

A thick, solid green curved bar that starts from the left edge of the page and curves downwards towards the right, ending at the bottom right corner. It is positioned above the main title text.

# **Nursing and Midwifery Council (Constitution) (Amendment) Order 2012**

*Consultation Report: October 2012*

**DH INFORMATION READER BOX**

<b>Policy</b>	Clinical	Estates
HR / Workforce	Commissioner Development	IM & T
Management	Provider Development	Finance
Planning / Performance	Improvement and Efficiency	Social Care / Partnership Working

<b>Document Purpose</b>	Policy
<b>Gateway Reference</b>	18215
<b>Title</b>	NMC Consitution Amendment Order: Consultation report
<b>Author</b>	Department of Health / Professional Standards
<b>Publication Date</b>	<b>9 November 2012</b>
<b>Target Audience</b>	PCT Cluster CEs, NHS Trust CEs, SHA Cluster CEs, Care Trust CEs, Foundation Trust CEs , Directors of Nursing, Special HA CEs
<b>Circulation List</b>	
<b>Description</b>	This report provides an analysis of the responses to the consultation on amendments to the Nursing and Midwifery Council Consitution
<b>Cross Ref</b>	NMC (Constitution) (Amendment) Order. A paper for consultation
<b>Superseded Docs</b>	
<b>Action Required</b>	N/A
<b>Timing</b>	<b>N/A</b>
<b>Contact Details</b>	Stuart Griffiths Professional Satndards Quarry House Quarry Hill LS2 7UE 0113 254 5249
<b>For Recipient's Use</b>	

# Nursing and Midwifery Council (Constitution) (Amendment) Order 2012

## *Consultation Report: October 2012*

Prepared by Professional Standards, Workforce Division, External Relations Directorate,  
Department of Health

# Contents

<a href="#">Nursing and Midwifery Council (Constitution) (Amendment) Order 2012.....</a>	<a href="#">3</a>
<a href="#">Contents.....</a>	<a href="#">4</a>
<a href="#">Executive summary.....</a>	<a href="#">5</a>
<a href="#">Background.....</a>	<a href="#">6</a>

# Executive summary

On 8 May 2012 the Department of Health published a consultation paper '*Nursing and Midwifery Council (Constitution) (Amendment) Order: A paper for consultation*' accompanied by a draft order setting out our proposed amendments to the constitution of the Nursing and Midwifery Council (the "NMC").

The proposed constitution amendment order made provision in respect of the following:-

- A reduction in the size of the NMC's governing Council;
- Alterations to the period of membership of Council members; and,
- Resultant transitional arrangements.

The consultation was available on the Department of Health website for the period between 8 May 2012 and the 31 July 2012.

# Background

1. In 2007, the previous administration published the White Paper *Trust, Assurance and Safety – The Regulation of Healthcare Professionals in the 21<sup>st</sup> Century*<sup>1</sup>. This paper set out a series of measures to ensure the independence of the professional regulators, including proposals to reform the constitution of their governing councils. The paper indicated that each regulatory body should have a smaller, more board-like Council.
2. Seven working groups were established to take forward the recommendations of *Trust, Assurance and Safety*.
3. Issues relating to the governance of the regulatory bodies were considered as part of the working group on enhancing confidence in healthcare professional regulation, chaired by Niall Dickson, then Chief Executive of the Kings Fund. The final report of the group<sup>2</sup>, published in 2008 (the “Dickson Report”), recommended that:-

*‘The role of a council should be to set the direction of the organisation in line with its mission and purpose. It should ensure systems are in place to enable it to monitor performance and to hold the executive to account. It should also ensure probity.’*
4. The Dickson Report also established a set of 12 key principles (based on developments in corporate governance) that should underpin the work of an effective council of a regulatory body and recommended that each regulatory body should adopt them. The principles can be found at Annex A.
5. In February 2011 the Government published the Command Paper *Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*<sup>3</sup>. The paper sets out the Government’s vision for the future of workforce regulation, which includes increasing the independence and accountability of the regulatory bodies.
6. Following this, the Council for Healthcare Regulatory Excellence (the “CHRE”) was commissioned to lead a sector wide review of the cost-efficiency and effectiveness of each regulator within its remit. As an initial part of this work it was asked to look at: Whether there was a case for reducing the size of the governing councils of the regulators.
7. In order to do this, the CHRE looked at a number of studies and highlighted what it saw as the most important characteristics of an effective board. The CHRE published its interim report, *Board size and effectiveness: advice to the Department of Health regarding health professional regulators*<sup>4</sup>, in September 2011.

---

<sup>1</sup>*Trust, Assurance and Safety – The Regulation of Healthcare Professionals in the 21<sup>st</sup> Century*, Department of Health, 2007

<sup>2</sup>*Implementing the White Paper Trust, Assurance and Safety: Enhancing confidence in healthcare professional regulators*, Department of Health 2007,2008

<sup>3</sup>*Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*, Department of Health, 2011

<sup>4</sup><http://www.chre.org.uk/satellite/414/>

8. The CHRE report established the following main 'typical' functions of a board (the first two of which are similar to those established by the Dickson Report):-
  - Strategic leadership and strategic decision making;
  - Stewardship, including holding the executive to account;
  - External relations and accountability; and,
  - Board maintenance.
9. It recommended that 'boards with a range of 8-12 members are associated with greater effectiveness' in discharging these functions.
10. The Department agrees with the Dickson and CHRE reports understanding of the role and purpose of the regulatory bodies' governing councils and considers that there is merit in the recommendations put forward by the CHRE. It has therefore consulted on plans to implement its recommendations for the NMC Council.
11. In light of provisions for the abolition of the Appointments Commission in the Health and Social Care Act 2012, that Act contains provisions to enable the Privy Council to ask the regulatory bodies and the CHRE to assist in its appointments function. We envisage that the regulatory bodies will run the appointments processes, in line with the principles and guidance for appointments that CHRE are developing [**DN: Need to check status of this work before finalising**], up to the point where they are able to make reasoned recommendations to the Privy Council. The final appointments will be made by the Privy Council after the CHRE has commented on the regulator's appointment process.
12. At the same time as consulting on a reduction in size for the NMC Council, the Department also sought to take the opportunity to cure an anomaly in terms of periods of membership for NMC Council members. Currently the NMC limits membership of the Council to a total of 6 years. This is out of step with other regulatory bodies, which enable members to serve for a total of 8 years in any 20-year period.

## Consultation process

13. The consultation was available on the Department of Health website for the period between 8 May 2012 and the 31 July 2012. The Department received 23 responses from a mixture of individuals and bodies. The majority of respondents answered all the questions in the consultation.
14. Annex B sets out a list of respondents and the responses to each question

# Consultation responses

## Q1: Do you agree that a smaller, more strategic NMC Council will support organisational improvements at that body?

Agree	Disagree	Unsure
18	0	5
78%	0%	22%

15. There was strong support for a move to a smaller NMC Council, with a consensus that a smaller Council would help deliver greater focus and enable more strategic decision making.
16. Of those respondents who were unsure there was a common theme that it was the effectiveness of the working of a Council that was the most important point, not its size. Concerns were also expressed that reducing the size of the NMC's Council too far might undermine the body's performance. The Department would agree that if any Council (including smaller ones) is to work effectively it will need to operate strategically.
17. From these results the Department has concluded that it is right to move to a smaller NMC Council. The Department agrees that the regulatory bodies need to ensure that they have the right mix of skills, knowledge and expertise on their councils and believes that this is possible with a reduced Council size with members appointed through the new robust appointments process described at paragraph 11 of this Consultation Report.
18. The evidence in the CHRE's report is clear that smaller councils are more effective at carrying out both these functions and therefore we do not consider that a reduction in size would necessarily undermine performance. We note that the effectiveness of a future, smaller, NMC Council will also be monitored by the CHRE as part of its annual performance reviews of the health regulators.

## Q2: Do you agree that the size of the board of the NMC should be between 8 and 12 members?

Agree
23
100%

19. There was unanimous support for a reduction in size of the NMC Council to between 8 and 12 members.
20. However, some respondents again indicated that they were concerned that if the new NMC Council had membership at the lower end of this range then there was a risk that this might compromise the ability to constitute a Council with a sufficient range of skills and experience.
21. As indicated above, whilst acknowledging this risk the Department would reiterate its view that, with a robust and effective appointments process, it will be possible to appoint to the new NMC Council individuals with appropriate knowledge, experience and skills. This is demonstrated by a number of other organisations which operate effectively with smaller councils and is

supported by evidence (set out in the CHRE’s report on board size and effectiveness) which shows that smaller councils can be more effective than larger ones.

**Q3: Do you agree that it makes most sense to reduce the NMC governing Council to 8, which is the lowest point in this range? If not, what size do you believe the governing Council of the NMC should be and why?**

Agree	Disagree	Unsure
5	15	3
22%	65%	13%

22. The majority of respondents disagreed with the Department’s proposal that the size of the new NMC Council should be 8 members. In response to this question a range of views, and a variety of suggestions as to the best size for the new NMC Council, were expressed as follows:-

- Unsure or did not specify a number: 3 respondents (13%);
- Council of 8: 5 respondents (22%);
- Council of 8-10: 1 respondent (4%);
- Council of 9-10: 1 respondent (4%);
- Council of 9: 2 respondents (9%);
- Council of 10: 2 respondents (9%); and,
- Council of 12: 9 respondents (39%).

23. Some respondents suggested that a range approach to the size of the new NMC Council might provide flexibility. The two respondents who supported a Council size of 9 believed that it would be advisable to move to the smaller end of the range suggested by CHRE, but believed that an even number of 9 would be advantageous to avoid the potential for deadlock in voting. The two respondents who suggested a size of 10 believed that this would enable the new NMC Council to be more representative (e.g. include representation from the branches of nursing and midwifery, and the four countries of the UK, etc).

24. The two largest categories of responses were at either end of the range suggested by CHRE.

25. Of those who agreed with the figure 8, only one provided a substantive explanation as to why. That respondent agreed with the Government that such a figure would enable the new NMC Council to act more strategically.

26. Those who suggested a figure of 12 believed that this number would provide for a greater diversity of views and greater continuity (to cover ill health, holidays, sickness, etc.). Trades Union respondents pointed out that the Department had decided, following a recent consultation, that the Councils of the General Medical Council and General Dental Council should be 12 members in size. As such, they suggested that a similar approach should be adopted. Concerns were expressed that a Council smaller in size than 12 members may not be able to have the requisite knowledge and experience.

27. The NMC itself also favoured the figure 12, for similar reasons of the Trades Unions. They further stated that:-

*“We believe that a council of eight members is too small to accommodate the range of skills and expertise necessary to maintain strategic oversight, hold the executive to account and provide leadership, while, at the same time, meeting the requirement for representation across the four*

*countries of the UK. The membership will also need to reflect the two professions that we regulate, nursing and midwifery.”*

28. The Department has considered the consultation responses carefully. We have also taken into account the fact that the majority of respondents to the consultation suggested that 12 was the optimum size. We do not find the evidence presented for a size of 12 compelling, nor the problems raised by respondents in relation to a smaller sized Council insurmountable.
29. That said, and on balance, we are persuaded that it would be inappropriate to reduce the size of the NMC’s Council to 8 at the present time and will therefore amend the draft order to provide for 12 members. This will mean that the new NMC Council must comprise of 6 registrant members and 6 lay members. The requirement for there to be at least one member living or working in each of England, Northern Ireland, Scotland and Wales remains unchanged.

**Q4: Do you agree that the quorum of the NMC Council should be 50% of the total + 1?**

<b>Agree</b>	<b>Disagree</b>
21	2
91%	9%

30. There was very strong support for the Department’s proposals regarding quorum of the proposed new NMC Council, with comments including agreement that a quorum requirement of attendance of a majority of total Council Members aids decision making. One respondent pointed out the important impact of decisions made by the NMC and so stressed the need to have a sufficient number of members in attendance in order to make informed judgments.
31. Of those disagreeing with this proposal one respondent suggested that the size of the Council was already small compared in comparison to its registrant base (c.670,000 nurses and midwives.) They suggested, therefore, that the quorum should be more like 80% of Council members. One respondent suggested that the requirements for a quorum should be 51% membership of the nursing profession.
32. The Department has carefully considered these comments but, given the wider support for our proposal, we would intend to proceed with setting the quorum for the new NMC Council at 50% of membership plus one. We note that the quorum arrangements for the current NMC Council are already set at this rate.
33. We also note that are currently no provisions for any of the regulatory bodies’ quorums to require as high a level of attendance as 80%, and similarly that there are no requirements elsewhere to guarantee a majority of professional representation for the other health regulators. The Department does not believe that legislating to provide for such representation is appropriate. In 2008 the Working Group on Implementing the previous administration’s White Paper *Trust, Assurance and Safety*<sup>5</sup> concluded that *“Members [of boards/councils], including those who were also registrants, should not be considered to be representative in any way - members should be appointed because of their knowledge, experience and judgement.”*

---

<sup>5</sup> Accessible at:  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085162](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085162)

34. The Department shares both the view of the Working Group and CHRE’s view (set out in its paper on Board size and effectiveness) that the composition of governing councils does not need to be representative of registrants, stakeholders or interested parties.
35. For the above reasons we would intend to implement quorum provisions of 50% of membership of the Council + 1.

**Q5: Do you agree that a Council member should be able to serve up to 8 years in any 20 year period? If not, what period do you believe a Council member should be able to serve?**

Agree	Disagree	Unsure
17	3	3
74%	13%	13%

36. There was strong support for the Department’s preferred approach. The respondents who agreed noted that this would put the NMC in line with other regulatory bodies, but stressed the importance of the need for the NMC to regularly appraise the performance of members.
37. The Department notes in this regard that the NMC’s *Code of Conduct for Members*<sup>6</sup> requires that Council Members are appraised annually, and obliges them to “*participate in the appraisal process and actively commit to achieving any personal development objectives identified during the appraisal process.*”
38. Of the three who disagreed with the proposal, each suggested a different maximum term of office of members (ie 10 years, 6 years, and 5 years respectively). Those who were unsure, again noted the need to ensure that members perform effectively, and one respondent noted that extended periods of membership may inhibit the bringing in of fresh ideas to aid decision making.
39. The Department notes that the majority of respondents support its proposal. It further notes that this move brings the NMC into line with the other health regulators. We believe that our proposals strike the correct balance between providing continuity on the NMC Council, whilst still enabling fresh ideas and viewpoints to be introduced periodically. Therefore, we would intend to proceed with this proposal.

**Q6: Do you think there are any additional equalities issues that need to be considered?**

Yes	No
10	13
43%	57%

40. The majority of respondents indicated that they did not believe that there were any additional equality issues that needed to be considered that had not already been highlighted in the equalities analysis paper published alongside the consultation.

<sup>6</sup> Accessible at: <http://www.nmc-uk.org/Documents/CouncilPapersAndDocuments/Council2011/Council-Code-of-conduct-2010-2011.pdf>

41. Those respondents who felt that there were additional equality issues to be considered raised a variety of interesting points relating to the need to ensure that the right people with the right skills are appointed to the new NMC Council. Trades Union bodies who responded to the consultation believed that reduction in size of the new NMC Council to below 12 members might threaten the ability to ensure sufficient diversity in membership. One respondent believed that membership of professional members should be calculated proportionally. Another respondent believed that the new NMC Council should be constituted to reflect what is happening outside of London and the South-East, which in their opinion was the base for most national organisations.
42. We have considered these additional points in the updated equalities analysis, which is attached at Annex D.
43. The CHRE’s proposed guidance on appointments that is currently being developed includes advice on ensuring that Council members are aware of equality and diversity issues as part of the appointments process. The NMC also has published policies<sup>7</sup> that commit it to acting in a way that values the diversity of the nurses and midwives on its register, its staff, and the wider community.

**Q7: Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes?**

Yes	No
8	15
35%	65%

44. Of the 8 respondents who had further views on the administrative burden of the Department’s proposed changes several believed that the changes should deliver a reduction in costs. One respondent commented that the cost implications of these proposals were not an important factor to consider, and that concentration should be focussed on creating an effective Council. The Department would agree with this. Two respondents were concerned that any cost implications of proposals should not fall on registrants. The NMC’s response to the consultation indicated that a change in the size of its Council would have a minimal effect on costs and administrative burden.

**Q8: Do you think there are any benefits that are not already discussed relating to the proposed changes?**

Yes	No	Not Answered
4	17	2
17%	74%	9%

45. Of those respondents who had further comments it was believed that the changes proposed would enable the NMC to make more focussed and timely decisions. One respondent believed that this should enable the new NMC Council to better hold to account its executive. One respondent argued that the financial impact of a smaller NMC Council should be better articulated, in light of the NMC’s proposals to increase the fee it charges to registrants.

<sup>7</sup> Accessible at: <http://www.nmc-uk.org/About-us/Equality-and-diversity/>

### Q9: Do you have any comments on the draft order itself?

Yes	No
4	20
17%	87%

46. Of the respondents who indicated that they had comments to make on the draft Order only one made comments relating to the actual provisions of the legislation itself, with that respondent suggesting that either none (or a limited number) of NMC Council members should be eligible for reappointment to the new Council. The Department does not agree with this contention and believes that appointment to the new Council should be made on merit. Current members will be free to apply for reappointment provided they have not reached their upper limit in terms of years of membership.
47. The other comments, though not directly related to the question posed, have been considered more widely by the Department as part of this consultation response.

## Conclusion

48. The Department would like to thank all those who responded to this consultation, and is grateful to them for their input.
49. The consultation asked for views on:
- A reduction in the size of the NMC's governing Council (in line with recommendations of the CHRE on board size and effectiveness, which were based on published research and evidence);
  - Alterations to the period of membership of Council members; and,
  - Resultant transitional arrangements.
50. There was strong support for a reduction in size of the NMC Council, and unanimous support that the reduced size should be between 8 and 12 members.
51. We have received a variety of views as to what the correct size within this 8-12 range should be, with the largest support being for the bottom and top end of this range. The Department does not agree with the basic premises that Councils with memberships at the bottom end of the range would not be able to work effectively. The evidence in the CHRE report on Board Size and Effectiveness clearly shows that smaller Councils can work effectively. However, we have listened carefully to the counter arguments and (for the reasons given earlier in this Consultation Report) are persuaded that, on balance, it is right to move to a 12 strong new NMC Council.
52. During the period of this consultation the CHRE published its final report following its recent Strategic Review of the NMC. The report highlights the vital importance of strategic leadership at the NMC, focussing particularly on the key roles of Chair and Chief Executive that the NMC are in the process of filling substantively. However, the wider Council has an absolutely crucial role to play in the future performance of the NMC. It needs to provide effective and strategic leadership, and hold the NMC's executive to account, to ensure that the very real need for change at the NMC to improve performance is delivered. To ensure that NMC are deriving the maximum benefit from a smaller Council we will ask CHRE to assess, in due course, whether

the reduction in size has delivered the intended benefits and, if not, whether any further changes are required.

53. The issue of the quorum was also consulted upon with a majority of respondents supporting the proposal for a quorum of 50% +1 (the current requirement for the NMC). As such, we will proceed on this basis.
54. We also consulted on bringing the NMC into line with other regulators regarding the length of membership of its members. As respondents identified, the important point with this is to ensure that the correct balance is struck between enabling continuity of leadership, whilst still allowing for new people with new ideas to be brought in to an organisation. The Department believes that harmonising the position regarding the NMC with the other regulators will allow this balance to be achieved.
55. Further, following consultation, the Department is of the view that there do not appear to be consequences in terms of costs or administrative burdens that would be so significant as to outweigh the benefits arising from the proposals, nor have there been any additional equality considerations that have arisen through the consultation process which need further attention.
56. The *Nursing and Midwifery Council (Constitution) (Amendment) Order 2012* was revised in accordance with these conclusions and laid before Parliament on 5 November to come into force on 1 May 2013.

# Annex A

## **12 key principles that should underpin the work of an effective council of a regulatory body (as published in the Dickson Report)**

1. The council should uphold the purpose of the organisation as established by Parliament, determine its values and keep both its purpose and its values in mind at all times, with mechanisms in place for annual review.
2. The council should be forward and outward looking, focussing on the future, assessing the environment, engaging with the outside world, and setting strategy
3. The council should determine the desired outcomes and outputs of the organisation in support of its purpose and values
4. For each of its desired outcomes the council should decide the level of detail to which it wishes to set the organisation's policy - any greater level of detail of policy formulation should then be a matter for the determination of the chief executive and staff
5. The means by which the outcomes and outputs of the organisation are achieved should be a matter for the chief executive and staff; the board should not distract itself with the operational matters
6. The chief executive should be accountable to the council for the achievement of the organisation's outcomes and outputs
7. In assessing the extent to which the outcomes have been achieved, the council must have a framework of pre-determined criteria against which performance is reported both internally and externally.
8. The council should engage with its key interest groups including patients, the public, registrants, employers, educators and the devolved administrations, and be confident that it understands their views and priorities
9. The membership of the council should have the capacity and skill to understand the priorities of each of these key constituents
10. Information received and considered by the council should support one of three goals – to allow informed decision making, to fulfil control and monitoring processes or to enable the council to co-operate with CHRE and to be accountable to Parliament
11. The council must govern itself effectively, with clear role descriptions for itself, its chair, and its members, with agreed methods of working and self-discipline to ensure that time is used efficiently
12. The council must ensure that issues of equality and diversity are considered as part of all its work

# Annex B

Table showing list of respondents and answers to each question

Respondent	q1	q2	q3	q3 if disagree size	q4	q5	q6	q7	q8	q9
H K Guthrie Note 1	Unsure	Agree	Disagree	-	Agree	Agree	No	Yes	Yes	No
Annette Lobo	Agree	Agree	Agree	8	Agree	Agree	No	Yes	No	Yes
Ruth Chauhan	Agree	Agree	Agree	8	Agree	Agree	No	Yes	No	No
Susan Goodman	Agree	Agree	Disagree	10	Agree	Agree	No	No	Yes	No
Abby Waters	Agree	Agree	Agree	8	Agree	Agree	No	No	No	No
Liz Griffiths	Agree	Agree	Disagree	10	Agree	Agree	No	No	No	No
Anonymous	Agree	Agree	Disagree	12	Disagree	Agree	No	No	-	No
Jane Camp	Agree	Agree	Unsure	9 or 10	Agree	Agree	No	No	No	No
Richard Morrison	Agree	Agree	Disagree	9	Agree	Disagree	Yes	Yes	No	No
Janet James	Agree	Agree	Disagree	12	Agree	Agree	Yes	No	No	No
Faculty of Health, Kingston University and St George's University of London	Agree	Agree	Agree	8	Agree	Agree	No	Yes	No	No
Trevor Parker	Unsure	Agree	Disagree	9	Agree	Unsure	Yes	No	-	Yes
Christine Hutchinson	Agree	Agree	Disagree	8 or 10	Disagree	Agree	Yes	No	Yes	Yes
National Clinical Assessment Service	Agree	Agree	Agree	8	Agree	Agree	Yes	No	No	No
Nick Arkle	Agree	Agree	Disagree	12	Agree	Disagree	Yes	Yes	No	No
Dept of Health Sciences, University of York	Agree	Agree	Unsure	-	Agree	Unsure	No	Yes	No	No

Dept of Nursing, Open University	Agree	Agree	Unsure	-	Agree	Unsure	Yes	No	Yes	Yes
NMC	Agree	Agree	Disagree	12	Agree	Agree	No	Yes	No	No
RCM	Agree	Agree	Disagree	12	Agree	Agree	Yes	No	No	No
RCN	Unsure	Agree	Disagree	12	Agree	Agree	Yes	No	No	No
Unison	Unsure	Agree	Disagree	12	Agree	Agree	Yes	No	No	No
Ann Wakefield	Unsure	Agree	Disagree	12	Agree	Disagree	No	No	No	No
CHHS, Swansea University	Agree	Agree	Disagree	12	Agree	Agree	No	No	No	No
Welsh Government	Unsure	Agree	Unsure	-	Agree	Agree	No	No	-	Yes

# Annex C

## Nursing and Midwifery Council Constitution Order Equality considerations

### **Background**

1. In the 2011 command paper *Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*, the Government announced that the Council for Healthcare Regulatory Excellence (CHRE) would be asked to advise on a number of issues relating to regulatory body governance including whether there was a case for moving to smaller councils as a way of delivering more board like and effective governance and constraining costs.
2. In September 2011 CHRE reported back on this issue and recommended that the optimum size, to be conducive to effectiveness, for Council membership was between 8 and 12 members.
3. CHRE's report will feed into a wider review they are undertaking around the efficiency and effectiveness of health professional regulators in delivering a high quality regulatory regime.
4. The Government announced in January 2012 that CHRE would undertake a Strategic Review of the NMC and also that a consultation would be held on the constitution of its Council.

### **What are the intended outcomes of this work?**

5. The intended outcome is to amend the Nursing and Midwifery Council (NMC) constitution order (SI 2008 2553) to:
  - Reduce the size of the governing Council from 14 members to 12 members (6 lay members and 6 registrant members);
  - Reduce the size of quorum from 8 to 7;
  - Amend the permissible length of service as a Council member from a total of 6 years to an aggregate of 8 years over a period of 20 years; and,
  - Make transitional arrangements in respect of the above.

### **Rationale**

6. CHRE's report on board size and effectiveness found a number of benefits to having a smaller board size. These included the following:
  - Smaller boards struggle to involve themselves in operational management issues that should be delegated to the executive, therefore a smaller size of Council

helps them to focus their efforts on core governance issues;

- Councils cannot operate in a 'board-like' manner if they are too large; and
- Smaller sized groups are able to communicate more effectively and reach decisions more quickly than larger ones.

7. The NMC has had ongoing performance difficulties, over a number of years and Ministers therefore commissioned the CHRE to carry out a strategic review of the organisation. The final report of this review was published on the CHRE website in July<sup>8</sup>.

8. The Department has also been mindful of the CHRE's advice concerning the potential benefits to be derived from smaller sized governing Councils. Given the difficulties facing the NMC, the Department believes that reducing the size of the NMC's Council now will help it to act in a more strategic and board-like manner, focussing on key issues of governance. We believe that this will help support a culture of improved performance across the organisation.

#### Size of Council

9. As set out above, CHRE's report on board size and effectiveness recommended that the optimum size, to be conducive to effectiveness, for Council membership was between 8 and 12 members.

10. The NMC currently has 14 members (7 lay members and 7 registrant members). We propose to make a reduction now as it will assist the NMC by enabling the Council to deliver its key functions in a more strategic and board-like manner.

#### Duration of Office

11. Currently Council members of the NMC are restricted to a total period of office of 6 years. This is out of step with other regulatory bodies and so we propose to amend the period of office to enable members to serve an aggregate of 8 years in any 20 year period.

#### **Equality considerations**

12. In considering the proposals to amend the NMC constitution order to reduce the size of the Council from 14 to 8, we have looked at the possible impact on all of the equality strands referred to in the Equality Act 2010 (disability, sex, race, age, gender reassignment (including transgender), sexual orientation, religion or belief and pregnancy and maternity, marriage and civil partnerships).

#### Appointment Process

13. The Appointments Commission was responsible for the appointments process for the regulatory body's governing Council and all appointments of current Council members were made in line with the following directions and schemes.

---

<sup>8</sup> See:

[http://www.chre.org.uk/\\_img/pics/library/120702\\_CHRE\\_Final\\_Report\\_for\\_NMC\\_strategic\\_review\\_\(pdf\)\\_1.pdf](http://www.chre.org.uk/_img/pics/library/120702_CHRE_Final_Report_for_NMC_strategic_review_(pdf)_1.pdf)

14. When exercising the powers to appoint, delegated to them by the Privy Council, the directions providing the Appointments Commission with such authority oblige it:

*'To apply good practice in relation to equality and diversity issues; and to make appointments which reflect the desirability ... to have persons from a range of backgrounds, qualifications, competencies, interests and experience on [the NMC] Council.'*

15. The Appointments Commission also had a Single Equality Scheme which it applied to all appointments it is involved in. The equality scheme stated that:

*'The appointments that we make will reflect the wide range of talents contained in the diversity of the population. Our appointments will be made using the principles of transparency and merit, and the candidates whom we select will possess a sound grasp of equality and diversity as part of their skills in governance and leadership'*

16. The Appointments Commission took into account the following objectives when assessing their main functions:

- To design and manage an application process that is easy to find out about and participate in, with applicants aware at every stage of the process what is expected of them;
- To use methods of recruitment and selection free from unlawful bias or discrimination and to allow participants the best chance to demonstrate their talents; and
- To positively emphasise the benefits that a diverse range of appointments will bring to customers and client organisations.

17. A new Chair for the NMC was made by the Appointments Commission, on behalf of the Privy Council. The Chair will be heavily involved in the recruitment of remaining new Council members. In anticipation of the abolition of the Appointments Commission, the Health and Social Care Act 2012 enabled the health and social care professions regulators and the CHRE (renamed the Professional Standards Authority for Health and Social Care (the Authority)) to assist the Privy Council in fulfilling its appointments functions in relation to the regulatory bodies. These powers were commenced in July this year and it is the intention that remaining Council members will be appointed using this new process.

18. In practice, we expect that regulatory bodies will manage their own appointments processes. We anticipate that the Authority will formulate good practice principles around appointments to the regulatory bodies and will provide assistance to the Privy Council to ensure that these principles and the requirements of the Equality Act 2010 are being followed. In all cases, the function of making appointments will remain with the Privy Council.

19. Therefore, in light of the abolition of the Appointments Commission, the NMC will manage the appointments process for the remaining Council members, and follow good practice principles set by the Authority to make sure that those appointed have the skills and attributes needed to undertake the role whilst taking account of equality and diversity

issues. We would expect the guidance to include standards relating to equality and diversity to ensure compliance with the Equality Act 2010. The Privy Council would then be advised if the process complied with the standards and would confirm the appointments.

20. The NMC has an equality and diversity strategy in place which aims to, amongst other things, ensure and actively demonstrate that current and prospective Council members, members of Council staff and job applicants, registrants, complainants and providers of services are treated solely on the basis of their merits, abilities and potential (and relevant legal requirements) without any discrimination.

### **Who will be affected?**

21. Provided there are systems in place around the way in which Council members are appointed to ensure equality issues are considered and addressed, we do not expect there to be any negative impact on equalities issues.

22. While there will be a reduction in numbers on the Council, by maintaining good practice in terms of equalities in relation to the appointments the NMC will be able to seek to ensure that appointments to the membership reflect the principles of the Equality Act 2010.

23. As set out above the NMC and the Appointments Commission have equality and diversity strategies in place. The NMC's processes will be enhanced by guidance on good practice from the Authority to ensure compliance with equalities law. Therefore we would expect that a fair and transparent process would be followed.

24. We are planning to reduce the size of the Council at the earliest opportunity. This will mean that any current members who wish to stay on as a Council member will have to re apply rather than going through a re-appointment process. As stated above, the new appointment process will be expected to ensure compliance with equalities law and any candidates whether these are existing members or new applicants will be selected on a fair and transparent basis.

25. We do not expect the positive effects, outlined above, of reducing the Council size to affect certain equalities groups more than others.