

DHSC Regulating Healthcare Professionals Consultation

In 2017, Government examined a range of options for reforming regulation of healthcare professionals. The five key objectives were to:

- 1) improve public protection from the risk of harm due to poor professional practice
- 2) support the development of a flexible workforce that is able to meet the challenges of delivering healthcare in the future
- 3) address concerns about the performance of professionals in a more proportionate and responsive fashion
- 4) Support regulated professions in delivering high-quality care
- 5) Increase efficiency of the system.

The purpose of this consultation is to modernise the legislation of the regulatory bodies.

Its overall aim is to put in place a legal framework which supports responsive and accountable regulation by providing regulators greater flexibility to set-out their operating processes through rules of guidance. In addition, the proposed changes should ensure regulators work in partnership with each other as part of the wider healthcare system, with public safety at the heart of everything we do.

A key change in this consultation proposal is modernising regulators' fitness to practice processes, which will enable the safe and quick conclusion of many cases without the need for expensive and lengthy panel hearings. This will also enable the regulators to better support the professionalism of their registrants.

The consultation is divided into nine sections, four of which will be detailed within this paper:

- 1) Governance and operating framework
- 2) Education and training
- 3) Registration
- 4) Fitness to Practise
- 5) Regulation of Physician Associates and Anaesthesia Associates
- 6) Next Steps for the reform of professional regulation (No Questions)
- 7) Changes to the international registration processes operated by the GDC and NMC (No Questions)
- 8) The regulators and public body status (No Questions)
- 9) Impact assessment and equalities impact assessment

Governance and Operating Framework (Pts 42-94)

Synopsis

The Governance and Operating Framework (GOF) is the legal basis which underpins the operation of the health and care professional regulators. However, GOFs vary between regulators. The consultation proposes that all regulators have similar GOFs which balance greater flexibility with effective oversight.

In addition:

- Regulators would have to meet additional duties in carrying out their regulatory reforms:
 - Duty to co-operate (**Pt 56**)
 - Duty of transparency (**Pt 59**)
 - Duty to assess the proportionality of changes to rules and procedures. (**Pt 62**)
- The current Council structure would be replaced by a Unitary Board with Executive and Non-Executive representation; appointed on the basis that they have the skills, knowledge and expertise to ensure the regulator discharges its functions effectively. (**Pt 65**)
- Regulators would be allowed to set fees without parliamentary oversight (**Pt 72**)
- Regulators should have the power to delegate functions to other regulators, if desired, and to carry out functions delegated to them (**Pt 81**)
- Regulators to report annually to Privy Council and other devolved institutions in countries they operate. (**Pt 91**)

Developing Your Consultation Response

Each question from the consultation paper has been placed in its own expandable box. Please submit your commentary, with justifications, in the appropriate box. If context to the question is required, the corresponding paragraph number/s from the consultation have been added at the end of each question (**in bold**). Although no word limit has been proposed, concise responses are preferred by the Clerks.

<p>1) Do you agree or disagree that regulators should be under a duty to co-operate with the organisations set out above? 56</p> <p>Answer:</p>
<p>2) Do you agree or disagree that regulators should have an objective to be transparent when carrying out their functions and these related duties? 59</p> <p>Answer:</p>
<p>3) Do you agree or disagree that regulators should be required to assess the impact of proposed changes to their rules, processes and systems before they are introduced? 63</p> <p>Answer:</p>
<p>4) Do you agree or disagree with the proposal for the constitution on appointment arrangements to the Board of the regulators? 69</p> <p>Answer:</p>
<p>5) Do you agree or disagree that regulators should be able to set their own fees in rules without Privy Council approval? 72</p> <p>Answer:</p>
<p>6) Do you agree or disagree that regulators should be able to set a longer-term approach to fees? 73</p> <p>Answer:</p>
<p>7) Do you agree or disagree that regulators should be able to establish their own committees rather than this being set out in legislation? 76</p> <p>Answer:</p>
<p>8) Do you agree or disagree that regulators should be able to charge for services undertaken on a cost recovery basis, and that this should extend to services undertaken outside of the geographical region in which they normally operate? 78</p> <p>Answer:</p>
<p>9) Do you agree or disagree that regulators should have the power to delegate the performance of a function to a third party including another regulator? 81</p> <p>Answer:</p>

10) Do you agree or disagree that regulators should be able to require data from and share data with those groups listed above? **89**

Answer:

11) Do you agree or disagree that regulators should produce an annual report to the Parliament of each UK country in which it operates? **91**

Answer:

12) Do you agree or disagree that the Privy Council's default powers should apply to the GDC and GPhC?

Answer:

Education and Training (Pts 95-143)

Synopsis

Regulators set the professional standards which registered professionals must meet. They also set the standards to pre-registration education and training, including:

- Requirements which learners must meet before entry to courses or programmes
- Standards for the outcomes of education and training for individual learners
- Standards which education and training providers must meet
- Standards which specific courses or programmes of training must meet.

It is proposed that all regulators be given broadly consistent set of powers relating to education and training standards (**Pt 105**).

Any increase in regulator powers will be balanced by the duties set out in Governance and Operating Framework section. (**Pt 108**)

It is proposed that regulators have powers to approve, impose conditions or warnings on education and training providers' courses, programmes or qualifications. (**Pt 109-114**).

Regulators will have the flexibility to determine the required outcomes of education and training which leads to registration or annotation of the register, and that all regulators have the power to set and administer such assessments. (**Pt 114-123**)

It is proposed that regulators should be allowed to delegate education and training functions to other bodies. In addition, regulators should be allowed to assess education and training providers in a variety of ways instead of site visits. (**Pt 127-128**)

Finally, it is proposed that all regulators be able to set standards for CPD and/or revalidation. Detailed CPD requirements should be set by individual regulators. (**Pt 137-142**)

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13) Do you agree or disagree that all regulators should have the power to set: **103-108**

- standards for the outcomes of education and training which leads to registration or annotation of the register for individual learners;
- standards for providers who deliver courses or programmes of training which lead to registration;
- standards for specific courses or programmes of training which lead to registration;
- additional standards for providers who deliver post-registration courses or programmes of training which lead to annotation of the register; and
- additional standards for specific courses or programmes of training which lead to annotation of the register?

Answer:

14) Do you agree or disagree that all regulators should have the power to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses or programmes of training which lead to registration or annotation of the register? **114**

Answer:

15) Do you agree that all regulators should have the power to issue warnings and impose conditions? **114**

Answer:

16) Do you agree or disagree with the proposal that education and training providers have a right to submit observations and that this should be taken into account in the decision-making process? **115-117**

Answer:

17) Do you agree that: **117**

- education and training providers should have the right to appeal approval decisions;
- that this appeal right should not apply when conditions are attached to an approval;
- that regulators should be required to set out the grounds for appeals and appeals processes in rules?

Answer:

18) Do you agree or disagree that regulators should retain all existing approval and standard setting powers? **119-121**

Answer:

19) Do you agree or disagree that all regulators should have the power to set and administer exams or other assessments for applications to join the register or to have annotations on the register? **122-123**

Answer:

20) Do you agree or disagree that this power to set and administer exams or other assessments should not apply to approved courses or programmes of training which lead to registration or annotation of the register? **122-123**

Answer:

21) Do you agree or disagree that regulators should be able to assess education and training providers, courses or programmes of training conducted in a range of ways? **128**

Answer:

22) Do you agree or disagree that the GMC's duty to award CCTs should be replaced with a power to make rules setting out the procedure in relation to, and evidence required in support of, CCTs? **134**

Answer:

23) Do you agree or disagree that regulators should be able to set out in rules and guidance their CPD and revalidation requirements? Please give a reason for your answer. **141**

Answer:

Registration (Pts 144-233)

Synopsis

It is proposed that there should be greater consistency in registration across all regulators as well as allow regulators to set-out operational processes in rules and guidance rather than having them set via legislation and Privy Council.

Some regulators hold multiple registers while others hold just one. It is proposed that all regulators hold a single register which can be divided into parts for each profession a regulator regulates. **(Pt 155)**

In addition, regulators should be given a power to request specific information from registrants which may be published on the register ie. Scope of practice, insurance and indemnity, revalidation and/or CPD requirements. **(Pt 158)**

Protection of professional titles is key to public protection. It is proposed that to be guilty of a protected title offence, someone would need to have used a protected title with the intent to deceive others into thinking they were entitled to use said title. **(Pt 178)**.

All regulators have a Registrar, generally the Chief Executive. It is proposed that all regulators have the power to appoint a deputy registrar. **(Pt 186)**

It is proposed that all individuals applying for registration should meet the following criteria:

- Evidence of identity
- Hold or passed all qualifying exams or assessments
- Possess the relevant knowledge, skills and experience to practise
- The necessary knowledge of English
- Meet any other requirements set by the regulator.

Regulators should have the flexibility to set-out in guidance the standards for meeting the above criteria and processes for considering applications from UK and international trained professionals **(Pt 193)**

It is proposed that all regulators are given the power to suspend **(Pt 206)** or remove registrants **(Pt 208)** alongside increased powers to set-out their removal and readmission processes in rules **(Pt 212)**.

It is proposed that regulators should not have the power to establish separate registers of non-practising professionals, thereby providing assurance that healthcare professionals are safe to practice. **(Pt 226)**

Requirements for international applicants can often be bureaucratic. It is proposed that the level of detail on international registration be removed and allow regulators to set these arrangements in rules thereby creating greater flexibility **(Pt 228-233)**

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24) Do you agree or disagree that the regulators should hold a single register which can be divided into parts for each profession they regulate? **152-155**

Answer:

25) Do you agree or disagree that all regulators should be required to publish the following information about their registrants: **156**

- Name
- Profession
- Qualification (this will only be published if the regulator holds this information. For historical reasons not all regulators hold this information about all of their registrants)
- Registration number or personal identification number (PIN)
- Registration status (any measures in relation to fitness to practise on a registrant's registration should be published in accordance with the rules/policy made by a regulator)
- Registration history

Answer:

26) Do you agree or disagree that all regulators, in line with their statutory objectives, should be given a power allowing them to collect, hold and process data? **157**

Answer:

27) Should they be given a discretionary power allowing them to publish specific data about their registrants? **158**

Answer:

28) Do you agree or disagree that all regulators should be able to annotate their register and that annotations should only be made where they are necessary for the purpose of public protection? **161-164**

Answer:

<p>29) Do you agree or disagree that all of the regulators should be given a permanent emergency registration power as set out above? 169</p> <p>Answer:</p>
<p>30) Do you agree or disagree that all regulators should have the same offences in relation to protection of title and registration within their governing legislation? 181</p> <p>Answer:</p>
<p>31) Do you agree or disagree that the protection of title offences should be intent offences or do you think some offences should be non-intent offences (these are offences where an intent to commit the offence does not have to be proven or demonstrated)? 182</p> <p>Answer:</p>
<p>32) Do you agree or disagree with our proposal that regulators should be able to appoint a deputy registrar and/or assistant registrar, where this power does not already exist? 185</p> <p>Answer:</p>
<p>33) Do you agree or disagree with our proposal that regulators should be able to set out their registration processes in rules and guidance? 192-193</p> <p>Answer:</p>
<p>34) Should all registrars be given a discretion to turn down an applicant for registration or should applicants be only turned down because they have failed to meet the new criteria for registration? 194-201</p> <p>Answer:</p>
<p>35) Do you agree or disagree that the GMC's provisions relating to the licence to practise should be removed from primary legislation and that any requirements to hold a licence to practise and the procedure for granting or refusing a licence to practise should instead be set out in rules and guidance? 203</p> <p>Answer:</p>
<p>36) Do you agree or disagree that in specific circumstances regulators should be able to suspend registrants from their registers rather than remove them? 205-207</p> <p>Answer:</p>
<p>37) Do you agree or disagree that the regulators should be able to set out their removal and readmittance processes to the register for</p>

administrative reasons in rules, rather than having these set out in primary legislation? **211-212**

Answer:

38) Do you think any additional appealable decisions should be included within legislation? **213-214**

Answer:

39) Do you agree or disagree that regulators should set out their registration appeals procedures in rules or should these be set out in their governing legislation? **218**

Answer:

40) Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish student registers? **220**

Answer:

41) Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish non-practising registers? **226**

Answer:

42) Do you agree or disagree that the prescriptive detail on international registration requirements should be removed from legislation? **228-233**

Answer:

Fitness to Practise (Pts 234-364)

Synopsis

Regulated professionals are required to meet the standards for practising their profession safely and effectively. Where a concern is raised, regulators have a duty to assess the concerns and, where necessary, take action to protect the public.

The following proposals aim to make fitness to practise standards consistent across regulators and help redirect focus and resources from a small minority of registrants and more towards supporting and developing the profession.

It is proposed a three-stage fitness to practise system be put in place: **(Pt 242-257)**

- An initial assessment stage to consider any concern and determine grounds for onward referral. If of immediate public risk, a regulator can impose an interim measure to restrict practice of the registrant.
- Case examiner stage where a detailed assessment of the case is made from the written information and evidence available to determine any impairment and whether action is needed to protect the public. Conditions to restrict, suspend or remove the registrant can be imposed.
- Fitness to Practise Panel will determine if the registrant's fitness to practise is impaired and therefore take the appropriate measures.

It is proposed that grounds for action be consistent across regulators as well as measures (warning, conditions, suspension and removal orders) be available to Case Examiners and Fitness to Practise panels **(Pt 260-268)**.

Furthermore, regulators should have the power to establish any committees necessary to assist them in their fitness to practise processes, as well as have the power to set out how they notify registrants and the person who raised the concern. **(Pt 284-286)**

It is proposed that a Registrar Review mechanism be created for all regulators, allowing the Registrar to review the fitness to practise decision made by a case examiner, or a case closed at initial assessment stage. **(Pt 358)**

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43) Do you agree or disagree with our proposal that regulators should be given powers to operate a three-step fitness to practise process, covering: **243-253**

- 1: initial assessment
- 2: case examiner stage
- 3: fitness to practise panel stage?

Answer:

44) Do you agree or disagree that: **261**

- All regulators should be provided with two grounds for action – lack of competence, and misconduct?
- Lack of competence and misconduct are the most appropriate terminology for these grounds for action?
- Any separate grounds for action relating to health and English language should be removed from the legislation, and concerns of this kind investigated under the ground of lack of competence?
- This proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection?

Answer:

45) Do you agree or disagree that: **269-276**

- all measures (warnings, conditions, suspension orders and removal orders) should be made available to both Case Examiners and Fitness to Practise panels; and
- automatic removal orders should be made available to a regulator following conviction for a listed offence?

Answer:

<p>46) Do you agree or disagree with the proposed powers for reviewing measures? 280</p> <p>Answer:</p>
<p>47) Do you agree or disagree with our proposal on notification provisions, including the duty to keep the person(s) who raised the concern informed at key points during the fitness to practise process? 286-289</p> <p>Answer:</p>
<p>48) Do you agree or disagree with our proposal that regulators should have discretion to decide whether to investigate, and if so, how best to investigate a fitness to practise concern? 290-292</p> <p>Answer:</p>
<p>49) Do you agree or disagree that the current restrictions on regulators being able to consider concerns more than five years after they came to light should be removed? 293</p> <p>Answer:</p>
<p>50) Do you think that regulators should be provided with a separate power to address non-compliance, or should non-compliance be managed using existing powers such as “adverse inferences”? 294-297</p> <p>Answer:</p>
<p>51) Do you agree or disagree with our proposed approach for onward referral of a case at the end of the initial assessment stage? 298-300</p> <p>Answer:</p>
<p>52) Do you agree or disagree with our proposal that regulators should be given a new power to automatically remove a registrant from the Register, if they have been convicted of a listed offence, in line with the powers set out in the Social Workers Regulations? 301-302</p> <p>Answer:</p>

53) Do you agree or disagree with our proposals that case examiners should: 305-319

- have the full suite of measures available to them, including removal from the register?
- make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations?
- be able to conclude such a case through an accepted outcome, where the registrant must accept both the finding of impairment and the proposed measure?
- be able to impose a decision if a registrant does not respond to an accepted outcomes proposal within 28 days?

Answer:

54) Do you agree or disagree with our proposed powers for Interim Measures, set out above? **334-338**

Answer:

55) Do you agree or disagree that regulators should be able to determine in rules the details of how the Fitness to Practise panel stage operates? **339-348**

Answer:

56) Do you agree or disagree that a registrant should have a right of appeal against a decision by a case examiner, Fitness to Practise panel or Interim Measures panel? **349**

Answer:

57) Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland? **351**

Answer:

58) Do you agree or disagree that regulators should be able to set out in Rules their own restoration to the register processes in relation to fitness to practise cases? **352-353**

Answer:

59) Do you agree or disagree that a registrant should have a further onward right of appeal against a decision not to permit restoration to the register? **352-353**

Answer:

60) Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland? **352-353**

Answer:

61) Do you agree or disagree that the proposed Registrar Review power provides sufficient oversight of decisions made by case examiners (including accepted outcome decisions) to protect the public? **354-364**

Answer:

62) Under our proposals, the PSA will not have a right to refer decisions made by case examiners (including accepted outcome decisions) to court, but they will have the right to request a registrar review as detailed above. Do you agree or disagree with this proposed mechanism? **354-364**

Answer:

63) Do you have any further comments on our proposed model for fitness to practise?

Answer: