary benefits for this option. Table 2 below outlines these non-monetised benefits:

Table 2: Non-monetary benefits associated with the removal of statutory supervision of midwives.

Impact	Description
Increased Understanding of the Workforce	NMC expect that their understanding of the midwifery workforce will be enhanced. This is in part due to the fact that they are now wholly responsible for regulatory procedures and fitness to practise complaints, giving the NMC direct regulatory oversights of all midwives. The new process will be less complex and thus provides the NMC with a more comprehensive overview of the midwifery workforce.
Supports the Principles of Better Regulation	This change supports the principles of better regulation, by focussing NMC resources on its core regulatory functions and responsibility to protect the public.
Improve FtP Complaints Process	A single consistent route of regulatory investigation and sanction will reduce the number of steps involved in making a complaint, making the process more easily understandable and accessible.
Improved Public Protection	Any regulatory sanctions imposed on midwives will be UK wide, not LSA area specific. This will ensure that a midwife cannot just move to practise in different a UK area without restrictions when they are subject to fitness to practise concerns. This will provide an improvement in public protection.
Increased Transparency and Accountability	The conflict of interest caused by peer regulation will be removed. This will reduce the risk of midwives' fitness to practise issues being concealed, and create a more open, accountable, transparent and consistent regulatory structure. This will improve public protection, as well as enhance public opinion of the regulatory system.

Monetary Impact - Removal of the Statutory Midwifery Committee

59. There will no longer be a requirement for the Statutory Midwifery Committee at the NMC. This committee is made up of seven members and is intended to advise the council on: any factor affecting midwifery; responding to policy trends; research; and ethical issues affecting all registrants. The removal of this committee would represent a cost saving to the NMC. Currently the NMC budgets £19,740 per year for 4 meetings of this committee per year.

Monetary Impacts – Fitness to Practise Amendments

60. Option two also entails changes to the fitness to practise procedures that the NMC must abide by. This requires amendments to various articles of the Nursing and Midwifery Order 2001, via a section

60 order. Table 3 below presents the high and low estimates of the costs and benefits of proposed fitness to practise changes encompassed by option 2 in year one:

Table 3: Summary of Estimated Year One Costs and Benefits of the Fitness to Practise Amendments Required in Option Two, 2015 Prices, £ million.

Impact	Best Case	Worst Case	Best Estimate
Transition Costs*	0.54	0.78	0.66
Undertakings, Warnings and Advice	3.1	2.0	2.5
Single FtP Panels	0.1	0.1	0.1
Interim Order Reviews	0.42	0.42	0.42
Location of Hearings	Unable to Quantify	Unable to Quantify	Unable to Quantify
Substantive Order Reviews	0.2	0.2	0.2
Notice Requirements	0.003	0.003	0.003

Source: DH Analysis of NMC Data

61. The following paragraphs provide some detail behind the estimates in table 2.

Transition costs

62. There are likely to be some transition costs for the NMC from the introduction of these fitness to practise changes. The NMC provided a breakdown of anticipated transition costs with some guideline estimates for quantitative values of these costs. The response from the NMC is shown in **annex D**. The NMC anticipate transition costs from: new functionality of case management systems to capture the new case examiner powers; training 355 panel members; training of case examiners; legal and policy costs; and administrative changes to procedures etc. (not quantified). The NMC do not anticipate any new recruitment and any of these costs will be absorbed by the current budget and covered by improvements in efficiency from the proposed fitness to practise changes. The best estimate given is the midpoint of the range of estimates provided by the NMC. As such the best estimate for transition costs incurred from the introduction of the fitness to practise changes is £0.66m.

Undertakings, warnings and advice

63. This follows the introduction of case examiners by the NMC back in March 2015. Case examiners were given the power to make a decision at the end of the initial investigation of a fitness to practise case, as to whether or not there was a case to answer for the registrant in question. However, this did not include the power for the case examiner to consider other alternative means of resolving cases, which could provide a more proportionate investigation to less serious cases where a nurse or midwife admits the allegations or have demonstrated insight and remediation. The introduction of a power for case examiners to impose undertakings, warnings, or provide advice earlier on in the investigation process will avoid many cases going to hearings, where it is in fact possible for them to

be dealt with much earlier on in the process. Therefore, if the case examiners consider that an allegation indicates that the registrant's fitness to practise may be impaired, but that the matter is not serious enough to be considered by a committee, they would have the power to agree undertakings with the registrant. For example, if it is alleged that a registrant is deficient in a particular clinical skill, an undertaking to complete specific retraining could be agreed.

64. The NMC expect that this power will result in an improvement in the overall cost efficiency, and costly full hearings will be reserved for more serious cases where there is a blatant public interest concern. We estimate that this power will lead to a saving of £2.5million in year one, rising to £5.6million in year 2. Year one will see less than half of the potential savings due to the fact that there is a time lag before cases actually get to a hearing. Therefore, a significant number of cases during the first year of implementation of this power will not be subject to these new powers, of which the NMC expect a vast majority to have been heard within six months. The following years (from year two onwards) will realise the full benefits of £5.6million as all cases will then be subject to the new powers. The NMC have estimated these savings figures on the assumption that case closure rates at the case examiner stage would rise from 51% to 75%. Therefore realising savings due to a fewer number of cases progressing beyond this stage and being referred to the investigating committee, health committee or conduct and competence committee. In their annual fitness to practise report for 2013-14, the NMC state that on average, a public hearing costs £12,500 so avoiding some of these would represent significant savings for the NMC. The benefit offset by the fact that case examiner decisions for undertakings warnings and advice will be more costly on average than current case examiner decisions. This is accounted for in the estimated benefits included in the above table.

65. This is the best estimate that can be provided given the current information available. A range has been provided for this estimate to show how much the benefit would vary if case closure rates at the case examiner stage only reached 70% or exceeded the estimate and reached 80%.

66. The GDC recently introduced case examiners with the power to agree undertakings. They currently haven't published any evaluation of the impact to inform this IA.

Single Fitness to Practise Panels

67. The removal of the statutory requirement for two separate fitness to practise committees will allow the NMC to create a single more cost effective panel, which will include a power to revoke the current rules on size limits of the panels. The NMC estimate that due to improved efficiency as cases are no longer passing between different panels, and cost effectiveness from reducing unnecessary delay, that this power will lead to a saving of £105,000 per annum in year one.

68. Since 2010 there have been 73 cases that have passed between the panels. The NMC state the cost of a lost day at £3.5k with a cost of rescheduling the case. This translates to 15 cases per year, and following an assumption that passing cases between panels leads to two days of the initial hearing being wasted, an annual saving of £100,000.

Interim order reviews

69. The extending of the time limit for first and subsequent reviews of interim orders will lead to the reduction in the holding of unnecessary interim order reviews. As a result there is a cost saving to be realised here. The NMC expect this measure to save £420,000 per annum.

70. The NMC impose approximately 360 interim orders per year. Currently, each is reviewed four times a year, and under the proposed new rules, will only require two reviews a year. The NMC are able to carry out six interim order reviews per day at a cost of £3.5k per day. Therefore, the cost per interim

order review is calculated at £583. If two reviews are no longer held on each of these cases, this represents a cost saving of £420,000 per year (360 x 2 x £583).

Location of hearings

71. If hearings and appeals take place in the most convenient location for all required attendees, then there is a travel cost saving which will accrue to the NMC as they have the responsibility to cover the costs of travel, accommodation and subsistence for staff, panellists, witnesses, shorthand writers, legal assessors, and possibly respondents if financial hardship can be demonstrated. We contacted the NMC in an attempt to quantify this by getting the number of hearings and appeals attendees however, the NMC do not collect data on the number of cases that this will affect. Without this it is not possible to provide an estimate. It is not a common occurrence though. Generally the registrant is registered in the nation they are practising in, therefore the likelihood of cases of this type is low.

Substantive order reviews

72. By making the review of substantive orders discretionary, and not a mandatory requirement, this will remove the issue of holding reviews that the NMC feel are unnecessary. The NMC do not hold data on the exact number of cases where a suspension order has been made on public interest grounds, however in their experience, these sorts of orders tend to be indicated by a panel imposing a period of suspension less than 12 months. In the past year, there have been 134 of these orders.

73. Based on the above assumption, the NMC state that two of these reviews can be held per day and would therefore cost £1750 per review. Using the above number of orders, the estimated saving here is £235,000 per annum (£1,750 multiplied by 134).

Notice requirements

74. The requirement to send notices to specified individuals is statutory however, the NMC do not view this as a necessary requirement, as at the stage where notices must be issued, there is nothing to report regarding findings, as no decision has been made. The removal of this requirement means that the NMC can realise an annual saving of £2605.

75. This calculation is based on the number of referrals to the CCC, HC and IC, multiplied by the number of notices issued for each referral, then multiplied by the cost of a second class stamp. In 2014-15 there were 1,206 referrals, which would require 4824 notices to be issued to the four relevant government departments in England, Wales, Scotland and Northern Ireland. The current cost of a

second class stamp is 54 pence. Therefore we estimate a negligible cost saving to the NMC of £2605, from the removal of notice requirements.

Non-monetised Benefits

76. The above fitness to practise changes also entail some non-monetary benefits. Table 4 overleaf outlines these:

Table 4: Non-monetary benefits associated with the fitness to practise amendments of this section 60 order.

Policy Measure	Impact and Description
Interim Order Appeals	Improved public protection, fairness and effectiveness by removing a current gap in our legislation. In cases were the order imposed is not sufficient or is unfair, this can be replaced by a more proportionate interim order.

Overall Costs and Benefits by Year

77. The figures in tables 1 and 3 form the basis of our ten year forecasts. Each of these figures shows the impacts for the first year of policy implementation. These impacts are not expected to be flat for the full period however. Due to an annual growth in fitness to practise cases, we expect that these costs and benefits will rise by 4% per annum, in line with the predicted growth in FtP referrals. This forecast is based on an average growth rate in fitness to practise referrals to the NMC over the previous three years.

78. Table 5 below presents the disaggregated best estimates of the estimated costs and benefits this policy will generate, forecast out to the default ten year timeline. Following this is table 6 which presents the aggregated costs and benefits:

Table 5: Best Estimate Costs and Benefits (Split by Measure, Excluding Transition) of Implementing the Powers Conveyed to the NMC in Option 2, 2015 Prices, £ Million

	Year	1	2	3	4	5	6	7	8	9	10	Total	Avg Annual
Costs	Total Transition Costs	0.9	-	-	-	-	-	-	-	-	-	0.9	-
	Rise in FtP Cases	0.15	0.16	0.16	0.17	0.18	0.18	0.19	0.20	0.21	0.21	1.8	0.18
	Costs to AEIs	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL COSTS		**1.1**	**0.2**	**0.2**	**0.2**	**0.2**	**0.2**	**0.2**	**0.2**	**0.2**	**0.2**	**2.7**	**0.2**
Benefits	Undertakings, Warnings and Advice	2.5	5.6	5.8	6.1	6.3	6.6	6.8	7.1	7.4	7.7	61.8	6.2
	Ending of QA Framework	0.2	0.2	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.3	2.8	0.3
	Removal of Stat Midwifery Committee	0.02	0.02	0.02	0.02	0.02	0.02	0.03	0.03	0.03	0.03	0.2	0.0
	Single FtP Panels	0.10	0.10	0.11	0.11	0.12	0.12	0.13	0.13	0.14	0.14	1.2	0.1
	Interim Order Reviews	0.4	0.44	0.45	0.47	0.49	0.51	0.53	0.55	0.57	0.60	5.0	0.5

	Substantive Order Reviews	0.2	0.2	0.2	0.2	0.2	0.2	0.3	0.3	0.3	0.3	2.4	0.2
	Notice Requirements	0.0	0.003	0.003	0.003	0.004	0.004	0.004	0.004	0.004	0.004	0.036	0.004
	Savings to LSA Host Bodies	-	-	-	-	-	-	-	-	-	-		
TOTAL BENEFITS		**3.5**	**6.6**	**6.9**	**7.2**	**7.4**	**7.7**	**8.0**	**8.4**	**8.7**	**9.0**	**73.4**	**7.3**

Source: DH Analysis of Stakeholder Data (Via BIS Calculator), totals may not sum due to rounding.

79. Furthermore, **table 6** presents the aggregated costs and benefits of the above including any transition costs, with **table 7** showing present value of table 6, discounted at the standard 3.5%.

Table 6 Aggregated Total Costs and Benefits of Implementing the Powers Conveyed to the NMC in Option 2, 2015 Prices, £Million

Year	***1***	***2***	***3***	***4***	***5***	***6***	***7***	***8***	***9***	***10***	***Total***
Costs	1.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	***2.7***
Benefits	3.5	6.6	6.9	7.2	7.4	7.7	8.0	8.4	8.7	9.0	***73.4***
Net Benefit	2.4	6.5	6.7	7.0	7.3	7.6	7.9	8.2	8.5	8.8	***70.7***

Table 7, Present Value of the Costs and Benefits of Implementing the Powers Conveyed to the NMC in Option 2, 2015 Prices, £million

Year	***1***	***2***	***3***	***4***	***5***	***6***	***7***	***8***	***9***	***10***	***Total***
PV Costs	1.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	**2.4**
PV Benefits	3.5	6.4	6.4	6.5	6.5	6.5	6.5	6.6	6.6	6.6	**62.1**
NPV Benefit	2.6	6.2	6.3	6.3	6.3	6.4	6.4	6.4	6.5	6.5	**59.7**

Source: DH Analysis of NMC Data (Via BIS Calculator), totals may not sum due to rounding

80. Overall, based on the data and evidence available, our best estimate suggests a net present value benefit of £59.7million will be generated over a ten year appraisal period following the implementation of policy outlined in option 2. This is in addition to the non-monetary benefits outlined in tables 2 and 4. Taking all of this into account it seems reasonable to assert that the benefits are very likely to outweigh the costs of implementing this policy.

Estimating the Costs to Business of Policy Implementation

81. The business impacts of this proposal are identified by the number of nurses and midwives who practise in the private sector.

82. This is based on the assumption that the NMC pass on any additional costs/savings on to individual registrants in the form of higher/lower fees. This may not necessarily be the case and the rate of pass through may vary. However, the principle source of the NMC funds is registration and renewal fees paid by individual registrants. The NMC annual report 2014/15 shows that fees paid by registrants account for 95.5% of their annual income. From this the department assumes that if costs rise, this will lead to a rise in fees for registrants, some of whom practise in the private sector or as self-employed, and of course the reverse if costs fall. This assumption has also been used in previous impact assessments completed by the department: The Professional Standards Authority for Health and Social Care (fees) Regulations 2014[1]; and the General Dental Council Case Examiner Section 60 Order 2015. This can be backed up by evidence of fee changes from other regulators. For

[1] PSA Fees page 11 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403037/Impact_Assessment.pdf

example, in 2011 the General Chiropractic Council (GCC) reduced fees following efficiency savings[2]. The consultation on fee changes by the NMC in 2014 describes how they are funded by fees charged to registrants, and how these fees must cover the costs of their regulatory activities[3]. We also contacted the NMC to justify this reasoning; in part two of the response in **annex C** the NMC state that any savings will cover areas where there is increasing cost pressures, in order to avoid future fee rises for registrants. Based on this assumption, this impact assessment provides a best estimate of impacts on business that will arise as a result of policy implementation.

83. The majority of the impacts on business have been classified as indirect (table 11). The reason for this is that fees are paid by individual professionals and therefore don't put a direct cost on to private healthcare providers. However, the department has also considered the impact on self-employed nurses and midwives.

84. The information on the proportion of NMC registrants that practise in the private sector or as self-employed is not collected by the regulator, and as far as we are aware, there are no official statistics containing this information at the department. To calculate this we obtained a breakdown of the Annual Population Survey (APS) dataset up to 2014, from the Office for National Statistics (ONS). The data shows the number of individuals employed as nurses or midwives (defined by four digit Standard Occupational Codes (SOC)) split by whether they work in the public, or private sector.

85. The table below (Table 8) shows how the estimated proportion of NMC registrants that practise in the private sector or are self-employed was calculated, with a view to estimating the costs to businesses:

Table 8: Estimated % of the NMC's registrants Practising in the Private Sector, 2014 (Source: ONS Annual Population Survey Data 2014)

Regulator	Total Employment	Private Employee	Self-Employed	Total Private	Public Employment
NMC	611,325	100,525	1,485	102,010	509,315

86. Based on the above table approximately 17% of total nurse and midwife employment is in the private sector (either private employee or self-employed). As approximately 17% of nurses and midwives operate in the private sector, based on the above calculation, 17% of the impacts that have been identified which fall on to the NMC are considered as impacts on business.

87. The costs/benefits to the NMC of policy implementation are multiplied by the percentage of the NMC's registrants practising in the private sector. This produced the estimated benefits to business that would arise from the NMC using the powers given to them in option 2. Table 9 shows the estimated direct and indirect impacts to business whilst table 10 shows the present value of the estimated direct and indirect impacts on business:

Table 9 Best Estimate of Impacts on Business from the Powers Conveyed to the NMC in Option 2, 2015 Prices, £ Million (Totals may not sum due to rounding)

Year	1	2	3	4	5	6	7	8	9	10	Total
Cost	0.14	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.04	0.42
Benefit	0.6	1.1	1.1	1.2	1.2	1.3	1.3	1.4	1.5	1.5	12.3
Net Benefit	0.5	1.1	1.1	1.2	1.2	1.3	1.3	1.4	1.4	1.5	11.8

[2] GCC Fees Reduction, page 7 - http://www.gcc-uk.org/UserFiles/Docs/Annual%20Report/Annual_Report_and_Accounts_2011_FINAL_website.pdf

[3] NMC Consultation on Registration Fees, May 2014 - https://www.nmc.org.uk/globalassets/sitedocuments/consultations/2014/fee-rise-consultation.pdf

10: Best Estimate of Net Present Value Impacts on Business from the Powers Conveyed to the NMC in Option 2, 2015 Prices, £Million, 3.5% Discount Rate (Totals may not sum due to rounding)

Year	***1***	***2***	***3***	***4***	***5***	***6***	***7***	***8***	***9***	***10***	***Total***
PV Cost	0.14	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.4
PV Benefit	0.58	1.07	1.07	1.08	1.08	1.09	1.09	1.10	1.10	1.11	10.
NPV	0.44	1.04	1.05	1.05	1.06	1.06	1.07	1.07	1.08	1.08	10.0

88. The costs that universities incur will also be considered in the impact on business. This cost however is expected to be negligible. It arises due to the fact that courses will continue to be offered as there is scope for at least some of the SoM role to be maintained following the removal of statutory supervision, to provide professional leadership and support to midwives. This will mean that universities must amend course content for the Preparation of Supervision of Midwives (PoSoM) course to meet this new requirement. This has been considered as an indirect cost to business. The NMC has approved 17 higher education institutions to provide this course.

89. The department has attempted to get cost estimates from these institutions but has been unsuccessful; as a result it has not been possible to monetise the impact of this change on the 17 universities. As per paragraph 49 we do not expect these to be a significant cost to these bodies as it is likely that it will just be minor administrative changes to course content. Further assessment of our estimates for the impacts on business has been provided by the sensitivity analysis attached in

Annex E.

Classification of Impacts & EANDCB

90. The previous tables present the total direct and non-direct impacts on business that we estimate will be generated by the implementation of this policy. For the purposes of calculating the Business Net Present Value, and the Equivalent Annual Net Direct Costs to Business (EANDCB), only the direct impacts are counted as per paragraph 1.9.33 of the Better Regulation Framework Manual. As such, 0.2% of the impacts that fall upon the NMC have been deemed as direct impacts on business, as this

covers individual registrants that operate as self-employed. Table 11 below shows the classification of the impacts identified in tables 1 and 2

Table 11: Classification of Impacts for EANDCB

Impact	Classification	Description
Increase in Fitness to Practise cases from statutory supervision changes (Paragraphs 38-44)	0.2% considered Direct – Included in the EANDCB	The impact falls on individual professionals, thus is indirect from a private healthcare perspective. However, 0.2% of nurses and midwives practise as self-employed; these impacts are considered as direct.
Ending of QA Framework (Paragraphs 43 - 44)	0.2% considered Direct – Included in the EANDCB	The impact falls on individual professionals, thus is indirect from a private healthcare perspective. However, 0.2% of nurses and midwives practise as self-employed, these impacts are considered as direct.
Removal of the Statutory Midwifery Committee (Paragraph 45)	0.2% considered Direct – Included in the EANDCB	The impact falls on individual professionals, thus is indirect from a private healthcare perspective. However, 0.2% of nurses and midwives practise as self-employed; these impacts are considered as direct.
AEIs - Impact on the PoSoM Course (Paragraphs 46 – 50)	Indirect – Not included in the EANDCB	The changes imposed are not directly imposed upon universities, but on the NMC and the professionals they regulate.
LSA Host Bodies	Public Sector Body – Not included in the EANDCB	The LSAs are funded by public funds, and are therefore not included in the impacts on business.
Power to Case Examiners to Agree Undertakings, give Warnings and Advice to Registrants (Paragraphs 60 - 63)	0.2% considered Direct – Included in the EANDCB	The impact falls on individual professionals, thus is indirect from a private healthcare perspective. However, 0.2% of nurses and midwives practise as self-employed; these impacts are considered as direct.

Single Fitness to Practise Panels (Paragraphs 64 - 65)	0.2% considered Direct – Included in the EANDCB	The impact falls on individual professionals, thus is indirect from a private healthcare perspective. However, 0.2% of nurses and midwives practise as self-employed; these impacts are considered as direct.
Interim Order Reviews (Paragraphs 66 - 67)	0.2% considered Direct – Included in the EANDCB	The impact falls on individual professionals, thus is indirect from a private healthcare perspective. However, 0.2% of nurses and midwives practise as self-employed; these impacts are considered as direct.
Substantive Order Reviews (Paragraphs 69 - 70)	0.2% considered Direct – Included in the EANDCB	The impact falls on individual professionals, thus is indirect from a private healthcare perspective. However, 0.2% of nurses and midwives practise as self-employed; these impacts are considered as direct.
Notice Requirements (Paragraphs 71 - 72)	0.2% considered Direct – Included in the EANDCB	The impact falls on individual professionals, thus is indirect from a private healthcare perspective. However, 0.2% of nurses and midwives practise as self-employed; these impacts are considered as direct.

91. Table 12 below shows the disaggregated nominal direct impacts on business that will be included in the EANDCB calculation:

Table 12: Disaggregated Nominal Direct Impacts on Business Included in the EANDCB, £'s:

	Year	1	2	3	4	5	6	7	8	9	10	Total
Costs	Transition	1,800	-	-	-	-	-	-	-	-	-	1,800
	Rise in FtP Cases	300	312	324	337	351	365	380	395	411	427	3,602
TOTAL COSTS		**2,100**	**312**	**324**	**337**	**351**	**365**	**380**	**395**	**411**	**427**	**5,402**
Benefits	Undertakings, Warnings and Advice	5,000	11,200	11,648	12,114	12,598	13,102	13,627	14,172	14,738	15,328	123,527
	Removal of Statutory Midwifery Committee	460	478	498	517	538	560	582	605	630	655	5,523

	Ending of QA Framework	40	42	43	45	47	49	51	53	55	57	480
	Single FtP Panels	200	208	216	225	234	243	253	263	274	285	2,401
	Interim Order Reviews	840	874	909	945	983	1,022	1,063	1,105	1,150	1,196	10,085
	Substantive Order Reviews	400	416	433	450	468	487	506	526	547	569	4,802
	Notice Requirements	6	6	6	7	7	7	8	8	8	9	72
TOTAL BENEFITS		**6,946**	**13,224**	**13,753**	**14,303**	**14,875**	**15,470**	**16,089**	**16,732**	**17,402**	**18,098**	**146,891**
Net Nominal Direct Benefit to Business Overall		4,846	12,912	13,428	13,965	14,524	15,105	15,709	16,338	16,991	17,671	141,489

92. The above gives an estimated Business Net Present Value figure of £0.12m based on the number of nurses and midwives operating as self-employed according to ONS APS data.

93. The EANDCB figure is the final step in the calculations required for this impact assessment and thus represents the conclusion of the costs and benefits section for Option Two.

94. The EANDCB was calculated as outlined in the Better Regulation Manual by applying the formulas to the direct impacts on business of this policy:

$$EANCB = PVNCB/a_{t,r}$$

$$a_{t,r}=\left(\frac{1+r}{r}\right)*\left(1-\left(\frac{1}{1+r^{t}}\right)\right)$$

Where:

EANDCB = Equivalent Annual Net Direct Cost to Business

PVNDCB = Present Value of Net Direct Costs to Business

$a_{t,r}$ = Annuity Rate

t = Time period covered in the policy appraisal

r = Discount rate

Inputting the best estimate figures for the direct impacts of this policy measure in to the latest version of the Department for Business Innovation and Skills' IA calculator (attached to the covering email for this IA) produced an estimated EANDCB for option 2 of0.0.

One-In, Three-Out Assessment (OI3O)

95. The Department asserts that the measures proposed in this impact assessment have been deemed as in-scope of the OI3O assessment.

96. Although the department does not require the NMC to implement the measures outlined, it is expected that they will implement these powers in full once given the power to do so. This is effectively ensuring that the changes will be made.

97. As per the Better Regulation Framework Manual, overall the measure is deregulatory (the removal of statutory supervision is a removal of a layer of regulation, and the fitness to practise changes are

defined as recast measures), and there is a small net benefit to business, therefore giving the measures described in option 2 an Out rating.

98. The first measure, removal of statutory supervision, is deregulatory as it removes a layer of legislation governing the regulation of midwives. The fitness to practise measures are considered recast measures, and as per paragraph 1.9.12 of the Better Regulation Framework are also considered deregulatory for the purpose of the OI3O assessment.

99. These measures are expected to produce a net benefit to business in present value terms of £0.01million over a ten year period, with an EANCB of0.00 due to the small numbers involved.

Small and Micro Business Assessment (SaMBA)

100. Small and micro businesses have not been exempted from the impacts of the policy options as the impacts to business relate to the impacts on individual nurses and midwives who practise as self-employed in the private sector. Furthermore, these measures enable the NMC to amend their procedures with regards to regulating nurses and midwives, in order to achieve a more streamlined fitness to practise process, and achieve efficiency savings. The benefits to business of this is that the private sector/self-employed individuals, who pay fees for membership of the NMC, will not be subject to higher future fee rises, and can benefit from improved fitness to practise processes.

101. It is estimated though that the impact on this group will be a benefit, therefore no additional burden will be added to small and micro businesses. Given that this is a deregulatory measure overall, and thus qualified a fast-track at consultation stage, a full SaMBA is not required.

Business Impact Target (BIT) Score

102. Given the 0.0 EANDCB, the contribution to the BIT score of this measure is zero.

Public Sector Equality Duty

103. A separate assessment of any potential impacts on equality is being completed alongside the implementation of this section 60 Order.

Timing of Implementation

104. The Department would like to have the Order signed by the Privy Council with the aim to have statutory midwifery supervision removed by 31st March 2017.

ANNEX A – NHS England LSA Transition Costs Estimates

Category	2016/17 Cost
Staff Costs	£93,857
Expert Reference Group (Travel & Venue Hire)	£2,500
Education Top Programme	£20,000
Restorative Clinical Supervision Programme	£43,000
Pilot Evaluation	£43,000
Existing Model Auditing	£6,000
Start up consultation and engagement	£8,500
New Model publication, engagement and implementation	£27,000

	£243,857

ANNEX B – NMC Response On Rise in Fitness to Practise Referrals

1 We have been engaging with LSA on case data since autumn 2015 and we need to recalibrate our response to this question. It is important to note that there is no change to the fitness to practise referral threshold associated with this Section 60. Any case that should be referred to the NMC after the change should therefore have been referred before the change. However, a small number of high profile cases which raised public protection concerns have shown that this has not always been the case. This small number of cases means that we should be able to assume that in steady state, there should not be a significant rise in fitness to practise referrals, and therefore, costs.

2 It does however mean that there may be a small rise in referrals as a transitional consequence of the change. We know that in 2014/15, LSAs undertook 685 supervisory investigations into complaints or concerns raised about Registered Midwives. Of these, only 21 (3%) were passed on to the NMC as an FtP referral. We are currently awaiting annual report submissions for 2015/16 from the LSAs, but our monitoring data indicates that LSAs undertook 549 supervisory

investigations, of which 30 (5%) were passed on to the NMC as an FtP referral. As part of planning a safe transition, live cases will be passed either to the employer (where there is an employer) or to the NMC for review. Among these 519 cases there may be some which we believe do meet the threshold for referral. There is no accurate way to estimate how many there might be.

3 We do know the costs of cases closed at each of the three fitness to practise stages, should they reach our FtP referral threshold:

3.1 c.£150 for each referral closed at screening (currently FtP business planning assumes this will be c.60% of all cases referred to us).

3.2 c.£300 for each referral passed on to Case Examiners for assessment following initial screening (currently FtP business planning assumes this will be c.40% of all cases referred to us).

3.3 c.£284 for each Case Examiner assessment made, regardless of the conclusion of that assessment (the same 40% of cases as in 3.2).

3.4 c.£13,000 for each case that progresses to a full hearing from the Case Examiners (in 2013/14 20.5% of all referrals progressed to this stage).

4 The initial estimate figure provided in October 2015 was a broad range estimate prior to more substantive engagement with LSA on this matter. As we have progressed with the proposed changes, we now consider that figure to be overstated. First, it was based on the previous year's LSA caseload which is higher than the latest set of figures (685 cases against 549-30 already referred to the NMC). Second, our high estimate was predicated on the cost burden if nearly all of the open cases came to us as referrals. That is within the bounds of possibility, but highly unlikely. It would imply systemic miscalculation of risk by LSA; if this was happening, we would know about it from our quality assurance of LSA.

5 With the benefit of further consideration, and more substantive engagement with LSA on this matter, we estimate it is now more realistic to assume a number of additional referrals, as a transitional effect, between 0 per cent and 20 per cent of the residual LSA cases (519). That would amount to between 0 and 104 cases, where we would anticipate the trends and costs set out in paragraph 3 above to apply.

6 Additional fitness to practise costs would, in this scenario, (a) be transitional and (b) would be in the range of £0 – 310k.

7 It should be noted that the proposed FtP changes consulted upon by the Department would produce significant cost savings.

ANNEX C – NMC Response On LSA QA Framework

Local Supervising Authority (LSA) Annual Reports We outsource many of our functions in relation to the quality assurance of LSAs. The contract with our external provider, Mott McDonald, combines education and LSA QA and is approximately £1.2 million per year. As an estimate, we have assumed that Mott MacDonald spends approximately 20% of their total time on LSA QA with their remaining work relating to our Education QA functions which will not be affected by these changes. Mott budgeted fixed staff costs across the contract at £455,147 for the academic year 2014/15. Twenty per cent of this figure equals £91, 250.

We would like to recap that in our previous response, we provided information regarding the LSA targeted monitoring events which covers the cost of the review panels who, in accordance with QA framework, are professionals contracted with Mott MacDonald to carry out independent LSA reviews. This was previously budgeted at £47,434 for the last academic year (2014/15, for four review visits). This £47,434 is included in the overall Mott McDonald contract but is in addition to the fixed staff costs

set out above. In relation to unscheduled extraordinary activity, the cost of each extraordinary review is currently budgeted at £12,000. This excludes any additional activity including further visits or legal reviews. On average we would not expect to undertake more than 2-3 extraordinary reviews a year.

Quarterly LSA reports are now conducted by our external contractors, Mott MacDonald, however internal staff allocate time to review and analyse the reports. The cost of conducting the calls and providing the initial analysis is carried out as a part of our external contact and was £2,000 approximately in the last quarter so £8,000 per annum. This is also included in the Mott McDonald contract.

NMC staff are currently involved in a number of midwifery supervision-related fields of work, including the review of quarterly reports, annual reports and self-assessment, external intelligence, and documentation generated by midwifery stakeholder groups, as well as exceptional reporting and contributing to regular risk analysis engagement. The following is our best estimate of the percentage of staff time/ cost spent on functions that will end as a consequence of change in midwifery regulation:

1 x Standards Compliance Manager (Band E: £43,319 - £58,608), estimated to spend 30 percent of their time on oversight and LSA related activity which equals £17,600 approximately

1 x Standards Compliance Officer (Band D: £33,667 - £45,549) : 30 percent of time is approximately spent on LSA QA which equals £10,100 - £13,600 approximately

1 x Standards Compliance Officer (Band D: £33,667 - £45,549) : 30 percent of time is approximately spent on LSA QA which equals £10,100 - £13,600 approximately

1 x Contract and Service Quality Manager (Band D: £33,667 - £45,549): 20 percent of time is approximately spent on LSA QA which equals £9,100 approximately

1 x Regulatory Quality Officer (Band C2: £26,959 - £36,338): 10 percent of time is spent approximately on LSA QA which equals £3,600 approximately.

This is a total cost for NMC staff of £48,400 per annum.

We also carry out two LSA Midwifery Officer (LSAMO) events a year which we estimate to cost £10,000 per year approximately.

ANNEX D – NMC Response on Transition Costs

(1) Transition costs

Note that we are responding in advance of completing our business planning for the s60 project. However, we are close to having early figures for the level of costs we would expect for each of the changes. We have provided the best estimates we currently can, or qualitative detail on where the costs are likely to arise, in the sections below.

We would emphasise that any transitional costs will be absorbed within the NMC's existing budget, and we will not be seeking additional funding either from nurses and midwives or central government in order to implement this legislative change.

Area	Cost estimate	Notes

Systems	c. £150-350k	NMC's case management system will need new functionality to capture new CE powers. External supplier will design system changes through November until Summer 2017. Anticipated cost is based on system design work for introduction of Case Examiners in 2015 and anticipated upgrade work for 2016-17 and is estimated in advance of the full scope of the design requirements having been mapped.
Training (practice committee panel members)	c. £180-200k	Cost for providing day of face-to-face training for c. 355 panel members. Terms of engagement require us to pay members a daily fee for training, and travel and accommodation expenses. Estimate based on previous cost of £177,000 for providing one day of face-to-face training for all panel members in 2015
Training (Case Examiners)	c. £30k	Benchmarked against the cost of externally-provided training for Case Examiners when introduced in March 2015
Legal and Policy Costs	£180-200k	Internal staff costs of full time work on s60 project, plus external legal fees for advice on drafting legislation.
Admin cost of increasing Case Examiner capacity (if required)	Business as usual	We do not presently anticipate that any increase in Case Examiner workload (through wider functions) is likely to be such that a further staff recruitment exercise is required. In addition to our staff Case Examiners, we have a small pool of contracted Case Examiners who currently work part-time. Only modest internal admin involved in extending their commitments if required.
Guidance development	Business as usual	Production of the guidance itself will done internally and is covered by existing budgets. There may be a modest external cost for any new online methods of hosting guidance but it is not yet clear that this would be incurred and not of same magnitude as other quoted costs.
Procedures and administrative changes	Business as usual	Low-level internal costs which will not require cash expenditure but will take up some staff time.
Total	**c. £540-780k**	

(2) Cost recovery

We NMC collect registration fees from our registrants as our primary source of funding. The income from this fee must cover all our regulatory activity including quality assurance of education, maintenance of the register, development of standards, and the processing of fitness to practise cases. Our corporate strategy makes clear that we aim to use resources released through fitness to practise savings to invest in upstream activities to promote public protection, including programmes for education, standards and revalidation which aim to help nurses and midwives maintain good practice. Savings from these efficiencies will mean we would not need to increase fees to make these investments.

Our business planning assumptions for our fitness to practise function involve a year on year increase in the number of referrals. If we can reduce the cost of each referral, this would partially defray the cost of

having a greater number of FtP cases each year, which would offset any further need to increase fees caused by a repeated year on year rise in the number of referrals.

ANNEX E - Sensitivity Analysis

There is often a danger that optimism bias will lead to underestimated costs and overestimated benefits. This section therefore looks at where the estimated net benefits (to both the NMC and business) would become net costs. It shows the percentage change that would be required in order for our estimates of net benefits and costs to business to equal to zero. This is illustrated in the tables below:

A1: Switching Values for Costs and Benefits to Reduce the Net Benefit to Business to Zero in the Best Estimate Scenario

Year	1	2	3	4	5	6	7	8	9	10	Total
Cost	0.14	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.04	0.4
Benefit	0.6	1.1	1.1	1.2	1.2	1.3	1.3	1.4	1.5	1.5	12.3
Net Benefit to Business	0.4	1.08	1.12	1.16	1.21	1.26	1.31	1.36	1.42	1.47	11.8
% Change in Costs to Business for Zero Net Benefit	321%	4061%	4061%	4061%	4061%	4061%	4061%	4061%	4061%	4061%	2830%
% Change in Benefits to Business for Zero Net Benefit	-76.2%	-97.6%	-97.6%	-97.6%	-97.6%	-97.6%	-97.6%	-97.6%	-97.6%	-97.6%	-96.6%

A2: Switching Values for Costs and Benefits to Reduce the Net Benefit to Business to Zero in the Worst Case Scenario

Year	1	2	3	4	5	6	7	8	9	10	Total
Total Cost to Business	0.18	0.05	0.06	0.06	0.06	0.06	0.06	0.07	0.07	0.07	0.7
Total Benefit to Business	0.5	0.9	0.9	1.0	1.0	1.1	1.1	1.1	1.2	1.2	10.1
Net Benefit to Business	0.3	0.85	0.88	0.92	0.96	0.99	1.03	1.08	1.12	1.16	9.3
% Change in Costs to Business for Zero Net Benefit	175%	1603%	1603%	1603%	1603%	1603%	1603%	1603%	1603%	1603%	1251%
% Change in Benefits to Business for Zero Net Benefit	-63.7%	-94.1%	-94.1%	-94.1%	-94.1%	-94.1%	-94.1%	-94.1%	-94.1%	-94.1%	-92.6%

Based on this analysis, even in the worst case scenario, our cost estimates would have to be out by a long way in year one in order for zero net benefits to occur. Alternatively our benefits estimates would have to reduce by 64% in year one, and 94% in all subsequent years in order for zero net benefit to occur. As a result we can be confident that the overall impacts of the proposed option will be beneficial overall.

References

PHSO Report, Midwifery Supervision and Regulation Recommendations for Change: http://www.ombudsman.org.uk/reports-and-consultations/reports/health/midwifery-supervision-and-regulation-recommendations-for-change

The King's Fund, Midwifery Regulation in the United Kingdom: https://www.nmc.org.uk/globalassets/sitedocuments/councilpapersanddocuments/council-2015/kings-fund-review.pdf

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