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Regulation of Health Care Professionals
Regulation of Social Care Professionals in England

Law Com No 345 / Scot Law Com No 237 / NILC 18 (2014)

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Scottish Law Commission
Northern Ireland Law Commission

(LAW COM No 345)
(SCOT LAW COM No 237)
(NILC 18 (2014))

REGULATION OF HEALTH CARE PROFESSIONALS
REGULATION OF SOCIAL CARE PROFESSIONALS IN ENGLAND

Presented to Parliament by the Lord Chancellor and Secretary of State for Justice by Command of Her Majesty

Laid before the Scottish Parliament by the Scottish Ministers

Laid before the Northern Ireland Assembly by the Department of Justice

April 2014

Cm 8839
SG/2014/26

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This publication is available at www.gov.uk/government/publications

Print ISBN 9781474101837
Web ISBN 9781474101844

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

ID 2634833 38723 04/14

Printed on paper containing 75% recycled fibre content minimum

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The terms of this report were agreed on 21 March 2014.

The text of this report is available on the Law Commission's website at

http://lawcommission.justice.gov.uk/areas/Healthcare_professions.htm
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REGULATION OF HEALTH CARE PROFESSIONALS

REGULATION OF SOCIAL CARE PROFESSIONALS IN ENGLAND

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LAW COMMISSION

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REGULATION OF HEALTH CARE PROFESSIONALS

REGULATION OF SOCIAL CARE PROFESSIONALS IN ENGLAND

To the Right Honourable Chris Grayling, MP, Lord Chancellor and Secretary of State for Justice, the Secretary of State for Scotland, the Scottish Ministers, and the Department of Justice in Northern Ireland

PART 1
INTRODUCTION

1.1 The regulation of health and social care professionals impacts not only on the lives of registered and aspiring professionals; it also affects the lives of all those who use their services. There are nine regulatory bodies responsible for regulating 32 professions in the UK – consisting of approximately 1.44 million professionals.[1]. The primary purpose of professionals regulation (as we shall call it for brevity) is to ensure public safety. This is achieved not only by a process of weeding out those who fall short of professional standards but also by ensuring high standards of practice and behaviour and thereby reducing the need for disciplinary intervention. Professionals regulation is one element of a much broader system of ensuring patient and service user care. In broad terms, its focus is on the regulation of individual professionals rather than, for example, organisations and systems.

1.2 Given the importance of health and social care professionals regulation, it is a matter of some concern that its UK legal framework is fragmented, inconsistent

[1] Professional Standards Authority, *Annual Report and Accounts 2012-13* (2013) p 4. A list of the professions regulated by each regulator is set out in Schedule 1 to the draft Bill.

and poorly understood. The history of the legal framework can be traced back to the establishment of the General Medical Council in 1858. Since then it has grown piecemeal through numerous statutes and Orders in Council which have established and sometimes re-established regulatory bodies. Added to this structure is a vast array of orders, rules and regulations that have accumulated over the years. The resulting framework is neither systematic nor coherent and contains a wide range of inconsistencies and idiosyncrasies. Several examples of this can be seen in the area of fitness to practise. Some regulators have powers to establish systems of case management, while others do not. Some are able to screen allegations of impaired fitness to practise, while others must refer all complaints to an investigation committee. The test for referring a case to a fitness to practise panel and the powers to take action against practitioners whose fitness to practise is impaired also vary.

1.3 The current system is also cumbersome and expensive. It requires continuous Government input for its maintenance. Changes to the regulators' rules and regulations – including relatively minor changes – must be developed, scrutinised and secured by the Government, and the process can take over two years. Furthermore, constraints on Government resources mean that only the most pressing matters are taken forward.

1.4 This project represents a major and unique opportunity to reform this legal framework and address these problems. The recommendations set out in this report will create a clear, modern and effective legal framework for health and social care professionals regulation both now and for the future.

THE REMIT OF OUR REVIEW

1.5 The remit of the project is to review the UK law relating to the regulation of health care professionals and, in England only, the regulation of social workers. There are nine regulatory bodies within the remit of the project. These are listed in the table below.

The regulatory bodies:	
(1)	General Chiropractic Council
(2)	General Dental Council
(3)	General Medical Council
(4)	General Optical Council
(5)	General Osteopathic Council
(6)	General Pharmaceutical Council
(7)	Health and Care Professions Council
(8)	Nursing and Midwifery Council
(9)	Pharmaceutical Society of Northern Ireland

1.6 In addition, the project covers the Professional Standards Authority, which oversees the work of the nine regulators.[2] The Authority is responsible for supervising and scrutinising the work of the regulators, sharing good practice and knowledge with the regulators, and advising the four UK governments' health departments on issues relating to professionals regulation.

What is professionals regulation?

1.7 Each regulatory body has the same overarching functions, which are as follows:

(1) setting the standards of behaviour, competence and education that professionals must meet;

(2) dealing with concerns from patients, the public and others about professionals who are unfit to practise because of poor health, misconduct or poor performance; and

(3) keeping registers of professionals who are fit to practise and setting the requirements for periodic re-registration (and in some cases revalidation) for each profession.

1.8 Professionals wishing to use titles such as "doctor of medicine" or "pharmacist" must be registered with the relevant regulator. It is a criminal offence for any person to use a protected title without being registered. In some cases, specific activities or tasks are reserved to registered professionals.

1.9 Four of the regulators also have, to varying degrees, jurisdiction over businesses engaged in health care.[3] In some cases, this enables them to register premises, maintain lists of businesses, require businesses to have particular professionals on their board of directors, impose financial penalties on businesses and inspect premises.

STRUCTURE OF THE PROJECT

1.10 The project was referred to the Law Commission by the Secretary of State for

[2] The Professional Standards Authority was previously called the Council for Healthcare Regulatory Excellence. Its name was changed as a result of the Health and Social Care Act 2012.

[3] The General Dental Council, General Optical Council, General Pharmaceutical Council and Pharmaceutical Society of Northern Ireland.

Health in September 2010 and announced in the White Paper *Enabling Excellence*.[4]

1.11 Owing to the UK-wide nature of the review, it was agreed that the project should be a joint one between the Law Commission of England and Wales, the Scottish Law Commission and the Northern Ireland Law Commission.

1.12 The project was divided into three stages:

Stage 1: Pre-consultation	
March 2011 – February 2012	Meetings with stakeholders and drafting of the consultation paper
Stage 2: Public consultation	
1 March 2012	Publication of consultation paper with provisional proposals for reform
1 March – 31 May 2012	Public consultation on the proposals
20 February 2013	Publication of the consultation analysis
Stage 3: Final Report and Draft Bill	
2 April 2014	Publication of the final report setting out our final recommendations and a draft Bill

1.13 The three Commissions have worked closely on the development of this report and the draft Bill and the final document has been approved by each of the Commissions of England and Wales, Scotland and Northern Ireland.

Public consultation

1.14 Our consultation paper was published on 1 March 2012.[5] The paper contained

[4] Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers (2011) Cm 8008.

[5] Regulation of Health Care Professionals, Regulation of Social Care Professionals in England (2012) Law Commission Consultation Paper No 202; Northern Ireland Law Commission Consultation Paper No 12; Scottish Law Commission Discussion Paper No 153. Subsequent references to the consultation paper will be abbreviated to Joint CP, followed by the paragraph reference.

111 provisional proposals and 66 consultation questions. During the public consultation period, we attended 44 events across the UK. These events covered a wide audience, including patients, health and social care professionals, academics, professional bodies, the regulatory bodies, lawyers, service providers and representatives from charities and campaigning organisations. At each of the consultation events, we received a wide range of views on various aspects of our proposals. As a general observation we were struck by the widespread support for this project and the need to reform this area of law as a matter of priority.

1.15 We received 192 written responses to the consultation paper, from a range of different individuals and organisations. All of our proposals have been reviewed as a result of consultation, and the vast majority have been revised or altered, some substantially. The consultation analysis was published on 20 February 2013.[6] We extend our gratitude to all those who participated in the consultation process.

Relationships with the Government and regulatory bodies

1.16 Throughout this project we have benefited greatly from a strong and ongoing commitment by all four UK governments. Ongoing meetings have taken place since the start of the project with the Department of Health, as the department with policy responsibility, to ensure that the Law Commissions are aware of developing Government policy. Meetings have also taken place with the Scottish Government; the Department of Health Social Services and Public Safety for Northern Ireland; and the Welsh Government.

1.17 Throughout the project, we have also met regularly with all the regulators, at both staff and General Council level, and with the Professional Standards Authority. We are extremely grateful for the expert assistance and support for the review provided by all nine regulatory bodies and the Authority.

ISSUES FOR THE PROJECT

1.18 At consultation, there was broad support for our review and the need to modernise and simplify the existing legislative framework. Nevertheless, a number of recurring themes emerged, which are considered throughout the report.

[6] Regulation of Health Care Professionals, Regulation of Social Care Professionals in England – Consultation Analysis (2013). Subsequent references to the consultation analysis will be abbreviated to Consultation Analysis, followed by the paragraph reference.

Enhanced discretion versus overall consistency

1.19 Consultees had different reasons for supporting our proposal of a single statute. The regulatory bodies for example often argued that this would offer them greater flexibility to adapt to changing circumstances and tailor their regulatory activity to cater for the circumstances of the professions they regulate. Others considered that a single statute provided an opportunity to impose greater harmonisation and consistency across the regulators. For example, many patient groups and lawyers argued that the rules for fitness to practise hearings should be the same no matter which regulatory body is deciding the case, and that inconsistent outcomes are unacceptable. Our approach to this issue is considered in Part 2.

Scrutiny and accountability

1.20 Some consultees argued that increasing the regulators' autonomy may lead to a deficit in their accountability. Many suggestions were put forward as to who should be given the primary task of holding the regulators to account in a meaningful sense, including the Department of Health, Professional Standards Authority and the Health Committee. Part 2 of this report considers the relevant issues in this regard such as the role of Government and Parliamentary accountability.

Devolution

1.21 Many consultees supported a UK-wide approach to professionals regulation. It was argued that the public has shared expectations about health and social care professionals across the UK and that UK-wide regulation would support the current high levels of movement of workers throughout the UK. Some consultees were also keen to ensure that the legitimate interests of the devolved administrations are properly recognised and expressed in the new legal framework. Our approach to devolution is discussed in Part 2.

Public protection and maintaining confidence in the profession

1.22 Many consultees argued that the role of the regulatory bodies should be focused on public protection. Some expressed concern that the regulatory bodies were increasingly interfering in matters of private and moral conduct which have no impact on public safety – such as matters of sexuality, religious views and political affiliations. The alternative view was that there are undoubtedly behaviours unconnected with a registrant's professional conduct which would undermine public confidence in the profession. Our approach to the main objective of the regulatory bodies is contained in Part 4.

Consensual disposals

1.23 There was a split of opinion at consultation about the use of consensual disposal as a method of dealing with professionals who admit the allegations made against them. In particular, patient groups were sometimes vociferously opposed and argued that consensual disposals are inappropriate in this context where the public interest is at stake. Others – including some regulators, lawyers and professional groups – were supportive of consensual disposals. It was argued that where a professional is willing to accept the sanction that is necessary to protect the public, there is no legitimate purpose to justify the costs and stress of a full hearing. Consensual disposals are discussed in Parts 8 and 9 of this report.

Separation of investigation and adjudication

1.24 In law, the regulators are responsible for both the investigation and the adjudication of allegations of impaired fitness to practise. This led to criticism that, as setters of standards and prosecutors, the regulatory bodies' independence as adjudicators is open to question. Some argued for the establishment of an independent adjudicator to consider all fitness to practise cases in the future, while others considered that the regulatory bodies should be required to establish internal mechanisms which ensure a greater degree of separation. Our approach to the separation of investigation and adjudication is set out in Part 9.

Joint working

1.25 A strong theme at consultation was the desirability of greater joint working by the regulatory bodies. This included joint working amongst the regulatory bodies themselves and with other bodies, such as the Care Quality Commission, Healthcare Improvement Scotland and the Health and Social Care Regulation and Quality Improvement Authority in Northern Ireland. Examples of areas where joint working was seen to be beneficial included co-produced guidance and codes of conduct and joint investigations and fitness to practise hearings. Many agreed that the law should encourage and sometimes require such activity but some queried the role of law in this area. This is discussed in Parts 10 and 12.

STRUCTURE OF THE REPORT

1.26 This report is divided into 13 Parts:

(1) Part 1 is the introduction;

(2) Part 2 considers the overall structure of the new legal framework;

(3) Part 3 is concerned with the general objectives of the regulators;

(4) Part 4 discusses the role, constitution and membership of the regulatory bodies;

(5) Part 5 considers the legal framework for establishing and maintaining a register of regulated professionals;

(6) Part 6 is concerned with how the regulators ensure proper standards of professional education, conduct and practice;

(7) Part 7 considers the concept of impaired fitness to practise;

(8) Part 8 looks at the investigation of allegations of impaired fitness to practise;

(9) Part 9 discusses the legal framework governing fitness to practise hearings;

(10) Part 10 is concerned with joint working between the regulators and with other organisations;

(11) Part 11 considers the regulators' powers to regulate premises and businesses;

(12) Part 12 looks at the role of the Professional Standards Authority; and

(13) Part 13 deals with other outstanding issues.

PART 2
THE STRUCTURE OF REFORM

2.1 This Part considers matters relating the overall structure of the new legal framework. In particular, it considers:

(1) a single statute;

(2) consistency versus autonomy;

(3) rule-making powers

(4) devolution;

(5) the Pharmaceutical Society of Northern Ireland;

(6) section 60 of the Health Act 1999;

(7) the role of the Privy Council;

(8) Government regulation-making powers;

(9) default powers; and

(10) Parliamentary accountability.

A SINGLE STATUTE

2.2 The UK legislative framework for the regulation of health and social care professionals has grown piecemeal over the past 150 years. Each regulator is governed by its own Act of Parliament or Order in Council. The Professional Standards Authority also has its own separate statute. The relevant governing legislation is set out in the table below.

Governing legislation	Regulatory body
Chiropractors Act 1994	General Chiropractic Council
Dentists Act 1984	General Dental Council
Medical Act 1983	General Medical Council
Opticians Act 1989	General Optical Council
Osteopaths Act 1993	General Osteopathic Council
Pharmacy Order 2010	General Pharmaceutical Council
Health and Social Work Professions Order 2001	Health and Care Professions Council
Nursing and Midwifery Order 2001	Nursing and Midwifery Council

Pharmacy (Northern Ireland) Order 1976	Pharmaceutical Society of Northern Ireland
National Health Service Reform and Health Care Professions Act 2002	Professional Standards Authority

2.3 Our consultation paper described this framework as confusing and fragmented, and generating various idiosyncrasies and inconsistencies in the powers and responsibilities of each regulator. For example, some regulators must establish a formal investigation committee to consider all fitness to practise allegations, while others can appoint case examiners. Some of the regulators have the ability to fine registrants, award costs in fitness to practise cases, issue advice and warnings to registrants, and mediate cases. We proposed that all current Acts and Orders should be repealed and replaced by a single Act of Parliament which would provide the legal framework for all the regulators and the Professional Standards Authority.[1]

Consultation responses

2.4 A large majority agreed with this proposal. It was argued that a single statute would support overall consistency across the regulators and provide the prospect of better understanding of regulation by registrants and the public. Others argued that the existing legislative structure encourages the regulators to work in isolation and therefore provides a barrier to joint working and the sharing of functions and facilities. A small number expressed qualified support for a single statute. The proposal was opposed outright by only one consultee.[2]

Discussion

2.5 Consultation confirmed our view that the existing legal framework needs to be consolidated and simplified. In our view, among the chief benefits of a single statute are that: the system of professionals regulation is more clearly presented to the public; the drafting of it presents an opportunity to overhaul each of the pieces of legislation currently applying to individual regulators and to create wider powers for them to introduce more effective systems of regulation; and that a single, over-arching statute can provide a vehicle for introducing joint working and other efficiencies. The alternative would be to retain a separate Act or Order for

[1] Joint CP, paras 2.2 to 2.6.

[2] Consultation Analysis, paras 2.1 to 2.6.

each regulatory body, while harmonising their various powers and duties. This option is not only unnecessarily complex but would demand a considerable amount of parliamentary time and resources to implement, and create risks for future legislative divergence.

2.6 Notwithstanding the general preference for a single statute, it was evident that consultees had different reasons for supporting this proposal. The regulatory bodies typically saw a single new statute as offering an opportunity to introduce greater flexibility to adapt more quickly and to tailor their regulatory policies to suit the circumstances of the professions they regulate. Others argued that a single statute would enable greater consistency to be imposed across the regulators. How these two positions are reconciled is a crucial issue for the project and considered in the next section.

Recommendation 1: There should be a single statute which provides the framework for all the regulatory bodies and the Professional Standards Authority.

This recommendation is given effect by clause 1 and part 10 of the draft Bill.

CONSISTENCY VERSUS AUTONOMY

2.7 The introduction of a single statute provides an opportunity to impose greater consistency across the regulators. The consultation paper accepted that the regulators should have the same powers to undertake their statutory functions, but argued it would be wrong to impose consistency in how these powers were exercised. This was on the basis that there are significant differences between the regulators in terms of their size and resources and the culture, history and structure of the professions they regulate. Therefore, the experience of one regulator is not always easily extrapolated to another, and each will need to tailor its approach to regulation in the light of its own individual circumstances.

2.8 We therefore proposed that the new legal framework should impose consistency across the regulators only where necessary in order to guarantee the same core functions, minimum procedural requirements and certain key public interest provisions. Otherwise the regulators should be given greater autonomy than at present to adopt, in the exercise of their statutory responsibilities their own approach to regulation in the light of their circumstances and resources.[3]

[3] Joint CP, paras 2.6 to 2.17.

Consultation responses

2.9 An overwhelming majority supported this proposal. Most of the regulators supported the need for enhanced autonomy and felt that it would be wrong for the statute to impose a one-size-fits-all approach. It was suggested that increased uniformity could increase the cost of regulation and prevent the regulators from reacting to changing circumstances.

2.10 However, even amongst those supporting the proposal, many also wanted greater consistency to be imposed in certain respects. Some argued that greater consistency could help to secure robust regulatory standards and therefore help prevent regulatory failure, and guarantee certain core procedural safeguards for the benefit of the complainant and practitioner in fitness to practise cases. It was argued that a divergence of approach would undermine public confidence in the regulators, especially in respect of fitness to practise adjudication, and serve to complicate rather than simplify the regulatory landscape. The Professional Standards Authority also argued that differences in regulatory performance would be much easier to identify if each regulator were required to implement the same provisions.[4]

Discussion

2.11 Some consultees contested the balance that we had struck between flexibility and consistency, and wanted a greater emphasis on the latter. We accept the broad thrust of these arguments. It is likely that increased consistency would be supported by patients and service users, who could then expect the same standards and outcomes irrespective of which regulator they approach. The arguments for consistency are particularly compelling in respect of fitness to practise adjudication, where it is difficult to justify different professionals being disciplined in different ways for the same misdemeanours or discrepancies existing between the relevant disciplinary procedures. However, there are clearly dangers in imposing greater consistency. The regulators' ability to adapt swiftly to new and unique circumstances may be impaired and there could be financial implications, especially for some of the smaller regulators. Increased standardisation could lead to benchmarks set at the lowest common denominator, rather than raising standards.

2.12 Notwithstanding these dangers, consultation has persuaded us to alter our proposed approach to reform. While the new system set out in the draft Bill does

[4] Consultation Analysis, paras 2.7 to 2.20.

not impose a one-size-fits-all approach, greater consistency has been imposed in certain key areas. These are areas where we think there is a clear public interest in imposing such consistency. The precise areas are identified throughout this report; they include fitness to practise adjudication. We have also adopted different approaches to ensuring consistency. In some areas it is imposed in the draft Bill itself or through Government regulation-making powers, while in other areas it will be encouraged through the Professional Standards Authority's oversight role. In some areas we have imposed consistency of outcomes and in other areas consistency of procedure. The solution adopted has varied according to the specific issue concerned.

Recommendation 2: The new legal framework should give the regulators greater operational autonomy, and impose greater consistency between the regulators in certain key areas where it is in the public interest to do so, such as fitness to practise adjudication.

RULE-MAKING POWERS

2.13 In order to undertake their statutory functions, the regulators are given powers to make rules and regulations which, in most cases, must be approved by Order of the Privy Council and laid before Parliament. The consultation paper argued that the process of Privy Council approval is unduly complex and resource-intensive and limits the regulators' ability to modernise and innovate. The financial constraints on the Department of Health – which is the Department with policy responsibility that advises the Privy Council – mean that only the most pressing matters are acted upon and the process for making these changes takes about two years.

2.14 Our consultation paper therefore examined the case for giving the regulators formal rule-making powers without the need for parliamentary approval. We identified several concerns with this approach, such as the loss of the expert advice and assistance provided by the Department of Health and Government lawyers in developing and drafting rules and regulations, and confusion over the formal legal status of the rules. On balance, we concluded that these concerns are outweighed by the advantages of giving the regulators more flexibility to adapt and modernise.

2.15 We also asked whether the Professional Standards Authority should have powers to scrutinise new rules or whether some rules should be subject to Secretary of State approval and contained in a statutory instrument. We proposed to abolish

the separate power of the regulators to issue standing orders because statutory authority is not necessary for such a step.[5]

Consultation responses

2.16 A significant majority agreed that the regulators should be given broad powers to make or amend rules without Privy Council and Government oversight. It was agreed that the requirement of Privy Council approval delays the process for delivering regulatory change and improvements. Some of the regulators argued that the difficulties in securing Department of Health resources or parliamentary time in order to amend rules had prevented their evolution.

2.17 However, some concerns were raised, including by those who supported the proposal, such as the possibility of poorly-drafted rules, frequent amendment of the rules and increased likelihood of legal challenges, all of which would create additional expense and uncertainty. Some felt that the proposal would lead to a disparate approach and that while the larger regulators could take on this role, some of the smaller regulators would struggle. The Department of Health suggested that in order to address any risks in relation to the capability of the regulators, a ”test of readiness” could be introduced to assess a regulator’s ability to take on the new rule-making powers.[6]

2.18 A small majority felt that the status of rules would be less clear. However, some of the regulators pointed out that in several areas, such as setting fees, they can already make regulations that do not require Privy Council approval, and that this does not affect the perceived status of these regulations. Opinion was divided over whether the Professional Standards Authority should be given an active role in scrutinising new rules. The Authority itself felt that it could perform such a role but would require additional resources. Others felt that such a role would alter the nature of the Authority, making it a “regulator of regulators”, and would compromise its ability to comment upon the regulators’ performance. A majority agreed that a limited number of rules should be subject to Secretary of State approval and contained in a statutory instrument. It was suggested that such approval should be required for constitutional orders and fitness to practise matters.[7]

[5] Joint CP, paras 2.18 to 2.36.

[6] Consultation Analysis, paras 2.21 to 2.30.

[7] Consultation Analysis, paras 2.31 to 2.43.

2.19 The vast majority agreed that the express powers to issue standing orders should be removed. However, a small number of the regulators argued that such powers should be retained in order to leave no room for doubt.[8]

Discussion

2.20 There was strong support at consultation for giving the regulators rule-making powers, but there were also some reservations. Some felt that the perceived status of the rules would be uncertain. We think this is unlikely. There are precedents in this area and in relation to financial regulation. In respect of the former, it is noteworthy that the regulators reported no difficulties in areas where they already have rule-making powers. In broad terms, the new rules would fall within the concept of subordinate legislation under the Interpretation Act 1978 and would therefore be legally binding. Any misunderstanding on this point could be addressed by the provision of information by the regulators and Government, and is unlikely to persist once the new system has bedded in.

2.21 In our view, the more significant concerns relate to the potential loss of Government advice and assistance. For example, it was argued that Government input serves to ensure the quality of the rules and that they do not conflict with other legislation such as the Human Rights Act 1998. It was also argued that the removal of the oversight role of Government may have resource implications. We consider that the resource implications of our proposal were overstated at consultation. The regulators are already responsible for drafting proposed new rules, which are then submitted to the Department of Health and its legal group. The proposals are then considered with a view to commenting on the compatibility of changes on existing Government policy and taking a view about the case for rule change. Furthermore, greater joint working and the sharing of legal resources across the regulators will help to secure efficiencies. Nevertheless, we accept the broader concerns about the removal of the role of Government. A possible response would be to require Government approval of some of the regulators' rules. However, we are concerned not to replicate the existing system which builds in delays and other inefficiencies. In addition, the Department of Health is clear that the constraints on its resources means that in the future its role will necessarily need to be reduced.

2.22 We believe that this issue should be addressed in three ways. First, more detail on particular matters should be specified on the face of the draft Bill, such as refusal or withdrawal of approval from education provider institutions (see Part 6)

[8] Consultation Analysis, paras 2.44 to 2.49.

and fitness to practise procedures (see Part 9). This would ensure that the need for regulators to make rules is reduced. Secondly, the Government would be given regulation-making powers in a number of key areas, such as revalidation (see Part 6) and introducing new sanctions (see Part 9). Government oversight would thus be secured over key issues of public interest. Our approach to regulation-making powers is discussed later in this Part. Finally, we consider that the Professional Standards Authority should play a key role in overseeing the processes which the regulators use to make new rules, and in reporting on good practice in this respect. However, this should not involve approving or commenting on the content of the rules. Such a role would require significant resources, would arguably be incompatible with the existing role of the Authority and merely replicate the existing system of approval by the Department of Health, with all the associated inefficiencies and delays.

2.23 The Department of Health suggested that a "test of readiness" could be applied before the regulators take on the new powers. We see no difficulties with this suggestion if all that is being described is the use of commencement orders to ensure that different parts of the legislation are implemented at different times to manage the transition into the new system. However, we would have serious concerns if some form of performance assessment was being proposed which restricted entry into the new system. This would raise the unattractive possibility of some regulators being prevented – perhaps for a considerable period - from entering into the new regime, forcing them to continue to operate under the old legislation, or perhaps even some other alternative scheme. We think that the oversight arrangements set out in this Part are adequate for all the regulators, and the focus should be on ensuring that they are all operating effectively when the legislation is implemented.

2.24 We do not consider that express powers to make standing orders are needed in the new legal framework. The absence of an express power would not prevent the regulators from adopting standing orders to regulate the way that they conduct their business, as any organisation might do.

Recommendation 3: The regulators should be given powers to make legal rules which are not subject to approval by Government or any Parliamentary procedure. The Professional Standards Authority should oversee the processes adopted by the regulators to make and amend rules.

This recommendation is given effect by clauses 23 to 24 of the draft Bill.

DEVOLUTION

2.25 The general position is that the regulators' jurisdiction in respect of health professionals is UK-wide. The exceptions are the General Pharmaceutical Council, which covers Great Britain, and the Pharmaceutical Society of Northern Ireland, which covers Northern Ireland.

2.26 Under the Scotland Act 1998 the regulation of existing health professions is reserved to the Westminster Parliament but the regulation of health professions brought into regulation since devolution is devolved to the Scottish Parliament. This means that the General Dental Council, General Pharmaceutical Council and Health and Care Professions Council are accountable to the Scottish Parliament as well as to the UK Parliament in relation to certain professional groups.

2.27 In Wales, the regulation of health professionals is not devolved.[9] In Northern Ireland, health professionals regulation is not an excepted or reserved matter and the Northern Ireland Assembly can therefore legislate in this area.[10] However, although legislative competence is devolved, the principal modern instrument for legislating for professionals regulation – orders made under section 60 of the Health Act 1999 – is not available to the Northern Ireland Assembly (although in practice section 60 would only be used with the agreement of the Northern Ireland Executive).[11] The UK Government has on a number of occasions in recent years used section 60 orders to legislate on a UK-wide basis. Our approach to section 60 orders is discussed later in this Part.

2.28 The regulation of social care professionals falls within the legislative competence of each country. England, Scotland, Wales and Northern Ireland have all now introduced separate arrangements for the regulation of social workers and other

[9] Government of Wales Act 2006, sch 7, pt 1, para 9.

[10] Northern Ireland Act 1998, s 4(1).

[11] Health Act 1999, s 60(1) and (2).

social care staff.[12] As noted previously, the remit of our review extends only to the regulation of social workers in England, and that part of the project has been carried out by the Law Commission of England and Wales alone.

2.29 The provision of health services is devolved in each settlement, subject to certain exceptions. Accordingly, the NHS is now administered differently in each of the four countries of the UK, and each has its own systems regulators, such as the Care Quality Commission in England and Healthcare Improvement Scotland. This is of major significance to the UK regulators since professionals regulation is affected by the context in which health services are delivered. Furthermore, education and training are broadly devolved, which has an important impact on the statutory role of the regulators to ensure proper standards of education.

2.30 The consultation paper confirmed that our project does not extend to a review of the devolution settlements in the UK. Nevertheless, the responsibilities of each of the three devolved administrations – legislatures and executive arms – give them a strong legitimate interest in professionals regulation. One of the challenges of the project is to ensure that the legitimate interests of the devolved administrations are properly recognised and expressed.[13]

Consultation responses

2.31 Although we did not consult specifically on this question, many consultees made strong statements in support of a UK-wide approach to professionals regulation. It was argued that members of the public have shared expectations about health and social care professionals across the UK and that UK-wide regulation would support the current high levels of movement of workers throughout the UK. Some consultees also urged us to take into account devolved interests and allow for the devolved administrations' input into any decision which is within devolved competence or which impacts on such competence.

Discussion

2.32 In our view, there are convincing reasons for a UK-wide approach to professionals regulation, such as the need to ensure that professionals moving within the UK are not subject to different regulatory requirements. In order to achieve this, some consultees called for a reconfiguration of the devolution settlements whereby all professionals regulation is reserved to the Westminster

[12] Care Standards Act 2000, s 54, Regulation of Care (Scotland) Act 2001 and Health and Personal Social Services Act (Northern Ireland) 2001.

[13] Joint CP, para 1.28.

Parliament. This option remains outside the scope of our project. However, a UK-wide approach to health professionals regulation can still be achieved – and arguably is being achieved – within the current devolution settlements by close co-operation between all four administrations. The framework for such co-operation can be found in the concordat on health and social care, and the memorandum of understanding which were agreed by Ministers and presented to the UK Parliament and devolved assemblies.[14] We think that the new scheme should enable this to continue, and that further requirements such as formal duties to consult are therefore unnecessary.

2.33 The Law Commissions also consider that the new legal framework should proceed on the basis of a Legislative Consent Motion in Northern Ireland and Scotland, but not in Wales. That is on the basis that the National Assembly for Wales has no competence in relation to professionals regulation.

Recommendation 4: The draft Bill should not interfere with the legislative competence of the devolved assemblies.

Recommendation 5: The new legal framework should proceed on the basis of a Legislative Consent Motion in Northern Ireland and Scotland.

THE PHARMACEUTICAL SOCIETY OF NORTHERN IRELAND

2.34 The Pharmaceutical Society of Northern Ireland is different from the other regulators in several ways. For example, the functions of the Society include both regulation and professional representation and the Society's registrar is appointed directly by the Department of Health, Social Services and Public Safety. The consultation paper argued that many of our proposed reforms would amount to a significant reconfiguration of the role of the Society, which is properly a matter for the Northern Ireland Executive. We therefore sought views on whether the Pharmacy (Northern Ireland) Order 1976 should be retained as a separate standalone piece of legislation, or incorporated as a separate part of the new statute. We also asked whether the statute should include the option of incorporating the Society into the new legal framework, and which, if any, of our proposed reforms might be applied to the Society.[15]

[14] UK Government and others, *Memorandum of Understanding and Supplementary Agreements* (2012) and *Concordat on Health and Social Care*.

[15] Joint CP, paras 2.112 to 2.120.

Consultation responses

2.35 A large majority felt that the Pharmacy (Northern Ireland) Order 1976 should be retained as a separate part of the new statute. A majority agreed that the Government regulation-making powers should include a power to incorporate the Pharmaceutical Society of Northern Ireland into the main legal framework of the new statute. All those who expressed a view argued that the reforms should be applied to the Society, generally on the basis that it would promote consistency. Many argued that professionals regulation should be consistent across the UK.

2.36 The Department of Health, Social Services and Public Safety for Northern Ireland supported the principle of UK-wide consistency of professionals regulation. It argued that incorporating the Society into the new statutory framework would be acceptable only on the basis of a clear separation between its regulatory and representational role and only if the regulation of pharmacists on a UK-wide basis was rejected. The Pharmaceutical Society of Northern Ireland supported its inclusion in the single statute only on the basis that, amongst other matters, its dual role of regulation and professional leadership would be retained.[16]

Discussion

2.37 We remain concerned that by retaining its dual role of regulation and professional leadership, the Pharmaceutical Society of Northern Ireland has adopted a fundamentally different approach to professionals regulation from the rest of the UK. This sits uncomfortably with our final recommendations set out in this report which are based on the understanding that the regulators must be – and be seen to be – independent of the professions they regulate.

2.38 We had argued in the consultation paper that the Society could be included in the new legal framework by retaining the Pharmacy (Northern Ireland) Order 1976 as a separate part of the draft Bill. Consultation has persuaded us that this would be wrong. The Society's unique dual role would mean that many of the provisions in the draft Bill – most importantly the main objective – would need to be made inapplicable to the Society. The Society would be retained in the new scheme for mainly aesthetic reasons – it would look more orderly if all the UK legislation were located in a single place – rather than any reasons of principle.

2.39 We have concluded that the Society as currently constituted should not be incorporated into the draft Bill. However, it is important that the option should be left open for the Northern Ireland Assembly to incorporate the Society into the

[16] Consultation Analysis, paras 2.140 to 2.148.

new legal framework either as a separate regulator for Northern Ireland or through merger with the General Pharmaceutical Council. We wish to emphasise again that these options would require the Society to relinquish its dual role. Either of these options could be achieved through the use of section 60 of the Health Act 1999 (see below).

2.40 As noted previously, there are cogent reasons to support a UK-wide approach to the regulation of health professionals and in our view it would be unattractive for the Society to be cut adrift from the new legal framework. We therefore strongly urge the Department of Health, Social Services and Public Safety for Northern Ireland – and the Department of Health – to settle this matter through either of the options set out above.

Recommendation 6: The Pharmaceutical Society of Northern Ireland should not be incorporated into the new legislative scheme unless its representational role is removed.

The Department of Health, Social Services and Public Safety for Northern Ireland and the UK Government should consider removing the representational role of the Pharmaceutical Society of Northern Ireland and incorporating the Society into the new scheme, or merging it with the General Pharmaceutical Council.

SECTION 60 OF THE HEALTH ACT 1999

2.41 Until the Health Act 1999, the creation and amendment of the regulators' governing legislation was achieved through primary legislation. Such changes can now be achieved by Her Majesty by Order in Council under powers contained in section 60 of the 1999 Act. Such an order can be used for a wide range of purposes, including allowing new professions to be regulated Where a section 60 Order is to be made in respect of a matter in relation to which the Scottish Parliament has legislative competence, it must be consulted on by Scottish Ministers and laid before the Scottish Parliament as well as the UK Parliament. A section 60 Order takes about two years from Ministerial commitment to full implementation.

2.42 The consultation paper argued that in our proposed legal framework the need for a section 60 order-making power is reduced since the regulators would

themselves be given broad powers to introduce rules. We therefore provisionally proposed that the section 60 order-making power should be repealed.[17]

Consultation responses

2.43 A significant majority agreed with this proposal. Many noted that under our proposals the Government would be given regulation-making powers on most matters currently dealt with by section 60 Orders. Some support was conditional on Government powers being delineated clearly in the new statute. A small number opposed the proposal, arguing that it will not be possible to include provision for every possible change that may be required in the future.[18]

Discussion

2.44 Consultation has confirmed our view that section 60 is no longer necessary in the new legal framework. The regulators will have more flexible powers to update and modernise their rules when necessary. The Government will continue to have powers on most matters currently covered by section 60 Orders through its new regulation-making powers, which are discussed later in this Part.

2.45 Clearly, it will not be possible for the draft Bill to cater for every eventuality. However, if further change is needed outside the scope of the new Government regulation-making powers, this is likely to amount to a fundamental change to the regulatory structure. It is right that such changes should only be introduced through primary legislation which would allow Parliament the opportunity to debate such change fully.

2.46 We have considered whether section 60 could be repealed altogether. However, it is used in respect of matters beyond the remit of the draft Bill, namely the regulation of pharmacy and pharmacy technicians in Northern Ireland and regulation of handling medicines under the Medicines Act 1968. Section 60 will therefore need to be retained for these limited purposes.

2.47 One of the most important features of the section 60 order-making process is its recognition of the legislative competence of the Scottish Parliament through the requirement that draft Orders must be consulted on by the Scottish Ministers and laid before and approved by the Scottish Parliament. This process has been

[17] Joint CP, paras 2.78 to 2.89.

[18] Consultation Analysis, paras 2.100 to 2.103.

retained in the draft Bill when the Government is proposing to use its regulation-making powers. This is discussed below (see paragraph 2.57 to 2.70).

Recommendation 7: The order-making power under section 60 of the Health Act 1999 should not be capable of modifying the draft Bill. It should be retained only for the purposes of the Pharmaceutical Society of Northern Ireland and the Medicines Act 1968.

This recommendation is given effect by clauses 246 to 247 of the draft Bill.

THE ROLE OF THE PRIVY COUNCIL

2.48 The Government has played and continues to play an active role in overseeing the regulators. In the majority of cases, this is achieved through its role as adviser to the Privy Council. In formal legislative terms, the Privy Council is required to approve new rules and regulations made by the regulators and has default powers to intervene in cases of regulatory failure. But in practice, the Privy Council performs no real independent function and lacks the resources to undertake an active role in this regard. It therefore defers to the Department of Health as the relevant Government department with responsibility for professionals regulation. In effect, the Department – not the Privy Council – is the main player in developing, scrutinising and securing the approval of rules and regulations, and would be required to implement the default powers in the event they were ever deployed.

2.49 In addition, the Government can and does undertake a more proactive role in securing reform of the regulators, often in response to a specific crisis. Historic examples have included changes to constitutional arrangements to ensure that professionals do not form a majority on the General Councils and registrants can no longer elect Council members, following the publication of the *Fifth Report of the Shipman Inquiry*.[19] More recently, the Department of Health ordered an investigation into events at the Nursing and Midwifery Council, and subsequently announced that the Council will be given a £20 million grant, in response to financial and performance difficulties.[20]

2.50 The consultation paper argued that – given the considerable responsibilities that the regulators have for assuring patient and public safety – the Government does

[19] The Shipman Inquiry Fifth Report: Safeguarding Patients, Lessons from the Past – Proposals for the Future (2004) Cm 6394.

[20] See, https://www.gov.uk/government/news/government-offers-20-million-grant-to-the-nursing-and-midwifery-council (last visited 30 October 2013).

have a legitimate interest and role in professionals regulation. However, we expressed concern that the formal role given to the Privy Council merely conceals the identity of the true actor. As a matter of principle, we felt that the relationship between Government and the regulators should be transparent and open to scrutiny, and therefore proposed that the formal role of the Privy Council should be removed entirely in the new legal framework.[21]

Consultation responses

2.51 A majority agreed with this proposal. Some consultees described the role of the Privy Council in this area as a "smoke screen", "a glove puppet" and "fig leaf". However, a small number disagreed and felt that the Privy Council role added value, for example by providing an appeals forum for professional groups, guarding against political interference in the regulators' operational matters and ensuring that reforms reflect the devolution settlements.

2.52 The Department of Health disagreed with the removal of the Privy Council role. It felt that the role of the Privy Council "indicates a clear intention for there to be distance between [the regulators] and the Government". It added that removing this role would "call into question the independence of the regulatory bodies from Government and the Secretary of State for Health". The Department also raised concerns about the impact of removing the role of the Privy Council on the classification of the regulators. [22]

Discussion

2.53 Consultation confirmed our view that the role of the Privy Council is illusory and should not be maintained in the new legal system. We do not accept that the Privy Council ensures the separation and independence of the regulators from Government. In reality, the Department of Health and its lawyers undertake the vast majority of the functions formally allocated to the Privy Council. Our intention is to create a new legal framework where this relationship is made transparent and clearly delineated. We do not think it is acceptable for the legitimate role of Government in professionals regulation to continue to be obscured in this way, and the UK Government and the devolved administrations must in the future be open and accountable about this role.

[21] Joint CP, paras 2.58 to 2.61.

[22] Consultation Analysis, paras 2.64 to 2.74.

2.54 A small number of consultees suggested that the involvement of the Privy Council provides an opportunity for interest groups to make additional representations before new rules are passed. We doubt that this occurs in practice, and indeed very few consultation responses mentioned this role. Even assuming that the Privy Council does provide an informal appeal mechanism, any representations would need to be considered substantively by the Department since the Privy Council does not have sufficient staff to undertake this role. In other words, what is being described is not the Privy Council but the Department. In any event, we do not think that it is appropriate for the Privy Council to be used in this way.

2.55 We are also not convinced that the Privy Council role ensures that new rules are consistent with the devolution settlements. It is the expertise of the Department and effective liaison with the devolved administrations that ensures such consistency. Under the new legal framework, it would continue to be open to the Government to make representations to the regulators about the content of their rules and where changes may be necessary to reflect devolution, but in the future this must be done in an open and transparent way and not under the guise of the Privy Council.

2.56 The Department expressed concerns about the impact of removing the role of the Privy Council upon the classification of the regulators, namely that the Office for National Statistics would reclassify them as being public rather than private sector bodies. This would bring the regulators within the Government's accounting framework and impose other requirements which might reduce their operational flexibility. We doubt that a mere formality like the role of the Privy Council could have such a significant effect. The key factors determining such classification are whether a body is owned by the public sector and whether the public sector has majority appointment rights. Other factors such as budgetary and financial control can also make a difference. Under our new scheme, these factors would not be substantively altered. But even if the Office for National Statistics did decide to reclassify the regulators, we do not think that this should alter our recommendations. The draft Bill is based on our view of the best legal structure for health and social care professionals regulation, and this should not be compromised by attempts to second-guess the outcome of the Office for National Statistics' decision-making process.

Recommendation 8: The formal role of the Privy Council in relation to health and social care professionals regulation should be removed entirely.

GOVERNMENT REGULATION-MAKING POWERS

2.57 The consultation paper discussed how the role of Government could be delineated clearly in the new legal framework. We argued that the regulators should retain operational independence, but that there are certain decisions which can only properly be taken by Government. In broad terms these are decisions on matters of significant public interest, including those which require the allocation of public resources. Examples include decisions to establish new regulators, regulated professions and protected titles and functions.

2.58 We proposed that on most such matters the Government should be given powers to make regulations which must be laid before Parliament. Similarly to the process for a section 60 Order, the Secretary of State would be required to

consult on the draft regulations and lay a report upon the consultation and the draft regulations before Parliament. The draft regulations should be approved by an affirmative resolution of each House of Parliament. Any use of these powers in respect of a profession for which the Scottish Parliament has legislative competence should be consulted on by Scottish Ministers and laid before and approved by the Scottish Parliament as well as the UK Parliament.

2.59 We also discussed a specific example of the proposed regulation-making power, namely the power to alter the statutory scheme of regulation. This would include the ability to abolish or merge any existing regulator, establish a new regulator, and add new professional groups to, or remove professional groups from, statutory regulation. In addition to the above steps, we proposed that the Secretary of State should be required to lay before Parliament a report which evidences that the use of such powers does not undermine in any way the health, safety and well-being of the public. The Scottish Ministers should also be required to lay the report in the Scottish Parliament where there is devolved competence.

2.60 We also asked whether the Professional Standards Authority should be given an express power to recommend a profession for statutory regulation, or the removal of a profession from statutory regulation. The Government would not be required to comply, but would be required to issue a report setting out its reasons for not complying with any such recommendation. [23]

Consultation responses

2.61 A majority agreed that the Government should be given formal powers on matters of significant public interest and a significant majority agreed that on most such matters the Government should be given regulation-making powers. Many felt that our proposed regulation-making powers would cover most matters currently dealt with by section 60 Orders, and therefore did not amount to an extension of Government powers. Some qualified their support by pointing to the dangers of unnecessary Government interference in professionals regulation on the basis of short-term political expediency. Some wanted clarification on how the Government would decide to exercise its powers and argued that there needed to be additional statutory criteria. Others suggested that on some issues we had not drawn the line in the correct place between Government decisions and matters that should be left to the regulators.

[23] Joint CP, paras 2.67 to 2.68 and 2.87 to 2.100.

2.62 A large majority agreed with the proposal for a separate procedure in Scotland. The Scottish Government added that it wanted to retain current arrangements whereby any consultation by the UK Government and Scottish Ministers is run as a joint exercise, with the Department of Health leading.

2.63 A significant majority agreed that the Government's regulation-making powers should include the ability to alter the statutory regulation scheme. Some suggested that these powers should be available to merge or abolish existing regulators. Many suggested additional procedural safeguards before these powers are exercised, such as a requirement for the Government to demonstrate that any alteration does not undermine public safety, or that the agreement of professionals should be sought. A small number opposed the proposal on the basis that it was unnecessary because the Government can simply amend the primary legislation and it is inconceivable that a whole sphere of professionals regulation would be deemed obsolete, such as to require the abolition of an existing regulator.

2.64 A large majority agreed that the Professional Standards Authority be given a power to make recommendations. The Authority itself argued that this could be linked to its existing power to provide advice to the Secretary of State and the devolved administrations. But some queried whether an express power was necessary, since as an independent body the Authority would be at liberty to make such recommendations in any event. Others argued there may be a conflict of interest since the Authority will in the future be funded by the regulators.[24]

Discussion

2.65 At consultation, many supported our approach to Government regulation-making powers, but some also expressed concern about the potential for unnecessary and inappropriate Government interference. We think that these concerns are misplaced. It is important to recognise that Government already plays an active role in overseeing the work of the regulators, and therefore it is not the case that the current system ensures the independence of the regulators from any political interference. The draft regulations would also be subject to a full public consultation and the negative or affirmative resolution process in Parliament. We therefore do not accept that the powers would be open to be abused by Government in the ways suggested at consultation.

2.66 We accept that the consultation paper did not always draw the correct line between decisions of significant public interest requiring Government input and

matters which should be left to the regulators. The purpose of consultation was to test where the line should be drawn and we have revised our approach based on the views received. In our view, the Government should be given regulation-making powers on matters that currently fall within the scope of section 60. In addition, the regulation-making powers would enable the Government to abolish a regulatory body and issue constitutions of the regulatory bodies. We have no reason to believe that the abolition of any regulator is on the current political agenda, but we think it is right that the Government should have the power to do this if it is necessary in the public interest. This could be the case where, for example, a regulator is failing to perform its statutory functions, or where there is a clear case that regulation of a particular group of professionals is no longer necessary. This use of the power would be subject to an additional procedural hurdle (see below). Our reasons for giving Government powers over constitutions are detailed in Part 4.

2.67 In addition to matters that fall within the scope of section 60 we think that the Government regulation-making powers should include areas where the Privy Council currently has direct order-making powers. These areas include, for example, the ability to make orders constituting the regulatory bodies and designating "recognised specialities" for the purposes of the General Medical Council's specialist register.[25]

2.68 We do not agree that every use of the regulation-making powers should require separate legal criteria to be satisfied or additional procedural hurdles surmounted. This would be cumbersome and unnecessary, given that the regulations would be subject to Parliamentary procedures. The single exception would be any proposal to alter the statutory scheme of regulation, for example by abolishing a regulator, merging regulators or extending regulation to new professional groups. Such changes would involve a fundamental reconfiguration of professionals regulation and, in order to ensure public confidence, it is important to build in the additional steps that we proposed at consultation (see paragraph 1.59 above). It is correct that such changes could be achieved anyway through primary legislation, but the advantage of using regulation-making powers is that they are more flexible and can be deployed at any time without waiting for an Act. Several consultees made suggestions for the abolition and merger of some of the existing regulators, and the extension of statutory registration to new

[24] Consultation Analysis, paras 2.81 to 2.88, 2.104 to 2.118, and 2.137 to 2.139.

[25] For example, Medical Act 1983, ss 1(2) and 34D(3).

professions. This is beyond the remit of our project and is a matter for Government to decide upon in the light of policy and resource considerations.

2.69 We are persuaded that it would not be appropriate for the Professional Standards Authority to have an express power to recommend a profession for statutory regulation, or the removal of a profession from statutory regulation. This would run the risk of the Authority being perceived as having enhanced lobbying powers on political matters which are beyond its current remit. A decision to extend professionals regulation is a matter for Government. It would be more appropriate to ensure that the Government continues to have the power to seek advice from the Authority (or the regulators) on these matters. This power is currently provided for under section 26A of the National Health Service Reform and Health Care Professions Act 2002 and a similar provision has been included in the draft Bill (see Part 12).

2.70 There was widespread support for our proposed procedure for the making of regulations – including reflecting matters of devolved competence where appropriate – which was based on the existing section 60 Order procedures. The Department of Health also suggested that in some areas the draft regulations should be subject to the negative resolution procedure in the UK Parliament (and where appropriate in the Scottish Parliament) in order to reflect the existing statutory arrangements and devolution settlements (although it expressed the preference that we leave these matters to be addressed in any Government Bill). We accept the principle of maintaining the current position as far as possible.

Recommendation 9: The Government should be given regulation-making powers on matters currently within the scope of section 60 of the Health Act 1990 and direct Privy Council order-making powers. The procedure for such regulations would reflect existing arrangements under section 60, including a separate procedure in Scotland on devolved matters where appropriate.

This recommendation is given effect by clauses 244 to 245 of the draft Bill.

DEFAULT POWERS

2.71 Currently, the Privy Council has power to issue a direction to a regulator that has failed to perform one or more of its functions. If the regulator fails to comply with the direction, the Privy Council may give effect to the direction themselves.[26] In

[26] See, for example, Chiropractors Act 1994, s 34 and Medical Act 1983, s 50. The only legislation which does not include such a provision is the Dentists Act 1984 and the Pharmacy Order 2010.

respect of the Health and Care Professions Council and the Nursing and Midwifery Council, the Privy Council is given powers to initiate a public inquiry on any matter connected with the Councils' exercise of their functions.[27] To this date, the default powers and powers to initiate a public inquiry have never been deployed.

2.72 The consultation paper argued that it is important for the new legal framework to preserve a power of last resort to intervene where a regulator is failing to meet its statutory duties. In line with our proposal to remove the role of Privy Council, we proposed that the default powers should be given to the Government. We also proposed that the Government should have powers to take over a regulator by exercising certain functions or appointing a nominee to do so in the most serious of cases. These powers would be similar to the Secretary of State's powers under section 15(6) of the Local Government Act 1999. We did not propose that the Government should have an express power to initiate a public inquiry because the Government already has such powers. We also argued that there was a strong need for default powers when a regulator fails or is likely to fail to implement EU law, particularly the Qualifications Directive.[28] This was on the basis that the Government would be held accountable to the EU for any implementation failures and that the effects of litigation are likely to be damaging to international relations.[29]

Consultation responses

2.73 A large majority agreed with our proposed Government default powers, including the ability to take over a regulator. Many argued that the default powers should always be available to prevent a regulator from failing to perform its functions rather than only applying after the event. This was seen as particularly important in the new legal framework where the regulators would have greater operational freedom.

2.74 Several consultees – including those supporting the proposals – expressed concern about the potential abuse of Government default powers and argued that their use should therefore be tightly prescribed. Some suggested a role for Parliament, either by giving default powers directly to the Health Committee which could then be delegated, or enabling the Health Committee to scrutinise

[27] Health and Social Work Professions Order 2001, SI 2002 No 254, art 47 and Nursing and Midwifery Order 2001, SI 2002 No 253, art 53.

[28] Qualifications Directive 2005/36/EC, Official Journal L 255 of 30.09.2005 p 22.

[29] Joint CP, paras 2.101 to 2.107 and 13.15 to 13.16.

the use of these powers after the event. Others argued that the Professional Standards Authority should be given a formal role, for example by requiring the Government to consult the Authority before exercising these powers.

2.75 Some expressed concern over Government powers to take over a regulator. It was also argued that our analogy with Government powers to take over a local authority was false since local authorities are funded by taxpayers whereas the regulators are independent bodies funded by fees charged to registrant groups. A small number argued that default powers are unnecessary. It was pointed out that the powers have never been used and that, for example, intervention in the crisis at the Nursing and Midwifery Council had been achieved by the Government requesting the Professional Standards Authority to step in and investigate.

Discussion

2.76 Consultation has confirmed our view that the default powers should be retained in the draft Bill. It is important to ensure that the Government can intervene if a regulator is failing to meet its statutory responsibilities, particularly where there is a strong public interest involved. The need for such powers may be particularly important under the new legal framework, which will give the regulators greater operational autonomy. The design of the default powers in the draft Bill is based on the existing default powers, and will extend them to the Professional Standards Authority as well as the regulators. We do not agree that because the default powers have never been used, they are no longer necessary. In a number of recent high profile Government interventions in health regulation the underlying threat of default powers as a last resort has been evident and deployed to powerful effect.

2.77 We are also persuaded that default powers should be available to Government where it is likely that a regulator will default in performing its functions. The use of default powers as a preventive measure may be particularly important in cases where public safety may be at risk or a breach of EU law may occur. This would also reflect more accurately the long-standing role of Government in professionals regulation, based on intervention in order to prevent regulatory failure, and avoid more draconian steps.

2.78 We do not consider that it is necessary to give Parliament an express role in respect of the default powers. However, it would continue to be open to the UK Parliament and the devolved assemblies to hold the Government to account for the implementation of its powers. As an additional safeguard, we think there should be a formal requirement for the Government to consult the “defaulting body”, the Professional Standards Authority (except where the Authority is the defaulting body) and any other relevant person or body affected by the proposed use of the power. However, the requirement to consult could be dispensed with, for example in cases of urgency.

2.79 We continue to be of the view that the Government should have powers to take over a failing regulator. Most of the existing default powers contain such a provision. We consider that our analogy with Government powers to take over a local authority was sound, since in both instances the overarching aim is to protect the well-being of the public. The fact that the regulators are funded by registrants does not affect this. We remain convinced that the Government does

not need an explicit power to initiate a public inquiry into a regulator as it has such powers under other legislation.

Recommendation 10: The Government should be given powers to notify and then give directions to a regulator, or the Professional Standards Authority, if it has failed or is likely to fail to perform any of its statutory functions. If the body fails to comply with any direction given, the Government should be able to give effect to the direction itself.

This recommendation is given effect by clauses 251 to 252 of the draft Bill.

PARLIAMENTARY ACCOUNTABILITY

2.80 The regulators are accountable to the UK Parliament and in some cases also to the devolved assemblies. The Privy Council is theoretically the main accountability mechanism but, in a recent development aimed at making Parliamentary accountability more effective, the House of Commons Health Select Committee has begun reporting on the performance of the General Medical Council and Nursing and Midwifery Council.

2.81 The consultation paper argued that, given the considerable responsibilities that the regulators have for patient and public safety, it is essential to establish an effective and transparent mechanism for parliamentary scrutiny. The possibility of a joint committee of both Houses of Parliament to oversee the regulators was described as "attractive", but we concluded that it would be inappropriate for us to dictate to Parliament how it should arrange its affairs. Instead, we proposed that the Health Committee should consider holding annual accountability hearings with the regulators, which should be co-ordinated with the Professional Standards Authority's performance reviews. Moreover, given the devolved legislatures' legitimate interest in this area, we proposed that a similar form of accountability should be instituted by the devolved assemblies.[30]

Consultation responses

2.82 A large majority agreed with our proposal. Some argued that we should have gone further and mandated annual accountability hearings. However, many queried the expertise of the Health Committee and claimed that it lacked the resources and knowledge to hold the larger regulators to account. A large number supported the establishment of a specialist joint committee. Some of the regulators expressed concern that accountability hearings in all four legislatures

[30] Joint CP, paras 2.52 to 2.66.

would be demanding on their resources and lead to conflicting demands as a result of the divergent policy concerns. [31]

Discussion

2.83 There was significant support at consultation for the establishment of a specialist Joint Parliamentary Committee and in our view this remains the ideal outcome. While it is, of course, a matter for Parliament to decide, there would be real advantages in establishing a joint committee to scrutinise the regulators, not least of which would be the public confidence and interest that would be generated by such a body. We strongly urge Parliament to consider the establishment of a joint committee on health and social care professionals regulation.

2.84 The Health Committee is clear that it intends to continue the recently initiated accountability hearings with at least some of the regulators. We would welcome the introduction of annual accountability hearings, co-ordinated with the Professional Standards Authority's performance reviews. We would also welcome a similar system of accountability being instituted by the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly. Some of the regulators expressed concerns that they may be pulled in different directions by the contradictory demands of the devolved legislatures. We think this is unlikely given the support for a UK-wide approach to professionals regulation, but in any event the devolved assemblies have a legitimate interest in the impact of professionals regulation, for example on their health services. In order to further reflect the legitimate interest of the devolved assemblies, we also think that the regulators' annual reports, strategic plans and accounts must be laid in UK Parliament, Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

2.85 Some expressed concerns about the Health Committee's ability to hold the regulators to account effectively, given that its remit extends to most aspects of health and social care and it would only be able to investigate some of the regulators relatively infrequently. Moreover, while the current chair of the Health Committee has demonstrated an ardent and proactive interest in professionals regulation, it is by no means certain that a future chair would wish to prioritise this area. It would also be highly unusual for statute law to mandate scrutiny by a select committee. Therefore, although we hope that the Committee will play a permanent role in actively overseeing the regulators, this cannot be relied upon.

[31] See Consultation Analysis, paras 2.75 to 2.80.

2.86 In summary, we think that the Health Committee's role in holding the regulators to account is not without its limitations, but it does provide an important form of additional oversight. However, we do not consider the Committee to be an essential part of our scheme and the recommendations made in this report will ensure the necessary scrutiny of the regulators notwithstanding any additional oversight provided by the Committee.

Recommendation 11: Parliament should consider establishing a specialist Joint Select Committee on health and social care professionals regulation. Otherwise, the Health Committee should consider holding annual accountability hearings with the regulators, co-ordinated with the Professional Standards Authority's performance reviews. The Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly should also consider introducing similar arrangements.

Recommendation 12: The regulators' annual reports, strategic plans and accounts should be laid in the UK Parliament, Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.

This recommendation is given effect by clause 21 of the draft Bill.

PART 3
THE GENERAL OBJECTIVES

3.1 In most cases, the governing Acts and Orders specify an overarching duty or main objective for the regulators when exercising their functions. The precise form of wording varies, but typically it will require the regulator to protect, promote and maintain the health and safety of the public.[1] This is referred to commonly as the *public protection duty*. However, this duty or objective is not stated in all the legislation. The main duty of both the General Chiropractic Council and the General Osteopathic Council is not to protect the public, but to "develop and regulate" the profession.[2] The General Dental Council's legislation does not include any main duty or objective.

3.2 Moreover, the courts have long recognised the importance of the need to maintain public confidence in the profession, even though it is not expressly acknowledged in the legislation. The significance of this regulatory aim was confirmed by the Court of Appeal in *Bolton v Law Society* where the profession's reputation was described as its "most valuable asset".[3] This approach was adopted in *Gupta v General Medical Council.*[4] However, the reason why reputation of the profession is so important is not a reflection of "the collective amour propre" but because it is an aspect of the need to protect the public:

> The public must be able to approach doctors, lawyers and other professionals with complete faith that they are both honest and competent. Without that faith the problems that would arise are too obvious to state.[5]

1 See, for example, Medical Act 1983, s 1(1A) and Opticians Act 1989, s 2A. For a list of all the main duties see Joint CP, appendix B.

2 Chiropractors Act 1994, s 1(2) and Osteopaths Act 1993, s 1(2).

3 *Bolton v Law Society* [1994] 1 WLR 512, 518.

4 *Gupta v General Medical Council* [2002] 1 WLR 1691, 1702. Also, see *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council* [2011] EWHC 927 (Admin), [2011] ACD 72 at [74].

5 *Luthra v General Medical Council* [2013] EWHC 240 (Admin) at [5].

3.3 In addition to public protection and maintaining public confidence in the profession, the courts have also acknowledged the regulators' objective of "declaring and upholding proper standards of conduct and behaviour".[6]

3.4 The consultation paper proposed that the statute should establish a single overarching duty for all the regulators and the Professional Standards Authority when undertaking their functions, which should be framed as a "paramount duty" which "rules upon and determines the course to be followed".[7] We asked whether the duty should be based on public protection, or whether it should also include express reference to maintaining confidence in the profession and ensuring proper standards for safe and effective practice.[8]

Consultation responses

3.5 This issue provoked the highest number of responses at consultation. A significant majority agreed that there should be a single paramount duty or objective, and that the legislation should contain express reference to maintaining confidence in the profession and upholding proper standards for safe and effective practice.

3.6 Many supported the inclusion of maintaining confidence in the profession, on the basis that it was an important aspect of professionals regulation. A common concern was that the lack of an express reference to it might narrow the scope of regulatory intervention. Examples were provided of behaviours which would undermine confidence in the profession but were unconnected to professional conduct, such as the publication of homophobic and racist materials, or sexual offences such as rape and downloading child pornography. Many felt that such conduct would always be incompatible with registration even if a criminal sentence had been served or remedial steps taken.

3.7 A small number of consultees supported the inclusion of maintaining confidence because they felt it would encourage the regulators to adopt a representational and developmental role on behalf of the profession. Some even suggested that the main duty should be to maintain the confidence *of* the profession. However, others argued that the duty or objective must be linked directly to the need to ensure public confidence in the profession.

6 See, for example, *Cohen v General Medical Council* [2008] EWHC 581 (Admin), [2008] LS Law Medical 246 at [62].

7 *J v C* [1970] AC 668, 710 to 711 (interpreting the expression 'paramount consideration').

8 Joint CP, paras 3.2 to 3.23.

3.8 Many who supported a public protection-focused duty or objective did so on the basis that maintaining confidence in the profession was implicit in such a duty. However, several consultees drew a distinction between public protection, which was the proper role of the regulators, and maintaining confidence, which was viewed as a matter for professional and other representative bodies and the profession itself.

3.9 Some were concerned by the extent of "regulation-creep" into the private affairs of individuals. It was argued that maintaining confidence in the profession was being used to punish professionals who pose no threat to the public for something which incurred the profession's, or the public's, disapproval. Specific examples included a nurse who was disciplined for publishing a work of fiction about euthanasia and an investigation into a doctor's behaviour at a Parent-Teacher Association meeting. Some argued that the concept of maintaining confidence in the profession was too subjective and difficult to quantify to form the basis of a statutory duty.

3.10 Some expressed concerns that the inclusion of "ensuring proper standards for safe and effective practice" would be misinterpreted as referring to the specific tasks of setting professional standards. Others argued that in some cases public confidence may be affected by behaviour that is not strictly a matter of safe and effective practice upon patients, such as convictions for fraud.

3.11 Some commented on specific elements of our proposal. For example, it was argued that a requirement to "maintain" public health, safety and well-being was not realistic, and that the term "well-being" was imprecise, and relevant to social care rather than health care. Some felt that the maintaining confidence in the profession element was not relevant to the Professional Standards Authority. It was also suggested that the legislation should refer to maintaining confidence in the "professions" in order to take into account multi-professional regulators. Others felt that the regulators should maintain confidence in the *system* of regulation.[9]

Discussion

3.12 Consultation confirmed our view that the draft Bill should establish clearly a single overarching objective for all the regulators and the Professional Standards Authority when exercising their functions. This would encourage a consistent approach to decision-making, and provide registrants and the public with a clear statement of the purpose of professionals regulation. We have opted for the term

"objective" rather than "duty" but attach no particular significance to the difference between the terms.

3.13 We remain convinced that the main objective should remain focused on public protection. Statute law and case law confirms this to be the primary purpose of professionals regulation. The issue that generated considerable debate at consultation was whether the draft Bill should also include reference to maintaining public confidence in the profession. Many supported its inclusion on the basis that otherwise a fundamental tenet of professionals regulation would be undermined. We think that many such arguments were misconceived. It was never an option to remove the concept entirely; the consultation paper sought views on the extent to which maintaining confidence is a standalone justification for regulatory intervention or merely an adjunct to public protection.

3.14 Nevertheless, some consultees put forward cogent arguments that regulatory intervention is sometimes justified in order to maintain public confidence where there is no direct link to public protection. Several examples were provided of cases which demonstrated that a regulator should concern itself with matters beyond professional competence where a registrant's conduct undermines the public's trust in their profession. The question of whether or not to include an express reference to maintaining public confidence is therefore relatively straightforward to resolve. For reasons of legal clarity, we think that it must be included. It is not acceptable that the existing legislative framework fails even to mention this concept, which has been left to be developed entirely through case law.

3.15 The more difficult issue is how to incorporate maintaining public confidence into the draft Bill, and specifically how it should relate to the main objective. We were concerned by the examples given which suggested that the regulators were inappropriately imposing moral judgments in essentially private matters under the guise of maintaining confidence. If these reports are accurate, the regulators' actions not only undermine the credibility of professionals regulation but also fail to have proper regard to article 8 of the European Convention on Human Rights. We strongly urge the regulators – and their fitness to practise panels – to consider carefully regulatory interventions which do not take some colour from the need to protect the public.

[9] Consultation Analysis, paras 3.1 to 3.35.

3.16 In particular, we have been told that a brief remark by Mr Justice Mitting in *Parkinson v Nursing and Midwifery Council* that "a nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register" has been used to justify fitness to practice proceedings against some professionals for relatively minor instances of dishonesty unconnected with professional practice.[10] The words he used show that the judge in this case (which involved substantial, work-related dishonesty) did not mean to lay down an invariable rule. We do not think that the public interest requires that fitness to practise proceedings should be taken in cases of minor dishonesty, or misconduct in private life, unless they can be see to have at least some relationship with patient safety or at least with the public's confidence in the profession as a whole. Indeed, given the costs that proceedings impose on registrants and, in many cases, the National Health Service, the pursuit of minor matters with excessive zeal would be contrary to the public interest.

3.17 We have constructed clause 3 of the draft Bill with a view to ensuring that the regulators adopt what we regard as the correct approach. In doing so, we are not seeking to change the current legal position or disrupt the relevant case law. The clause restates the existing legislative position that public protection is the regulators' "main" objective, and recognises that the public interest also consists of promoting and maintaining public confidence and proper standards of conduct and behaviour. In effect, a hierarchy is established between the three objectives. The clause is intended to make clear that public safety would trump any concern for maintaining confidence in the profession or upholding standards, if these were found to be incompatible. Within this hierarchy, the concepts of maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour are to be weighted equally.

3.18 It has been reported to us that fitness to practise panels have, in some cases, adopted an overly restrictive approach to the test of fitness to practise impairment. While the relevant case law establishes that all three factors contained in the objectives (including public confidence in the profession) must be weighed in the balance, it is suggested that panels and the courts have not done this correctly in certain cases. In particular, the concern is that in cases of clinical misconduct or deficient professional performance they are more likely to look at whether the instances of clinical misconduct or performance are remediable than to fully consider all of the factors, including the public confidence in the profession. If this concern is correct, then we think that the panels in question have misunderstood the correct legal position – namely that regard must

[10] *Parkinson v Nursing and Midwifery Council* [2010] EWHC 1898 (Admin), [18].

be had to all of the factors reflected in the objectives when deciding impairment, irrespective of the particular grounds being considered. Our intention is that the wording of the general objectives in the draft Bill and duties to have regard to them should help to clarify the existing legal position.

3.19 We have moved away from the view that the main objective should be framed as a "paramount duty". Such a standard would be too demanding and fail to recognise that there are other objectives that a regulator may take into account. We have therefore formulated it as the "main" objective. This means that it is a general objective which must be implemented, but how it is to be implemented would be left to the regulator in question to decide. The objective would not be directly enforceable but a failure to have any regard to public protection, for example, could be cited in legal proceedings as evidence that the regulator has acted unlawfully.

3.20 We have reviewed all of the drafting suggestions. We accept that the maintaining public confidence objective needs to reflect the perspective of regulators who regulate more than one profession. We disagree with the criticism of "well-being". This term has already been incorporated without difficulty into the main duties or objectives of many of the regulators. The suggestion that the legislation should also include maintaining confidence in the system of regulation is an interesting one and does appear sometimes in the reasoning of fitness to practise panels. However, we think this is a secondary purpose of the regulators which is subordinate to and a consequence of the general objectives identified above.

3.21 We agree that the need to maintain confidence in the profession should refer to the public's confidence in the professions, rather than the regulators seeking to maintain the confidence of the professions. The legislation should not suggest any role for the regulator in promoting or representing the profession.

3.22 Some suggested that the inclusion of "ensuring proper standards for safe and effective practice" could be misunderstood to suggest that the role of the regulators is limited to setting standards. We accept this point and have reworded this objective to reflect more accurately the relevant case law.

3.23 We continue to think that the maintaining public confidence in the professions aspect of the objective is relevant to the Professional Standards Authority as well as to the regulators. As noted above, public protection and maintaining confidence often overlap and it would not be possible for the Authority to ignore the latter in its work. Moreover, the Authority will be responsible for scrutinising how the regulators implement the objectives. Therefore ensuring that public confidence is maintained in the professions will be an important aspect of its work. But we accept that the Authority has a more limited toolkit for achieving the general objectives than the regulators. We have sought to reflect this in the wording of the clause.

Recommendation 13: The main objective of each regulator and the Professional Standards Authority should be to protect, promote and maintain the health, safety and well-being of the public. The regulators and the Authority also have the following general objectives: to promote and maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for individual registrants.

This recommendation is given effect by clauses 3 and 220 of the draft Bill.

PART 4
THE REGULATORY BODIES

4.1 Each of the regulators has a governing body (currently known as a "Council") which sets policy and strategy, and oversees operational matters. This Part considers the role, constitution and membership of these bodies under the new legal framework. Specifically, it considers the following issues:

(1) strategic role;

(2) constitutions;

(3) appointments;

(4) the definition of lay and registrant members;

(5) concurrent membership; and

(6) reviewing the regulators' constitutions.

4.2 In the draft Bill the Councils are renamed as the "regulatory bodies". We think that this term will help the reader understand the role of these bodies, and it follows common usage in other generic health legislation.

STRATEGIC ROLE

4.3 Reforms in recent years have aimed to ensure that the regulatory bodies become more board-like in their strategic role. As a result of these changes, members are now appointed and not elected, there are equal numbers of professional and lay members, and the size of the bodies has reduced considerably to 20 members or fewer. The consultation paper suggested that our draft Bill could go further in encouraging the regulatory bodies to be more board-like and put forward three options for reform:

(1) *retaining the existing structure*: statutory functions would be given to the regulatory body and delegated to staff but, in addition, the draft Bill would state clearly that its role is strategic and not operational;

(2) *board of governors model*: an executive board would be established which would hold statutory powers and be held to account for the exercise of these powers by the regulatory body; and

(3) *unitary board structure*: each regulatory body would consist of officers and appointed members.

4.4 We also argued that the ability to delegate was a key aspect of ensuring that regulatory bodies can become more board-like, and therefore proposed that these powers should be retained and that all delegations must be recorded clearly in a publicly available document.[1]

Consultation responses

4.5 The three options for reform divided opinion at consultation. Most consultees expressed equivocal positions. Some felt that instead of focusing on structures, our reforms should instead relate to the quality of membership, training of members and appointment process.

4.6 Of the three options, most favoured option one (retaining the existing structure). It was frequently argued that this structure was well established and understood by the regulators and key stakeholders. Option two (board of governors model) was the least popular. Those who supported this option felt that it provided a clear separation between the executive and the regulatory body and was consistent with other corporate organisations and health bodies. However, many opposed this option because it was felt that the regulatory body would be rendered toothless in holding the executive to account. The support for option three (unitary model) was often based on its perceived efficiency. However, many felt that it would provide insufficient oversight of the executive and that it was vital to maintain the separation between members of the regulatory body and its staff.

4.7 The vast majority agreed with our proposals on delegation. However, some were concerned about the potential for conflict and loss of effective accountability if delegations were made to individual staff members, rather than to the registrar to sub-delegate to others. Others felt it would be inappropriate to delegate fitness to practise adjudication to members of the regulatory body.[2]

[1] Joint CP, paras 4.3 to 4.19 and 4.70 to 4.75.

[2] Consultation Analysis, paras 4.1 to 4.16 and 4.103 to 4.105.

Discussion

4.8 None of the options received unanimous support. This lack of consensus is not surprising given the longstanding and continuing academic and public policy debate on what constitutes an effective board in for example the health and commercial sectors. It was always improbable that our consultation would resolve this debate, even within the specific context of professionals regulation. We have therefore concluded that we have insufficient evidence from consultation to make a credible case for a wholesale reform of the existing system. We have instead decided to retain the existing structure but build in certain reforms to try and ensure that the regulatory bodies are more board-like in their operation. This would include placing a general requirement on the regulatory bodies to ensure that members concentrate on strategic or policy matters, and other reforms in relation to the size and constitution of the regulatory bodies which are discussed in the rest of this Part.

4.9 We also accept the point that too much emphasis can be placed on structural issues at the expense of other key matters such as the quality of members. Consequently, much of the focus of our thinking has turned towards the issue of appointments to the regulatory bodies and whether the law can help to ensure that competent and skilled members are appointed. This is discussed further below.

4.10 We continue to think the regulatory bodies should be given powers to delegate, either generally or specifically, any of their functions to any staff members or any internal body (such as a committee, panel, board or reference group). There will a requirement to prepare and publish an "organisational statement" which describes the structure and the main responsibilities of the different parts of the organisation, which may include formal delegation arrangements. We accept that delegations would be through the registrar in most cases, but we do not accept that this should be required in every case. There would however continue to be a prohibition on the delegation of the power to make rules.

Recommendation 14: The regulatory bodies should be required to ensure that, as far as possible, members concentrate on strategic or policy matters rather than operational delivery.

This recommendation is given effect by clause 10 of the draft Bill.

Recommendation 15: The regulatory bodies should have powers to delegate their functions, apart from making rules, to any staff members or internal bodies.

This recommendation is given effect by clause 11 of the draft Bill.

CONSTITUTIONS

4.11 The current legislation provides that each regulatory body shall be constituted by Order of the Privy Council. These Orders specify matters such as the size and composition of the regulatory body and the terms of office of members. The consultation paper proposed that instead of an order of the Privy Council, each regulatory body would be constituted by rules issued by itself. There would be a requirement that such rules must address terms of office, grounds for

disqualification, quorum for meetings, removal or suspension from office, education and training, and attendance requirements.

4.12 As noted earlier, in recent years, the Government has sought to reduce the size of the regulatory bodies and introduce equal numbers of lay and registrant members. We argued that these are matters that affect public confidence in regulation and therefore should not be left entirely to the regulators. We put forward the following options for reform:

(1) the regulatory bodies would set their size and composition, but the draft Bill would specify a maximum size (such as 12 members) and that registrant members cannot be a majority;

(2) the Government would specify in regulations the size of the regulatory bodies and the proportion of lay and registrant members; and

(3) the regulatory bodies would set their size and composition, subject to Government default powers to intervene in the public interest.[3]

Consultation responses

4.13 An overwhelming majority agreed that the regulatory bodies should have rule-making powers governing their constitutions, and a large majority agreed with our proposal as to which matters must be addressed by the rules. However, many argued that public confidence would be undermined if the regulators were able to alter their constitutions without additional checks and balances. The General Medical Council argued that while it is right that the regulators should be given autonomy on operational matters, there should be Parliamentary scrutiny of rules which concern the nature of the regulator (such as the constitution). A number of consultees felt that oversight should be provided by the Professional Standards Authority or the Government.

4.14 Of the three options, most consultees felt that the regulatory bodies should be able to set their size and composition (in respect of lay and registrant members), subject to Government default powers to intervene in the public interest. However, some professional bodies argued that registrants should be in the majority on the regulatory body and membership should comprise of at least one professional from each of the professions regulated by the body. It was argued that the reductions in the size of the regulatory bodies had undermined the regulators' ability to secure the necessary expertise and support from the

[3] Joint CP, paras 4.24 to 4.54.

professions. Concerns were also raised about the ability of a small regulatory body to be representative of all four countries of the UK. Some also argued that in all cases the chair should be lay.[4]

Discussion

4.15 Consultation has persuaded us to revise our approach to the constitutions of the regulatory bodies. We are attracted by the General Medical Council's argument that operational matters should be left to the regulators, while matters concerning the nature of the regulator (such as its constitution) need additional oversight. To put this in a different way, greater oversight of the constitutions would help to secure public confidence and thereby provide a strong foundation upon which the regulators could be given greater autonomy in their operational responsibilities. We have therefore concluded that the Government should have responsibility for the constitutions of the regulatory bodies through a regulation-making power. The Government would have the ability to provide a new constitution, amend an existing constitution, or even to issue a single constitution which applies to more than one regulator thereby imposing greater consistency.

4.16 The logical consequence of this approach is that the size and composition of the regulatory bodies should also be left to the Government. These are matters that speak directly to public confidence in regulation and it is right that they should not be left to the regulators. In any event, we think that the option of allowing the regulatory bodies to set their size and composition, subject to the Government default power, would be a clumsy way of addressing these important matters.

4.17 We have also concluded that the draft Bill should not specify a maximum size. In our view, this would prevent the development of future policy which may not be in favour of smaller regulatory bodies. However, we are persuaded that the balance between lay and registrant members is a matter of significance that should be addressed on the face of the draft Bill. In our view, the key issue is that a regulatory body should not be dominated by the profession and the draft Bill will therefore prohibit a registrant majority. The precise numbers of lay and registrant members would be a matter for Government.

4.18 Some queried the position of the chair in our scheme. Our intention is that the chair is always counted as a member of the regulatory body, not as an additional person. Furthermore, we do not think it appropriate for the draft Bill to specify a lay chair. The chair should be the best person for the role.

[4] Consultation Analysis, paras 4.24 to 4.36 and 4.48 to 4.66.

4.19 It has been drawn to our attention that some of the regulators' current constitution orders contain a provision that a member can be removed on the basis of adverse physical or mental health. In our view, this is unacceptable and likely to breach the Equality Act 2010 and the United Nations Convention on the Rights of Persons with Disabilities. We strongly urge the Government to address this by ensuring that in future the criterion for removal should be the same – that a member is unable to perform their duties – irrespective of whether or not the member is disabled.

Recommendation 16: The Government should have a regulation-making power to make provision for the constitution of any regulatory body.

This recommendation is given effect by clause 5 of the draft Bill.

Recommendation 17: Registrant members should not form a majority on any regulatory body.

This recommendation is given effect by clause 6(2) of the draft Bill.

Recommendation 18: The Government should consider taking steps to ensure that members of the regulatory bodies cannot be removed from office on the basis of ill health alone.

APPOINTMENTS

4.20 In the past, members of the regulatory bodies were elected by registrants, thus giving rise to a perception that the interests of the public were being given less weight than those of the profession. This changed in 2008 with the introduction of appointed, rather than elected, members.[5] The current position is that all members and chairs are appointed formally by the Privy Council.

4.21 Until recently, the Privy Council's appointments function was delegated to the Appointments Commission by means of directions made under the Health Act 2006. However, following the abolition of the Appointments Commission, the Privy Council has been given powers to make arrangements for the regulator in question (or a third party) to assist in making appointments.[6] It is the Privy Council which appoints members of the regulatory bodies, but the regulators are responsible for running a suitable process to select candidates to recommend to the Privy Council. The Professional Standards Authority is responsible for

[5] Health Care and Associated Professions (Miscellaneous Amendments) Order 2008, SI 2008 No 1774.

[6] Health and Social Care Act 2012, s 227.

providing advice to the Privy Council on whether the appointment process adopted by each regulator has been open, fair and transparent. The consultation paper asked for views on whether any additional form of oversight of the appointment process is needed and, in particular, whether the Government should have powers to remove members in certain circumstances.[7]

Consultation responses

4.22 A small majority argued that additional oversight was required. Some felt that the Government had a role to play by, for example, removing members where there has been a failure of effective leadership. Recent problems at the Nursing and Midwifery Council were cited frequently in this regard. Others felt that additional oversight should be provided by the Professional Standards Authority. Many responses contained strong statements of support for the Appointments Commission and argued that it should not have been abolished. It was suggested that the Commissioner for Public Appointments, the Civil Service Commissioner or an independent body set up by the regulators themselves could be used in the place of the Appointments Commission. A significant number agreed that appointments should be made by the regulators. Several consultees argued that the regulators should be required to appoint at least one member who works or lives in each of Northern Ireland, Scotland and Wales. However, it was also recognised that this might be difficult in the context of smaller regulatory bodies and for the smaller regulators.[8]

Discussion

4.23 As noted previously, we have been persuaded that greater oversight is needed in respect of matters relating to the nature of the regulators. Responsibility for the appointment of members of the regulatory bodies is, in our view, clearly such a matter. We think that there is a legitimate public interest in how members are appointed and that this should not be left entirely to the regulators.

4.24 We have considered whether certain external bodies could be given responsibility for appointments, such as the Commissioner for Public Appointments or the Civil Service Commission. However, the remit of these bodies is to oversee rather than to carry out appointments. It is therefore difficult to see what these bodies would add to the existing role of the Professional Standards Authority.

[7] Joint CP, paras 4.42 to 4.46.

[8] See Consultation Analysis, paras 4.37 to 4.47.

4.25 We have concluded that the Government should have formal responsibility for approving appointments. This would include the appointment of the chairs. The administration of appointments would be undertaken by the regulators themselves and the Professional Standards Authority would be responsible for setting standards and guidelines, and confirming that the appropriate process has been followed in individual cases. This would replicate the existing appointment system, with the single exception that the role of the Privy Council would be replaced by the Government.

4.26 A strong case was made at consultation that governance structures need to reflect the impact of devolution on professionals regulation. One way of achieving this might be to require that a certain number of members of a regulatory body must live or work in one of each of England, Northern Ireland, Scotland and Wales. However, we are concerned that in some instances this might be tokenistic; there are alternative ways to ensure that a regulator can take the impact of devolution into account (such as by establishing advisory groups). In the light of smaller sizes of regulatory bodies, such alternative systems may be more realistic than imposing appointment requirements. In any event, this would be a matter for Government to decide when making regulations concerning the constitutions of the regulatory bodies.

4.27 Although not raised at consultation, we have also considered whether the Health Select Committee could be given a role in overseeing appointments. While the existing constraints on Parliamentary resources would preclude an active role for the Committee in the appointment of all members of regulatory bodies, it might be possible to introduce a more limited system in relation to the appointment of chairs. For example, the regulators could appoint a chair subject to the agreement of the Health Committee, joint recruitment of chairs could be undertaken by the Government and the Committee, or the Committee could hold pre-appointment hearings with the preferred candidate. We think all of these options have merit and urge the Government to take this issue forward with the Health Committee. The draft Bill leaves open the possibility of introducing any of these options. However, it is important to recognise that this system would be limited to the appointment of chairs and does not remove the necessity of establishing an effective recruitment process for all members (including chairs).

Recommendation 19: The Government should have powers to appoint members of the regulatory bodies following a selection process run by the regulator concerned and confirmation by the Professional Standards Authority that the process adopted has been open, fair and transparent.

This recommendation is given effect by clause 8 of the draft Bill.

Recommendation 20: The Government should consider inviting the Health Committee to oversee the appointment of chairs of the regulatory bodies.

DEFINITION OF LAY AND REGISTRANT MEMBERS

4.28 In general terms, a registrant member is defined in the relevant legislation as any person entered into the register of a particular regulatory body. Lay members are members who are not and have never been registered and do not hold qualifications which would entitle them to be registered. However, some of the regulators have adopted different definitions. For example, the General

Pharmaceutical Council's definition of a lay member is any person who is not and has never been entered in the register of not only the General Pharmaceutical Council's register, but of any regulatory body, and is not entitled to be registered with the General Pharmaceutical Council.[9] The consultation paper argued that the definitions should be consistent and proposed that the draft Bill should establish that a lay member is any person who is not and has not been entered in the register, and a registrant member is any person who is entered in the register of that particular regulatory body. [10]

Consultation responses

4.29 A large majority agreed with our proposal. However, many – including those supporting the proposal – suggested amendments. Some proposed a more restrictive definition of a lay member to exclude those who hold professional qualifications but who have never been registered. Others argued that the definition of a lay member should exclude any person registered with a predecessor regulator, such as the General Social Care Council. It was also argued that, to reflect commonsense understandings, a lay member should be someone who has never been a registered health or social care professional. The General Optical Council also pointed out that its definition of lay members excludes current and former directors of registered bodies corporate and anyone holding a qualification that would make them eligible for registration. Some argued for a broader definition of a registrant member to include individuals who have been but are no longer registered, such as those who have withdrawn as a matter of personal choice or have moved away from active practice.[11]

Discussion

4.30 Consultation has confirmed our view that the definitions of lay and registrant members should be consistent and on the face of the draft Bill. We are also persuaded that the definition of a registrant member should be more restrictive than in some current legislation. Having considered all the suggestions, we think that a registrant member should be defined as someone who is (or has been) registered with any of the professionals regulators (including predecessor organisations), or is eligible to be registered. We accept the General Optical Council's point that current and former directors of a regulated body corporate

[9] Pharmacy Order 2010, SI 2010 No 231, sch 1 para 1(1)(b).

[10] Joint CP, paras 4.51 to 4.52.

[11] Consultation Analysis, paras 4.67 to 4.77.

should also be included. A lay member would be defined as a person who is not a registrant when appointed.

4.31 In Part 5 of this report, we recommend that the regulators should not have powers to maintain voluntary registers. Therefore voluntary registrants (including those registered on a scheme accredited by the Professional Standards Authority) could not – on this basis alone – be registrant members. A practitioner registered with an overseas regulator could be a registrant member, assuming that they are eligible to be registered with the particular regulator.

4.32 It is important to note that the definitions would apply to other aspects of the legal framework, such as fitness to practise panel membership (see Part 9).

Recommendation 21: A registrant member of a regulatory body should be defined as someone who is or has been registered with any of the professionals regulators, including predecessor organisations, or is eligible to be registered. A lay member should mean a member who is not a registrant when appointed.

This recommendation is given effect by clauses 6(7) and 7 of the draft Bill.

CONCURRENT MEMBERSHIP

4.33 A number of members of the regulatory bodies also serve concurrently as members of other regulatory bodies. The consultation paper pointed to concerns that this impacts negatively on the regulators' image by suggesting an old-boys network. We asked for views on whether concurrent membership should be prohibited.[12]

Consultation responses

4.34 A slim majority felt that members of the regulatory bodies should be prohibited from concurrent membership of another regulatory body. It was argued that concurrent membership limits the positions available to new people who may bring fresh views and insights, could lead to conflicts of interest and reflects poorly on the regulators. Others felt there were advantages in concurrent membership, such as facilitating shared learning and experience, and harmonisation of regulatory approaches. Some felt that, rather than prohibiting concurrent membership, the key issue is to ensure that members have the right

[12] Joint CP, para 4.54.

skills and abilities and that recruitment seeks candidates from a wider range of backgrounds and experiences.[13]

Discussion

4.35 We are persuaded that concurrent membership of the regulatory bodies undermines public confidence in professionals regulation and raises potential conflicts of interests, particularly in the context of increasing joint working between the regulators in the future. We also have concerns about the capacity of an individual to serve or more than one regulatory body, and still perform an effective role. Matters such as shared expertise and cross-pollination of ideas can easily be addressed through other means such as joint working. The appropriate level of expertise could be ensured by the regulators casting their nets wider when undertaking recruitment.

Recommendation 22: Concurrent membership of the regulatory bodies should be prohibited.

This recommendation is given effect by clause 6(6) of the draft Bill

Reviewing the regulators' constitutions

4.36 Many of the changes we have recommended in this Part of the report would require amendments to the existing constitutions. At some stage these constitutions will need to be superseded by fresh provision. However, we are mindful of the need to avoid unnecessary disruption during the implementation of the new legislation. The draft Bill therefore allows the existing constitution orders to remain in place on a transitory basis and gives the Government some degree of flexibility regarding the timetable for replacing these orders. However, it is not our intention to allow the existing constitutions to continue indefinitely. The draft Bill requires the Government to review, as soon as practicable, the existing constitutions and determine whether they conform with the provisions of the draft Bill. If changes are needed the Government will be required to address this by laying draft regulations before Parliament.

[13] Consultation Analysis, paras 4.78 to 4.92.

Recommendation 23: The Government should be required to review the provisions constituting the regulatory bodies and determine whether they conform to the requirements of the draft Bill, and introduce regulations containing any necessary changes.

This recommendation is given effect by clause 6(8) of the draft Bill.

PART 5
REGISTERS AND REGISTRATION

5.1 The requirement to be registered in order to practise lies at the heart of professionals regulation. Registration refers to the compilation of a list of professionals (and sometimes businesses) who have satisfied the regulator that they are appropriately qualified and fit to practise. This Part considers the legal framework in relation to registers. Specifically it considers:

(1) registers of regulated professionals;

(2) student registers;

(3) voluntary registers;

(4) non-practising registers;

(5) negative registers;

(6) types of registration;

(7) requirements for registration;

(8) processing registration applications;

(9) publication and upkeep of the registers;

(10) content of the registers;

(11) registration appeals; and

(12) restoration to the register.

REGISTERS OF REGULATED PROFESSIONALS

5.2 The establishment and maintenance of a register is a key statutory function for the regulators. The register provides important information for the public and employers, such as indicating those professionals who are qualified and fit to practise and any sanctions that have been imposed as a result of fitness to practise proceedings. The establishment of a register also serves to define a

profession for the purpose of statutory regulation, and thereby can enhance the status of practitioners in that profession.

5.3 Some regulators, such as the General Chiropractic Council, keep a single register for a given profession. Others have a single register which is divided into different parts; for example, the Health and Care Professions Council's register contains 16 parts – one for each profession it regulates. Some have multiple registers; for example, the General Medical Council must keep a main register, a General Practitioner register and a register of specialist medical practitioners.[1]

5.4 The consultation paper proposed that the statute should set out a core duty of all the regulators to keep a register of regulated professionals. However, the regulators would be given broad discretion over how to discharge this duty. The regulators would have the power, but not a duty, to appoint a registrar. We also proposed that the statute should specify how each register should be divided. The Government would be given a regulation-making power to amend this structure by, for example, adding or removing parts of the register.[2]

Consultation responses

5.5 All consultees who expressed a view supported the proposal of a core duty to keep a register. This duty was described as the "centrepiece of statutory regulation" and providing "a stamp of accreditation of the abilities, skills and qualifications of a professional" thereby inspiring "trust and confidence in individual registrants". Some were concerned about the terminology used to describe the registers and in particular warned against any suggestion that a register is run for the benefit of professionals. Some argued for greater consistency over how this duty is implemented.

5.6 A significant majority agreed that it should be left to the regulators to decide whether or not to appoint a registrar. However, some argued that registrars are essential to the core duty since they provide transparency and accountability. It was also suggested that the statute should prohibit the chief executive or a registrant from holding the office of registrar.

5.7 A majority agreed that the statute should specify how the registers must be structured. A large majority agreed with there being Government powers to alter this structure. However, some drew a distinction between specialist registers, which have a clear legal effect, and specialist lists or accreditation which are

[1] Medical Act 1983, s 30(A1).

indicative of a regulatory standard being met but have no direct legal effect. It was argued that the former should be left to Government and the latter to the regulators. However, some disagreed with the proposals outright and argued that the regulators are best placed to make decisions on how the registers are divided. Suggestions were made for the establishment of new registers or specialist lists for health visitors, advanced nursing practitioners, Approved Mental Health Professionals and best interests assessors. Several consultees felt that there should no longer be a separate part of the Nursing and Midwifery Council's register for "specialist community public health nurses" – since this title is no longer in common usage.[3]

Discussion

5.8 Consultation has confirmed our view that the draft Bill should set out a core duty of all the regulators to keep registers of regulated professionals. The registers are a key feature of professionals regulation and the establishment (or not) of a register is too important to leave to the discretion of the regulators. We also think that, on the majority of issues, the regulators should be given discretion over how to perform this duty. Nevertheless, there are certain matters in respect of which consistency should be imposed, such as the information contained in the public register. This would reflect public expectations and, in some cases, help to protect the public by, for example, ensuring that sanctions are published. The precise areas where we think that consistency should be imposed are identified in the rest of this Part.

5.9 The legal term we have used to describe the register is the "professionals register". We do not think that this suggests it is owned by the profession and we are clear that this is not our intention.

5.10 We have been persuaded that one area where consistency should be imposed is the appointment of a registrar. It would be confusing and might undermine public confidence if each regulator were to establish a different system for keeping the register. We consider that accountability for the register is relatively straightforward at present; we are concerned that greater discretion has the potential to introduce inconsistency and uncertainty. Therefore, we have concluded that each regulator should be required to appoint a registrar who has statutory responsibility for keeping the register and other associated tasks. We do

[2] Joint CP, paras 5.3 to 5.15 and 5.26 to 5.29.

[3] Consultation Analysis, paras 5.1 to 5.27.

not consider it necessary to prohibit the registrar from being the chief executive or require the post holder to be a non-registrant. The individual should be appointed on the basis that they are the best person for the role. We are unconvinced that such prohibitions are needed to ensure public confidence in the regulators.

5.11 Consultees expressed a range of views about how the registers should be structured and who should decide upon their structure. We think it is right that the primary legislation should set out the fundamental structure of which registers must be kept. This is too important to leave to the discretion of the regulators. The difficulty remains that in law there is no consistency over the concept of a register. Some regulators keep a single register for a single profession or for several professions, while other regulators keep multiple registers for a single profession (based on sub-groups of the profession and other matters such as temporary registration). Our intention is to establish consistency in this area. The basic rule will be that a register must be kept by each regulatory body for each profession it regulates.

5.12 In a small number of cases the existing registers include subsets of the wider profession or specialist lists. In the draft Bill these will be treated as separate parts of the main register. This would be the case for general practitioners and specialist medical practitioners (in the General Medical Council's register) and first and second level nurses (in the Nursing and Midwifery Council's register). However, we are mindful that the Nursing and Midwifery Council is keen to remove the second level nursing part of its existing register in the long run as it is already closed to new UK applicants and is only open for EU applicants. This could be achieved under the draft Bill through the Government's regulation-making powers. We also think that the draft Bill should remove the requirement for the Nursing and Midwifery Council to keep a separate part of the register for "specialist community public health nurses". In practice this appears to be an umbrella term which includes various specialities such as health visitors, school nurses and occupational health nurses. Instead, the Council would be able to use its powers to include annotations in the public register – where appropriate – to identify additional qualifications and specialisms (see below).

5.13 We also intend to establish a clearer legal distinction between the register and registration status. In the draft Bill, a register is a list of professionals who have satisfied the conditions for registration, whilst matters relating to registration status (such as temporary and visiting status) will be identified through annotations. Finally, we consider that the register of regulated professionals must be demarcated clearly from other registers, such as student and supplementary registers. In the draft Bill, these are governed by separate provisions. This is discussed later in this Part.

5.14 Several suggestions were put forward for the establishment of new registers and parts of registers. We have provided the UK Government and the devolved administrations with the analysis of the relevant consultation responses. The fundamental decision whether to establish new registers must remain one for Government. Our draft Bill has been drafted on the assumption that the scope of the existing registers will be replicated, but we also want to future-proof the system and allow Government to alter the structure through its regulation-making powers.

Recommendation 24: Each regulator should be required to keep a register for each profession it regulates. The Government should have regulation-making powers to alter the structure of the registers.

This recommendation is given effect by clauses 30 to 31 of the draft Bill.

Recommendation 25: Each regulator should be required to appoint a registrar.

This recommendation is given effect by clause 36 of the draft Bill.

Recommendation 26: Separate parts of the General Medical Council's and Nursing and Midwifery Council's registers should be established for general practitioners and specialist medical practitioners, and for first and second level nurses.

This recommendation is given effect by schedule 2 to the draft Bill.

STUDENT REGISTERS

5.15 Only one regulator – the General Optical Council – currently maintains a compulsory student register. Since 2005, all students on an approved training course in optometry or dispensing optics must be on this register.[4] The Council sets core competencies that students must meet as part of their course. Where an allegation is raised that a student's fitness to undertake training is impaired, the matter can be referred to the Council's formal fitness to practise process, however some larger education and training providers have their own internal disciplinary processes which often deal with complaints in the first instance. In its 2013 *Review of Student Regulation*, the Council reported that there were 4,642 students on its register.[5]

5.16 Some of the other regulators, such as the General Medical Council, have kept student registers in the past and have considered their reintroduction at various times in recent years. For example, in 2012 the General Medical Council considered the mandatory and voluntary registration of medical students but concluded that this was not necessary to ensure the promotion of professional values or to support a smoother transition to practice.[6]

[4] Opticians Act 1989, s 8A.

[5] General Optical Council, *Review of Student Regulation: Consultation* (2013) para 34.

[6] See, http://www.gmc-uk.org/20111025_Student_registration.pdf_45213188.pdf (last visited 31 October 2013).

5.17 Our consultation paper argued that although the new statute could give all regulators powers to introduce student registers, any such moves would impose burdens on others (including students and education providers). We therefore proposed that the Government should be given regulation-making powers on this matter. However, we also asked for views generally on whether student registration should be retained in the new legal framework and/or how the legal framework could help to ensure that the principles and practices of professionalism are embedded in pre-registration training.[7]

Consultation responses

5.18 A small majority agreed that the Government should have regulation-making powers to introduce student registers. Some supported such powers because the introduction of student registers was seen as a decision for Government, but many agreed on the basis that they supported the increased use of student registers. Conversely, many disagreed with the proposal because they did not support student registers. A small number felt that the introduction of student registers should be a matter for the regulators to decide and not Government.

5.19 A majority considered that student registers should be retained. Many felt that such registers instil professionalism at an early stage and enable the regulators to quality control those who are seeking to enter the profession. This view was particularly prominent amongst stakeholders in the field of social care – who argued that social work students are unique in the unsupervised access they have to vulnerable children and adults. However, others argued that student registers are ineffective, inefficient and a disproportionate way to manage the relatively small number of issues that typically arise with students. Several consultees suggested ways in which professionalism can be embedded in pre-registration training, including through curricula and joint working between the regulators and educators.[8]

Discussion

5.20 Consultation produced a range of views on the efficacy or otherwise of student registers. Our task as law reformers is not to evaluate whether or not student registration should be introduced for any given profession, but whether it should be a possibility in the new legal framework and, if so, who should make this decision.

[7] Joint CP, paras 5.21 to 5.22 and 5.30 to 5.32.

[8] Consultation Analysis, paras 5.28 to 5.50.

5.21 None of the regulators plan to introduce student registers. Moreover, the General Optical Council decided in November 2013 that it will not maintain its current system of student regulation, including full compulsory registration for students. It will be undertaking further research and engagement with stakeholders to consider the alternatives, including the registration of student optometrists undertaking their pre-registration training. On this basis, the draft Bill could provide that only the General Optical Council can keep a student register. In order to do this, we would need to be certain that a student register will never be a viable option for any of the other regulators. We cannot be sure that this is the case. Consultation demonstrated some support for student registers and it is therefore entirely possible that any of the regulators will want to turn to student registration at some point in the future, for example in response to a specific set of new developments or a crisis. Indeed, many of the regulators have discussed the possible introduction of student registration in recent years. We consider, therefore, that the possibility of student registration should be retained in the draft Bill for all the regulators. However, since the introduction of such registers imposes significant burdens on others (most notably education providers), this should be a matter for the Government to decide through its regulation-making powers. This would allow the Government to reform the General Optical Council's current system of student registration should this be the favoured option.

5.22 The consultation paper reported that the Nursing and Midwifery Council planned to introduce a student index containing data on every student who is enrolled on an approved programme. This would allow education providers to check whether a student has been removed from another course due to concerns about their conduct. The Council has since dropped these plans. However, we think that the same arguments that apply to student registration can be applied to student indexing. In effect, they impose burdens on others and their introduction should be a matter for the Government. For example, under the draft Bill the Government would be able to introduce a barring scheme for students. This is discussed in more detail below.

5.23 We agree, however, that the regulators should be encouraged to work with education providers to develop mechanisms for identifying, reporting and sharing information relating to fitness to practise incidents. This is discussed in more detail in Parts 6 and 10.

Recommendation 27: The Government should have regulation-making powers to enable the introduction of compulsory student registration for any regulated profession.

This recommendation is given effect by schedule 3, part 2, to the draft Bill.

VOLUNTARY REGISTERS

5.24 A voluntary register is a register of practitioners who are not required by law to be registered in order to be entitled to use a title or practise as a member of a profession. People on a voluntary register will normally be practitioners who work in health and social care occupations that are not statutorily regulated. But sometimes people who are on a statutory register are also on a voluntary register that covers a specialist area of practice. Voluntary registrants normally sign up to a code of conduct and can be removed from the register for serious breaches of that code. In general terms, the aim of a voluntary register is to enable the public,

employers and commissioners of services to choose with confidence people who are on the register.

5.25 The Health and Social Care Act 2012 introduced new powers for the regulators within the scope of this review to establish voluntary registers and for the Professional Standards Authority to set accreditation criteria for any voluntary registers established by the regulators or any other body; if the Authority is satisfied that a voluntary register meets the criteria it may accredit the register.[9] None of the regulators have exercised their power to establish a voluntary register.

5.26 The consultation paper pointed to concerns that voluntary registers are ineffective and may be confusing for the public if maintained alongside the professionals registers. We asked whether the regulators should retain their powers to introduce voluntary registers. We also asked whether – if the regulators retained such powers – the Professional Standards Authority should be given an express power to recommend a group for voluntary registration, or that a particular group cease to have a voluntary register. Whilst the regulators would not be required to comply with any such recommendation, they would be required to set out their reasons for not doing so in a report.[10]

Consultation responses

5.27 Opinion was divided on whether the regulators should have powers to keep voluntary registers. Half of those who responded to the question argued that the regulators should have powers to keep voluntary registers, though a significant number disagreed (the rest held equivocal positions). Voluntary registers were argued to have the benefit of establishing a clear boundary around a defined group of health or social care practitioners where the level of risk to the public does not justify full statutory registration. The existence of a publicly accessible statement of the values and ethics to which members of that group subscribe was also cited as an advantage of voluntary registration schemes. It was also felt that voluntary registers can ensure that peer pressure is exerted on practitioners to demonstrate competence and that complaints processes are more effective. Many supported voluntary registers as an interim measure leading to statutory registration. Others argued that voluntary registers should operate on a full cost recovery basis to ensure that registrants are not funding the voluntary register. The Department of Health argued that the existing infrastructure within the

[9] Health and Social Care Act 2012, ss 228 to 229.

[10] Joint CP, paras 5.23 and 5.33 to 5.37.

regulators would help allow them to operate a voluntary register at reduced costs, compared with other bodies.

5.28 However, many consultees argued that the regulators should not have such powers, including many of the regulators themselves. It was suggested that by undertaking both statutory and voluntary regulation a regulator risks confusing the public and undermining the credibility of both models. Furthermore, it was argued that the regulators' main public protection duty would be difficult to achieve when those who may pose a risk to the public would have the choice over whether or not they wished to be regulated. Others pointed to the lack of robust evidence at this point in time whether voluntary registers can help to improve standards and protect the public.

5.29 Opinion was divided on whether the Professional Standards Authority should be given a formal power to recommend to the regulator in question that a group should become or cease to be voluntarily registrable. Half of those who responded felt that the Authority should be given such power, but a significant number disagreed. The Professional Standards Authority felt that a formal power would cut across its function of independently accrediting organisations to open voluntary registers. Some pointed out that the Authority could make such recommendations anyway through its annual performance review or in its response to the consultation on the establishment of a voluntary register.

Discussion

5.30 We continue to have concerns about the utility of voluntary registers, and the possibility of public confusion and misunderstanding if registers of those not currently subject to statutory regulation are to be kept by the regulators. Moreover, there was no overwhelming support for voluntary registers amongst consultees. It is also notable that none of the regulators have exercised the new power under the Health and Social Care Act 2012 to establish a voluntary register, or plan to do so. We therefore consider that the regulators' powers to establish voluntary registers should be removed.

5.31 The establishment of voluntary registers by bodies other than the professionals regulators is beyond the remit of our review, except for the Professional Standards Authority's powers of accreditation. We think it would be undesirable to remove the Authority's powers, given that they ensure some level of quality assurance of voluntary registers.

5.32 Since the regulators will not be permitted to keep voluntary registers if our recommendations are accepted, it follows that the Professional Standards Authority need not have the power to recommend that a regulator should establish or, conversely, close a voluntary register.

Recommendation 28: The regulators' powers to keep voluntary registers should be removed. The Professional Standards Authority should retain its powers to set criteria for and accredit voluntary registers kept by others.

This recommendation is given effect by clauses 35 and 223 to 225 of the draft Bill.

NON-PRACTISING REGISTERS

5.33 Some of the regulators register qualified people who do not intend, or are not able, to practise in the UK. This system enables a professional to demonstrate to employers and others that they remain in good standing with the regulator. The registration of non-practitioners is not subject to continuing professional development requirements. Only two regulators currently register non-practising professionals: the General Medical Council allows doctors who do not have a license to practise to remain on its register; and the General Osteopathic Council indicates non-practising status by annotation of the main register.

5.34 The consultation paper discussed concerns that non-practising registers serve the interests of the profession rather than the public and undermine the ability of the registers to identify those professionals who are appropriately qualified, fit to practise and continue to meet the regulators' standards. We therefore asked whether the regulators should continue to have powers to register professionals who are not practising.[11]

Consultation responses

5.35 A slim majority felt that non-practising registration should be abolished. It was argued that the main purpose of registers should be to protect the public and it is important that registers indicate which professionals are fit to practise, and undertake continuing professional development. Non-practising registers were described as a "relic of professional self-regulation", "a source of confusion" and only benefiting registrants who wish to retain their professional status beyond their practising careers.

5.36 Those in favour of retaining non-practising registration argued that members of the profession spend many years achieving their status and that it would be "callous" and "unnecessary" to remove this, provided that the registers distinguish clearly between practising and non-practising professionals. Others felt that such registers provide an important public benefit by allowing professionals to return to practise without the additional impediment of re-registration. It was also argued that non-practising registers provide reassurance that all professionals are bound by the codes of conduct and less likely to bring the profession into disrepute.

5.37 The General Medical Council felt that its system had value, but only in particular circumstances. These include where doctors practise overseas in jurisdictions which look to the regulator for assurance that the individual adheres to the values

[11] Joint CP, paras 5.25 and 5.38 to 5.39.

of the profession, or when a doctor is performing non-clinical roles which nevertheless draw on their training and experience as a doctor. The General Osteopathic Council wished to maintain its system, along with the ability to test the competence of non-practitioners before restoring them to the full register.

5.38 Irrespective of whether or not they were in favour of non-practising registers, many consultees argued that the statute needed to clarify what is meant by the term practising and when non-practising professionals should be expected to come off the full register. Some queried whether a non-practising register would include those temporarily not practising, for example professionals on a career break, maternity leave or long-term sick leave.[12]

Discussion

5.39 In our view, the registration of non-practitioners can serve to undermine the main purpose of the registers, which is to indicate which professionals are fit to practise and continue to meet the regulators' standards. We do not agree that non-practising registers should be retained merely to provide a badge of honour for an individual who is no longer practising but wishes to demonstrate continuing good standing with the regulator. Some argued that non-practising registers enable professionals to return to practice without unnecessary delay. We are not persuaded by this argument. Most regulators have developed streamlined and efficient administrative systems for restoration to the register, which do not rely on a non-practising register.

5.40 However, we accept that in limited circumstances there may be public safety benefits in registering non-practising professionals who undertake roles which directly or indirectly impact upon patient care. These include management, education, tribunal or advisory roles which are not reserved to registrants but which involve low-level professional activity; here, non-practising status can provide reassurance that the person signs up to a professional code and can be removed from the register for misdemeanours. We also accept that there are potential public safety benefits in allowing UK professionals to remain on the register while practising overseas.

5.41 On balance, we have therefore concluded that the draft Bill should not abolish all forms of non-practising registers, but that their use should be restricted. First, the Government should be given regulation-making powers to require a regulator to keep a non-practising register in relation to a profession regulated by that body. It should not be open to the regulators to introduce such a register on their own

initiative. On the other hand, regulations requiring such a register to be kept could only be made following a formal request by the regulator concerned. In other words, a non-practising register could not be imposed by the Government on a regulator.

5.42 Second, such registers could only be introduced for those who are not registered in the professionals register, but who meet such registration criteria as may be specified in the regulations. The regulator could also be required to set continuing professional development requirements for inclusion on the register. These requirements would be different from those required for full registration and would not necessarily be linked to a specific role (such as teaching or tribunal work) but would need to demonstrate that the person is up-to-date in their knowledge and training. In this sense we find the term "non-practising register" misleading; it would be more accurately described as a supplementary register.

5.43 The supplementary register would be separate from the register of professionals; it would not be possible for a regulator to include non-practising professionals (which would include those without a licence to practise where such a scheme existed) in the register of professionals, for example through annotation. The options for people temporarily not practising, for example on career breaks or maternity leave, would be to remain fully registered by maintaining the continuing professional development requirements, or choose to leave the full register and apply for restoration when they are ready to return to practice.

5.44 We also accept that greater clarity is needed over what is meant by the term "practising" in this context. For example, the Nursing and Midwifery Council defines this as working in some capacity by virtue of being a registered nurse, midwife or specialist community public health nurse; this can include administrative, supervisory, teaching, research or managerial roles as well as providing direct patient care.[13] In contrast, the General Pharmaceutical Council can only register or renew the registration of professionals who intend to practise; this is defined as "the preparation, assembly, dispensing, sale, supply or use of medicines, the science of medicines, the practice of pharmacy or the provision of healthcare".[14] We have considered whether consistency could be imposed in this matter, but concluded this is not possible. For example, some academic roles will require a high degree of professional competence and up to date knowledge,

[12] See Consultation Analysis, paras 5.72 to 5.86.

[13] Nursing and Midwifery Council, *Notification of Practice Instructions* (2013).

[14] General Pharmacy Order 2010, SI 2010, No 231, arts 3(2) and 20(3).

which would be consistent with being on the full register, while other teaching roles do not draw so directly on professional competence. This will need to be assessed on a case by case basis by the regulator. However, the draft Bill will make clear that in order to be fully registered a professional must intend to practise in a role which is linked directly with their profession. Precisely what that link may be and how it may occur will depend on the circumstances. In cases of doubt, we would expect the regulator not to grant registration or to consider making a formal request to Government to exercise its powers to establish a non-practising register.

Recommendation 29: All registrants should intend to practise the profession in order to be registered.

This recommendation is given effect by clause 37(2)(c) of the draft Bill.

Recommendation 30: The Government should have regulation-making powers to require a regulator to keep a supplementary register of professionals who do not intend to practise.

This recommendation is given effect by schedule 2, part 3, to the draft Bill.

BARRING SCHEMES

5.45 An issue that was raised at consultation is the development of barring schemes or negative registers. Rather than providing a list of those who are qualified and fit to practise, a barring scheme lists only those who are prohibited from practising and is used as a form of regulation in fields where there is no requirement to register. It is normally a criminal offence for such a person to work in the relevant field. There is usually no requirement to pay fees or comply with continuing professional development requirements, but practitioners can be required to abide by a code of conduct and barred if they infringe it. A person who has been barred has the right to make representations, seek reviews of decisions and appeal to the courts.

5.46 For example, the Health and Care Professions Council has recently set up a barring scheme for social work students and is exploring the possibility of such a scheme for adult social care workers in England.[15] The Council's system provides that complaints referred to it will be considered at a hearing by a single adjudicator who can make a determination which prohibits the student from participating in a social work programme, temporarily or permanently. This

[15] Health and Care Professions Council, *Proposal for Regulating Adult Social Care Workers in England* (2013).

scheme draws upon the system of prohibition orders used in New South Wales, Australia.

5.47 Following the *Final Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry*, the Government announced its intention to put in place a barring scheme for NHS managers and leaders across NHS Trusts and Foundation Trusts.[16] However, it has since decided not to pursue this policy and instead plans to give powers to the Care Quality Commission to address this through its registration requirements.

5.48 Existing examples of barring schemes include the Disclosure and Barring Service's lists of people who are barred from working with children and vulnerable adults in England, Wales and Northern Ireland.[17] In broad terms, barring occurs where a person has been convicted of certain serious offences or where an organisation (such as a local authority) informs the Service that there is or may be harm to a child or vulnerable adult. Appeals are to the Administrative Appeals Chamber of the Upper Tribunal in England and Wales, or the Care Tribunal in Northern Ireland.

Discussion

5.49 Whilst we did not consult on this issue, we consider that barring schemes are within the remit of our project, given that they fall within the scope of section 60 of the Health Act 1999. Proponents of barring schemes argue that they are a proportionate and cost-effective alternative to full statutory regulation, and ensure higher levels of public protection than voluntary or self-regulatory arrangements. Whilst there is a danger that some degree of public confusion and misunderstanding may arise if negative, 'barring' lists are maintained by the regulators alongside the positive lists constituted by registers of professionals, such misunderstanding is unlikely to be significant and could be addressed by public information campaigns. In any event, we think that the potential advantages of negative registers outweigh the drawbacks.

5.50 Under our scheme we think that the Government should continue to have the ability to introduce barring schemes through regulations. We also intend to establish a clear distinction between a barring scheme and the professionals register. The introduction of a barring scheme should not be a backdoor way of

[16] Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (2013) HC 898-III, paras 24.189 to 191 and Department of Health, *Strengthening Corporate Accountability in Health and Social Care: A Consultation* (2013) para 30.

[17] Safeguarding Vulnerable Groups Act 2006.

achieving what amounts to full statutory registration. The Government will therefore be given discrete powers on this subject. We also want to achieve a degree of specificity as to how the power should be exercised. A broad enabling power would not be acceptable in view of the consequences of inclusion in the list for an individual's ability to earn a living. We consider that there needs to be some indication in the draft Bill – even if only at a relatively high level – about what a barring scheme is and to whom it can apply.

5.51 The draft Bill will therefore provide that a barring scheme can be introduced by a regulatory body in respect of a profession prescribed in the regulations, a specified field of activity and/or a specified occupational group. There would be common criteria for imposing a prohibition order, including:

(1) a breach of a code (where one has been issued);

(2) an order is necessary for the protection of the public or otherwise in the public interest; and/or

(3) certain convictions, cautions or banning decisions.

5.52 In terms of sanctions, we think there should be a binary system which simply determines whether or not a person is barred (including interim barring). The schemes should not allow for the use of conditions or warnings. We also consider that an individual to whom a prohibition order relates should be able to apply to the regulator for the order to be set aside. The draft Bill should enable the Government to make provision in regulations as to a minimum period for which a prohibition order must be in effect before such an application may be made and the procedure relating to such an application. There will also be a right of appeal to the higher courts.

5.53 It should be a criminal offence for a person included on a barred list to work as a relevant professional, or perform the activity or work in the relevant occupational role prescribed by the regulations. The Government should be given regulation-making powers to specify any information that must be included in any individual prohibition order or register of prohibited persons, and to make provision about the publication of information relating to a prohibited person.

5.54 We also consider think that the draft Bill should require the Government to evidence in a report that the introduction of any such scheme is necessary in order to protect the public. The report must be laid before Parliament at the same time as the draft regulations introducing the scheme. In our view this would help to establish a separate identity for the scheme, and is similar to the approach we have taken to the use of the Government's proposed powers to abolish, merge or create a regulator (see Part 2).

Recommendation 31: The Government should have regulation-making powers to establish barring schemes, to be run by the regulators. Such a scheme could be introduced in respect of a prescribed health or social care profession, a specified field of activity, a role involving supervision or management, and prescribed title.

This recommendation is given effect by part 7 of the draft Bill.

TYPES OF REGISTRATION

5.55 As well as full registration, the regulators can register professionals on a conditional or temporary basis. Conditional registration means that the registrant can practise subject to certain conditions, such as restrictions on the type of work undertaken or a requirement that the registrant must undergo retraining or a course of medical treatment. Temporary registration enables the regulators to register overseas practitioners who are coming to the UK to provide services for a short period of time. In most cases, this applies to practitioners whose case falls within the Qualifications Directive (see paragraph 5.66) and who, whilst lawfully established in their home state, wish to provide services in the territory of another Member State on a "temporary and occasional" basis. In addition, the General Medical Council can grant temporary registration to "eminent specialists" in a particular branch of medicine and those providing services exclusively to non-UK nationals (for example, during the Olympic Games).[18]

5.56 In addition, the General Medical Council can register on a provisional basis. This allows newly qualified doctors to undertake the general clinical training they need to attain full registration. A doctor who is provisionally registered is entitled to work only in Foundation Year 1 posts in hospitals or institutions which are approved for the purpose of the pre-registration programme.[19]

5.57 Some of the Acts and Orders provide that if the Secretary of State advises that an emergency has occurred, the regulator can make certain temporary changes to the register. For example, in an emergency, the General Medical Council and the General Pharmaceutical Council can register people and groups who appear to be "fit, proper and suitably experienced" with regard to the emergency.[20] The General Pharmaceutical Council and Nursing and Midwifery Council can annotate their registers to indicate individual registrants or groups of registrants who are "fit, proper and suitably qualified" to order drugs, medicines and appliances.[21] Examples of situations where the use of the powers might be necessary include a flu pandemic and the outbreak of foot and mouth disease.

5.58 A professional's registration status is normally indicated in the register in the form of an annotation. However, as noted earlier, some regulators are required to keep

[18] Medical Act 1983, ss 27A and 27B.

[19] Medical Act 1983, s 15.

[20] Medial Act 1983, s 18A and Pharmacy Order 2010, SI 2010 No 231, art 34.

[21] Pharmacy Order 2010, SI 2010 No 231, art 34 and Nursing and Midwifery Order 2001, SI 2002 No 253, art 6A.

separate registers for temporary practitioners. The consultation paper proposed that the statute should enable the regulators to register on a full, conditional or temporary basis. In addition, the regulators would be given powers to introduce provisional registration if they wish to do so. The statute would also provide that a regulator can make certain temporary changes to the register to enable temporary registration and annotation of the register if the Secretary of State advises that an emergency has occurred.[22]

Consultation responses

5.59 An overwhelming majority agreed with the imposition of a duty to register on a full, conditional or temporary basis. However, some queried whether our reference to conditional registration extended beyond fitness to practise cases. For example, the General Medical Council pointed out that its general system of conditional registration – which imposed certain conditions on the practice of international medical graduates – had been abolished in 2007, and argued that any move towards restoring it would be a "retrograde step". Others pointed out that the General Chiropractic Council's and the General Osteopathic Council's conditional registration schemes had been a convenient method of bringing experienced but not formally qualified practitioners onto the new statutory registers when the regulators were established, but were no longer in operation.

5.60 A majority agreed that the regulators should be given powers to introduce provisional registration. However, many consultees commented that extra safeguards should be in place before any regulator introduced such a system.

5.61 An overwhelming majority agreed with our proposal on emergency registration. However, some felt there should be greater clarity over the meaning of an emergency and how long temporary registration should last. Others pointed to the need to consider devolution issues especially since emergencies, such as a pandemic, may be limited to one of the devolved countries. The Department of Health and the Scottish Government pointed out that the emergency powers were more appropriate in the case of some professional groups than others.[23]

Discussion

5.62 We continue to be of the view that the regulators must be able to register applicants on a full, conditional or temporary basis. Registration status should be indicated through annotation of the register and not through separate registers.

[22] Joint CP, paras 5.40 to 5.44.

[23] Consultation Analysis, paras 5.87 to 5.104.

We agree that conditional registration should be limited to those cases where conditions are imposed as a result of fitness to practise proceedings, and that the general powers to register conditionally are no longer necessary. We do think that it is important to future-proof the legislation by establishing Government regulation-making powers to add further types of registration, such as general conditional registration, if this was necessary. We also intend to retain the General Medical Council's specific power to register specialists temporarily. Under the draft Bill this power could be extended to any of the other regulators through Government regulation-making powers.

5.63 Consultation has persuaded us to revise our approach to provisional registration. In view of the potential cost of it and the public interest in whether such a system is introduced, we accept that the introduction of provisional registration should not be left to the regulators but should be the subject of Government regulation-making powers. This would allow the Government to tailor the introduction of provisional registration to those professions where pre-registration education provides the necessary knowledge and theory for practice, but where the registrant needs to gain experience of applying that theory unsupervised. The current systems of provisional registration – such as that maintained by the General Medical Council – could be retained through transitional arrangements in order to minimise disruption before new regulations are made.

5.64 It is also important to retain a provision in the draft Bill to enable emergency registration. We do not consider it necessary to exclude certain professions from this, even though we agree that emergency powers are more likely to be apposite for some professions than for others. However, the Secretary of State would be able to apply the power specifically to one or more regulator or regulated profession We also accept that the definition of an emergency requires clarification. Most of the legislation refers to the Civil Contingencies Act 2004; we intend to follow that approach. However, we are not convinced that the establishment of fixed durations for emergency registration would be sufficiently flexible to deal with the demands of an emergency. The draft Bill provides that the registrar must revoke any changes when the Secretary of State advises that the emergency is over. We accept that the new provisions must ensure appropriate input by the devolved administrations, while not undermining the ability to act quickly in an emergency. This would continue to be achieved through joint working in accordance with the health and social care concordat and memorandum of understanding (see Part 2)

Recommendation 32: The regulators should be able to register professionals on a full, conditional (in fitness to practise cases) or temporary basis. The Government should have regulation-making powers to introduce other forms of registration (including provisional registration).

This recommendation is given effect by clauses 37, 41, 42, 43, 51, 52, and 54(4) of the draft Bill.

Recommendation 33: The regulators should have powers to register practitioners on a temporary basis or annotate their registers if the Secretary of State advises that an emergency has occurred.

This recommendation is given effect by clauses 49 to 50 of the draft Bill.

REQUIREMENTS FOR REGISTRATION

5.65 In order to be registered, applicants are normally required to hold an approved qualification. The requirements for registration can vary between the regulators on other matters. For example, some regulators require applicants to demonstrate or confirm that they are in good health physically and mentally, while for other regulators an applicant's ill health is only relevant to the extent that it impairs their fitness to practise.[24]

5.66 EU law also has an important role to play in this area. Directive 2005/36/EC (the Qualifications Directive) facilitates the recognition of professional qualifications when a person intends to pursue their profession in a Member State other than that in which the qualification was obtained.[25] The Directive distinguishes between the sectoral professions – including doctors, dentists, nurses, midwives and pharmacists – and the remaining professions (general systems professions). In broad terms, the general systems professions are not subject to the same system of automatic recognition of qualifications as the sectoral professions. Furthermore, Directive 2011/24/EU requires all registered health professionals to have appropriate indemnity arrangements in place before registration.[26] This requirement does not apply to social workers.

5.67 The consultation paper argued that the detail of the registration requirements will legitimately need to vary to reflect the different professions, but the statute could set consistent overarching requirements. We therefore proposed that the statute should specify that, in order to be registered on a full or temporary basis, an applicant must be appropriately qualified, be fit to practise, have adequate indemnity or insurance arrangements (except social workers) and have paid a prescribed fee. The regulators would have broad rule-making powers to specify the precise detail under each of these headings (including overseas qualifications). We also proposed that the regulators should be given powers to establish separate criteria for the renewal of registration and for registrants proceeding from provisional to full registration.

5.68 The consultation paper also sought views on whether applicants should demonstrate that they are "fit and proper" persons to exercise the responsibilities of their profession, and whether applicants should be entitled to be registered or

[24] For example, Chiropractors Act 1994, s 3(2)(c) and Medical Act 1983, s 3(1).

[25] Qualifications Directive 2005/36/EC, Official Journal L 255 of 30.09.2005 p 22.

[26] Patients' Rights in Cross-Border Healthcare Directive 2011/24/EU, Official Journal L 88 of 04.04.2011 p 45.

the regulator must register the applicant provided that they satisfy the relevant criteria (and whether either formulation would make any difference in practice). [27]

Consultation responses

5.69 An overwhelming majority agreed with our proposal for full and temporary registration. Many argued that this would provide an appropriate degree of consistency, while also allowing flexibility for the regulators to tailor their registration requirements to each profession. Some, however, disagreed and argued that the detail of the rules should be consistent across the regulators.

5.70 Many commented on the individual elements of the proposal. Some felt that for the purposes of EU law, it would not be possible for the regulators to list all relevant qualifications due to their sheer number. It was also pointed out that, for the sectoral professions, qualifications alone would be insufficient and additional information would be needed about qualifications in order to compare the specialised knowledge and abilities certified by the qualification with the knowledge and qualifications required by the national rules.

5.71 Many welcomed our proposed criterion that the applicant must be fit to practise. It was argued that some of the current criteria which relate to health and good character are too "blunt" and can lead to discrimination. It was also argued that fitness to practise should be interpreted to mean the possession of appropriate knowledge and skills, and not just an absence of a finding that fitness to practise is impaired. Some argued that being fit to practise should be further defined to include being of good standing.

5.72 A number of consultees commented expressly on the proposed criterion relating to indemnity and insurance. Some felt that the statute should define what is *adequate* indemnity and insurance. Several consultees argued that we should implement the recommendations of the *Scott Report* – for example requiring that insurance or indemnity must cover liabilities which may be incurred in carrying out work as a registered professional and introducing powers to require information from registrants in relation to cover.[28] A number of consultees pointed to the difficulties faced by independent midwives who are not covered by existing professional indemnity schemes. It was also argued that social workers should be required to have adequate cover.

[27] Joint CP, paras 5.45 to 5.69 and paras 13.3 to 13.14.

[28] F Scott, *Independent Review of the Requirement to have Insurance or Indemnity as a Condition of Registration as a Healthcare Professional* (2010).

5.73 A number of consultees raised the question of a language check for EEA nationals, arguing that this was a crucial issue which should be clarified and tackled by the regulators. For example, it was argued that the issue had been devolved inappropriately to local employers, even though it raises concerns relating to patient safety. Many argued that professionals from overseas must be able to communicate effectively.

5.74 An overwhelming majority supported the proposals on the renewal of registration and proceeding from provisional to full registration. A slim majority agreed that applicants must demonstrate that they are "fit and proper" persons. However, some were concerned that the term was too subjective and would lead to inconsistency and discrimination. Opinion was divided over whether the legislation should state that applicants are *entitled* to be registered or that the regulator *must register* the applicant.[29]

Discussion

5.75 Consultation has demonstrated that our proposed criteria for full registration were largely correct. We have reviewed whether our framework could go further in securing greater consistency, but have concluded there are limits to what can be imposed in this respect. It is accepted that "appropriately qualified" must be interpreted broadly and should not merely mean providing a list of professional qualifications. The draft Bill clarifies that the regulators' rule-making powers under this heading could be used to specify a range of matters including qualifications, additional requirements relating to education, training or experience (for example, if applicants have not practised for some time or do not hold a recognised qualification) and processes for approving overseas applicants.

5.76 We remain convinced that the general requirements of good health and good character should be removed. In order to be registered, the person should simply be required to demonstrate that they are fit to practise. For similar reasons we do not think that there should be a separate criterion requiring that the applicant is of good standing or a fit and proper person. In effect, any health or character requirements must only be set for the express purpose of confirming that an applicant is fit to practise. This will – amongst other matters – ensure compliance with the Equality Act 2010 and the United Nations Convention on the Rights of Persons with Disabilities.

[29] Consultation Analysis, paras 5.105 to 5.140.

5.77 We are persuaded that the draft Bill should implement the *Scott Report* recommendations in relation to insurance and indemnity. The draft Bill provides that the regulators can make provision by rules for determining whether a person is properly indemnified or insured, including requiring that certain information must be supplied, as well as requiring registrants to inform the regulator if the indemnity arrangements are no longer adequate or appropriate. This power would also enable the regulators to refuse registration if sufficient information about cover is not provided, and to refer cases concerning inadequate or inappropriate cover to a fitness to practise or an interim orders panel if appropriate. But any extension of the insurance and indemnity criterion to social workers, or special rules for independent midwives, must be a matter for the Government. Under the draft Bill, the Government's regulation-making powers could be used to extend this criterion to other professions or exempt professions from this requirement.

5.78 We also continue to believe that the draft Bill should require the applicant to have paid a prescribed fee in order to be registered (except in cases where the fee is waived).

5.79 As noted in the discussion earlier in this Part, we have recommended that provisional registration should be a matter for Government regulation-making powers. Therefore, the criteria for proceeding from provisional to full registration will be a matter for those regulations.

5.80 Consultation has confirmed our view that there is no substantive difference between stating that applicants are entitled to be registered or that the regulator must register an applicant. The draft Bill requires the registrar to register any person who satisfies the relevant conditions.

5.81 Temporary registration enables the regulators to register overseas practitioners who are coming to the UK to provide services for a short period of time. We no longer consider that the criteria proposed for full registration should be applicable to temporary registration. In order to reflect the requirements of the Qualifications Directive, we think the regulators should be required to make rules on a range of matters to provide for temporary and occasional registration. The Government's regulation-making powers could give any regulator the ability to grant temporary registration to "eminent specialists" in a particular area of practice and those providing services exclusively to non-UK nationals.

5.82 We no longer consider that the regulators should have power to establish separate criteria for registration renewals. Instead, we think that the renewal criteria should mirror the registration criteria as far as possible. However, some adjustments are needed in order to take into account the differences between initial registration and renewal. There would, for example, be no need to re-submit evidence of approved qualifications at the renewal stage. The renewal criteria would need additional provisions to take continuing professional development requirements into account, and deal with cases where the practitioner has not been in practice for some time. This provision will also need to take systems of revalidation into account (see Part 6).

5.83 The mutual recognition of qualifications is seen as a fundamental element of the EU Single Market. Difficulties linked with recognition of professional qualifications

are one of the obstacles to gaining employment or providing services in a member state and run the risk of discrimination on the grounds of nationality. Pursuant to the legal principle of sincere co-operation,[30] it is important to ensure that the Qualifications Directive is implemented effectively through the new draft Bill. At the same time, the new framework must ensure public safety without becoming an obstacle to mobility. Article 53 of the Qualifications Directive provides that language controls may only be carried out *after* the recognition of a qualification. Under our scheme the recognition of qualifications would be secured by registering all "exempt persons".[31] However, in a minority of cases, it will be necessary for the regulators to check the language skills of individuals before permitting them to practise.

5.84 The draft Bill therefore gives the Government regulation-making powers to make provision for the treatment of exempt applicants for registration in a professionals register in relation to proficiency in English. This would allow the Government to, for example, require the regulators to maintain a part of their register (or sub-part of registers which are already divided into parts) in which the registrar must register exempt persons in respect of whom the registrar is not satisfied that they have sufficient knowledge of English (subject to their meeting the other registration requirements). The Government could also require each regulator to maintain a supplementary register for this purpose. The regulations could allow the regulators to make rules in relation to proficiency in English (for example, rules which specify how a professional can demonstrate sufficient proficiency in English) and provide for the effect of being so registered (for example in relation to using protected titles or carrying out protected functions), including by way of modification of the application of the rest of the draft Bill to such persons. Our intention is that these language testing provisions would only apply to a small number of professionals where specific individual concerns have been raised prior to, or during, the registration process. These professionals would be registered but unable to practise until the relevant tests or checks have been completed successfully. In our view, this approach would be compatible with EU law and achieves the required clarity about who is fit to practise.

5.85 The Government has recently announced plans to amend the Medical Act 1983 to give the General Medical Council greater powers to take action where

[30] Article 4 of the Treaty on European Union.

[31] An exempt person is defined in clause 88 of the draft Bill and includes nationals of the EEA States and Switzerland.

concerns arise about a doctor's English language capability.[32] Amongst other matters, this would enable the Council to undertake checks on language where legitimate concerns arise during the registration process about a doctor's ability to communicate effectively. Such checks would be applied after registration but before the licence to practise is issued, thus preventing doctors from treating patients where language concerns are identified. However, the use of the licence to practise as the mechanism through which to achieve this objective is not an attractive option in our view. In particular, it would perpetuate the inconsistent powers of the regulators that we have sought to address through our reforms. The Government's proposals would mean that only the General Medical Council will have such scheme, and it would not be available in respect of other professionals who may also pose a risk to the public if they lack sufficient language skills (for example, nurses, pharmacists and dentists). Our draft Bill therefore ensures that the same scheme of language testing would be available to all the regulators.

Recommendation 34: In order to be registered an applicant must be appropriately qualified, be fit to practise, have adequate indemnity or insurance arrangements (except social workers) and pay any prescribed fee. The regulators would have rule-making powers to specify the precise detail under each of these headings.

This recommendation is given effect by clauses 37 to 40 of the draft Bill.

Recommendation 35: The Government should have regulation-making powers to make provision for the treatment of exempt applicants (under the EU Qualifications Directive) for registration in a professionals register in relation to proficiency in English.

This recommendation is given effect by clause 46 of the draft Bill.

PROCESSING REGISTRATION APPLICATIONS

5.86 The current legislation sets out various procedural requirements for how registration and renewal applications should be processed. For example, the registrar of the General Dental Council is required to acknowledge the receipt of the application within one month, inform the applicant of any missing documents and notify applicants of the result of the application within three months.[33] The

[32] Department of Health, *Language Controls for Doctors: Proposed Changes to the Medical Act 1983* (2013).

[33] Dentists Act 1983, s 21A. See also Pharmacy Order 2010, SI 2010 No 231, art 24.

registrar of the General Medical Council must wait six months for someone not to reply to a letter before they can be removed from the register.[34] Most of the legislation requires that if the application is refused, reasons must be given in writing and the applicant informed of their right to appeal.[35]

5.87 The consultation paper argued that these types of requirements often become outdated (for example requiring postal rather than electronic communication) and can inhibit innovation. We therefore proposed that the regulators should be required to "communicate expeditiously" with applicants and given broad powers to determine their registration processes.[36]

Consultation responses

5.88 The vast majority agreed with this proposal. It was argued that the statute should allow the regulators to extend their deadlines when processing applications especially if there is evidence of a risk to public safety. However, some felt that the term *expeditious* lacked certainty and would generate litigation, and suggested that the Professional Standards Authority should issue guidance and monitor compliance as part of its annual performance review. A small number of consultees suggested that the statute should specify timescales for communications. The Department of Health pointed out that EU law prescribes specific timeframes for processing certain types of applications and therefore the regulators should be under a general duty to observe these requirements.

Discussion

5.89 Consultation has confirmed our view that the existing procedural requirements for processing applications should be removed. Instead, the regulators will be required to make rules about the procedure for dealing with applications for registration or renewal. These rules must require that the registrar should deal expeditiously with applications. The regulators could use these rules, for example, to set time limits for communications. We do not agree that a general requirement to deal with applications "expeditiously" will generate the litigation suggested by some consultees. This requirement would be broadly in line with

[34] Medial Act 1983, s 30(5).

[35] See, for example, Health and Social Work Professions Order 2001, SI 2002 No 254, art 9(6) and Nursing and Midwifery Order 2001, SI 2002 No 253, art 9(4).

[36] Joint CP, paras 5.70 to 5.77.

the recognised principles of good administrative practice.[37] We also note that the Professional Standards Authority could, if it wished to do so, take into account the effectiveness of the regulators in this area as part of its annual performance review. Finally, we agree that the regulators will be required to take into account article 51 of the Qualifications Directive concerning timeous communications. However, we do think it is necessary for the draft Bill to signpost the regulators to this provision.

Recommendation 36: Each registrar should be required to deal expeditiously with applications for registration or renewal.

This recommendation is given effect by clause 47(2) of the draft Bill.

PUBLICATION AND UPKEEP OF THE REGISTERS

5.90 The governing legislation sometimes includes detailed provisions about the publication of the registers. For example, some regulators are required: to publish their registers periodically, from "time to time", or every 12 months; in such form, including electronic, as they consider appropriate; and to make the register available for inspection by members of the public at all reasonable times.[38] In contrast, few legislative requirements are placed on the General Pharmaceutical Council, which instead has broad powers to specify most of this detail in rules.[39]

5.91 The legislation also contains provisions which enable the regulators to amend and alter their registers. These often include the removal of an entry with the registrant's consent or if a registration has lapsed.[40] Some regulators can add further information to an entry when the registrant acquires specialist qualifications or extra skills. In the case of the General Pharmaceutical Council, the registrant is placed under a duty to notify the registrar of any change to their name, address or contact details within one month.[41]

[37] See, for example, Parliamentary and Health Services Ombudsman, *Principles of Good Administration* (2009).

[38] See, for example, Medical Act 1983, s 34; Dentists Act 1984, s 22; and Nursing and Midwifery Order 2001, SI 2002 No 253, art 8(1).

[39] Pharmacy Order 2010, SI 2010 No 231, art 19.

[40] See, for example, Nursing and Midwifery Order 2001, SI 2002 No 253, art 7.

[41] General Pharmaceutical Council (Registration) Rules 2010, SI 2010 No 1617, r 8.

5.92 The regulators are also given powers to erase register entries that have been fraudulently procured or incorrectly made.[42] There is a right to appeal to a registration appeals panel in such cases and a further right to appeal to the higher courts (or sometimes to the county court or, in Scotland, to a sheriff).[43]

5.93 The consultation paper proposed that the regulators should have broad powers to establish rules concerning the upkeep and publication of the register. We also proposed that the regulators would be required to establish a process for dealing with fraudulently procured or incorrectly made entries, but given discretion in deciding the precise process they wished to introduce. The right of appeal would be to the higher courts in all cases. [44]

Consultation responses

5.94 All those who expressed a view agreed with our proposals on rule-making powers. However, many also argued that the processes established by the regulators should be as consistent as possible. All those who expressed a view also agreed with our proposal on powers to deal with fraudulently procured or incorrectly made entries. It was suggested that the statute should put beyond doubt that "fraudulently procured" covers failure to disclose pertinent information. Some argued that fraudulently procured entries should be dealt with through fitness to practise proceedings.

5.95 The vast majority agreed that there should be a right to appeal to the higher courts. However, some expressed concern about the costs of appeals to these courts. For example, the Administrative Appeals Chamber of the Upper Tribunal felt that this route was "disproportionate in terms of both cost and complication" and suggested an appeal to the First-tier Tribunal in the first instance. The Scottish Law Service felt that the sheriff court would be the most appropriate level for a right of appeal, rather than the Court of Session.

Discussion

5.96 Consultation has confirmed our view that the regulators should have broad powers to publish and update their registers. We do not want to tie the regulators to any specific form of publication, such as a written document or an online register. Whatever means of publication is used, it must be practically accessible

[42] See, for example, Medical Act 1983, s 39.

[43] See, for example, Nursing and Midwifery Order 2001, SI 2002 No 253, art 38(1)(b).

[44] Joint CP, paras 5.84 to 5.94.

so that it serves its purpose. This should allow for the electronic publication of registers, or any other format.

5.97 The regulators should have rule making-powers to keep their registers up to date. This would allow the regulators, for example, to make changes to a registrant's name or address and to give effect to an order or direction of a panel. There are also certain changes that the regulators should specifically be required to make. The regulators should be required to erase practitioners who have died, remove entries of those no longer entitled to be registered (for example as a result of fitness to practise proceedings), and restore entries to the register in certain cases. We also think that the regulators should have express power to remove entries where it is proved that a registrant failed to provide relevant information relating to their fitness to practise at the point of registration. At the moment, this power is restricted to health cases or "serious, specific circumstances", but the draft Bill will broaden this to include any case of impairment.[45] We also want to retain the powers to remove entries where a registrant has been subject to a "disqualifying decision" in a relevant European state which relates to fitness to practise.[46]

5.98 We intend that the regulators should continue to have the power to remove an entry which has been fraudulently procured or incorrectly made. In our view this could include certain failures to disclose pertinent information about changes in registration information. In most cases, individuals should have a right to appeal to a registration appeals panel (see section on registration appeals below). However, the regulators would retain the ability to deal with individual cases by other means, such as referring cases to a fitness to practise panel or for further investigation. We continue to think that the right to appeal against the removal of entry in the register in such cases should be to the higher courts. This issue is considered in more detail in Part 9 of this report.

Recommendation 37: The regulators should be required to publish their registers and powers to keep their registers up to date. There should be a duty to remove practitioners who have died, remove entries where the person is no longer entitled to be registered and restore entries in certain cases.

This recommendation is given effect to by clauses 61, 69 to 72, and 90 to 93 of the draft Bill.

[45] Medical Act 1983, s 44B(1).

[46] See, for example, Medical Act 1983, s 44.

Recommendation 38: Where a regulator has reasonable grounds for believing that an entry in the register has been fraudulently procured or incorrectly made, it may remove that entry. A right of appeal should lie to a registration appeals panel and to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

This recommendation is given effect to by clause 63 of the draft Bill.

CONTENT OF THE REGISTERS

5.99 The legislation often specifies what information must be included in the registers, such as a registrant's name, address, date of registration and qualifications. In most cases the regulators have rule-making powers to add further information, which have been exercised to include matters such as gender, title, honours and distinctions. There is a difference between what appears in the public register and what is otherwise entered into the register. For example, the Health and Care Professions Council's rules provide that the home address of a practitioner shall not appear in the public register without that person's consent.[47]

5.100 The consultation paper proposed that the regulators should have flexibility in determining the content of their registers in terms of the registrant's personal and professional details. We asked for further views as to whether these powers should extend to annotating the register to indicate additional qualifications. We proposed that all current fitness to practise sanctions should appear in the public register. In addition, the regulators would have powers to include other sanctions or forms of disposal which have been issued without a finding of impairment (such as undertakings, warnings and interim orders). We asked for views on whether the regulators should publish information about professionals who have been removed for at least five years and provide links to information about previous fitness to practise sanctions. We also sought views on whether registers should include details of all previous sanctions.[48]

Consultation responses

5.101 A significant majority agreed that the regulators should have broad powers to make rules concerning the content of the registers. However, many argued in favour of greater consistency and suggested that the register should have a common meaning across the regulators. Some also argued that the public register should only include those details that are pertinent to practice.

[47] Health Professions Council (Registration and Fees) Rules Orders of Council 2003, SI 2003 No 1572, r 3(2).

5.102 A majority argued that the regulators should be given broad powers to annotate their registers to indicate additional qualifications. However, many argued that there should be some restrictions, for example so as to ensure that only qualifications which are relevant to a specific professional role or quality assured by the regulators should be indicated in the register. Others argued that additional qualifications should be indicated only in exceptional circumstances, where issues of public safety arise. Several consultees were concerned to ensure that annotation is not used simply as a tool for career development or a means for the regulator to charge additional fees. The Health and Care Professions Council pointed to its own approach. It will only annotate in exceptional circumstances where annotation is necessary in order to protect the public and is a proportionate and cost-effective response, the qualification is necessary in order to carry out a particular role or function and there is a link between the qualification and a protected title or function.

5.103 A significant majority agreed that the statute should require all current sanctions to which the registrant is subject, including interim orders, to appear on the public register. However, a small number disagreed. For example, it was argued that in some cases registrants' own safety could be put at risk as a result. A majority agreed that the regulators should have discretion to include details of current undertakings, warnings and interim orders in the public register. However, some argued that publication should be mandatory and that any regulatory action taken in response to impaired fitness to practise should, while it is in force, be visible on the register. Some felt that the details of interim sanctions should not be published because at the interim sanctions stage the evidence relied on in support of the allegation has not been tested. It was pointed out that interim orders will be replaced by a substantive order which will appear on the register if there is a finding of impaired fitness to practise.

5.104 A significant majority felt that the regulators should be required to publish information about professionals who have been removed for at least five years from the date of removal. Some suggested this should not apply in cases of impairment on the grounds of ill health. Others agreed that this information should be public, but considered that it should be located separately to avoid confusion. A small number argued that this was unnecessarily punitive and that the regulators should have discretion on such matters.

[48] Joint CP, paras 5.109 to 5.114.

5.105 A small majority did not agree that the registers should include all previous sanctions. For example, it was argued this would be confusing and send a message that some practitioners were more fit to practise than others. Some suggested alternative systems, such as the General Medical Council's register which allows all previous sanctions to be viewed by selecting "a fitness to practise history tab" but makes sure that this information is kept separately from the register. Others felt that details of previous sanctions should only be available on request. Several consultees favoured discretionary powers in this area and that past sanctions should only be included where it is clearly in the interests of public protection.[49]

Discussion

5.106 In broad terms, we think that much of the information that appears on the register will necessarily be highly specific to the particular profession concerned, and therefore the regulators should have flexibility to determine such matters. Nevertheless, we consider that there is certain minimum information that the public is entitled to see whenever they access a public register and there are public safety arguments in favour of ensuring consistency on a number of key issues. Our review of existing online registers indicates that the following information is common to all the public registers – name, reference number, registration status (full, provisional, temporary or emergency), registration date, primary qualification, and (where appropriate) the part of the register in which the person has been entered. We think that the draft Bill should ensure this basic information is retained on each public register and the regulators should retain powers to specify additional information. We also think that the Government's regulation-making powers should include the ability to add to or remove from this list.

5.107 Consultation has also persuaded us that the draft Bill should provide a framework to govern the regulators' powers to annotate their registers. This would help to ensure that the purpose of additional information is clear and transparent. It is also important that the use of annotations is restricted for example to cases where it is necessary to protect the public, and does not become a means of promoting career development or generating additional fees for the profession. We think that there should be statutory criteria for additional annotations based on the test used by the Health and Care Professions Council, as referred to in its response and set out above. The use of annotations should continue to be monitored by the Professional Standards Authority as part of its annual

[49] Consultation Analysis, paras 5.90 to 5.240.

performance review. We do not agree that annotations should be limited to qualifications which the regulator has directly quality-assured. There will be cases where the regulators need to annotate to indicate other qualifications, although we accept this would be the exception rather than the rule. Examples might include overseas qualifications.

5.108 We continue to be of the view that any current fitness to practise sanctions must be entered in the public register. This means all sanctions issued by a fitness to practise panel following a finding of impairment (see Part 9). It is vital for public protection that such information is not kept privately by the regulators and we are not persuaded that any potential harm caused to the registrant concerned is likely to outweigh the need to ensure public safety. We acknowledge that the publication of information about practitioners may engage their right to private life under article 8 of the European Convention on Human Rights. However, we are satisfied that the publication requirements are a justified and proportionate response in the interests of public safety. We also consider that the registers should contain the details of any conditions on practice (except where the conditions relate to the registrant's health) and not just the fact that conditions have been imposed. We also think that the register must indicate if the panel has made a finding of impairment but decided to take no further action, or has agreed undertakings and voluntary erasure.

5.109 In cases where there has been no finding of impairment, we accept that – for reasons of public protection – the public register should indicate cases where a warning has been issued, undertakings have been agreed, or an interim order imposed. In relation to those disposals available at both the investigation and final hearing stages, the register would need to indicate whether or not the disposal has followed a finding of impairment. We recognise that, in relation to interim orders, the facts of the case have yet to be tested. Nevertheless, the imposition of such an order must be necessary to protect the public and it is therefore right that it be made public. It is accepted that many of the above sanctions and disposals will only appear on the register for a limited period. In our view, the time limit must be decided or agreed by the body issuing them, such as the fitness to practise panel or the regulator, at the time when they are imposed.

5.110 We also think that the regulators should establish a list of persons whose entry has been removed following a finding of impairment. Simply omitting a name from the register does not give the clarity required for public protection. Furthermore, being removed can be compared to a current sanction in the sense that it is ongoing and remains in force unless registration is subsequently restored. It follows that removal should be treated in the same way as any current sanction. We are also persuaded that the regulators should be required to maintain lists of cases where the regulator has agreed to voluntary removal.

5.111 We are persuaded that the regulators should be required to publish details of previous sanctions. Transparency about a registrant's fitness to practise history is an important aspect of delivering public protection and maintaining confidence in the profession. Many of the regulators already provide this information and we consider that this should be done consistently by all. The only exceptions should be warnings over five years old. We consider that this strikes a fair balance between the need to ensure that the public is fully informed about registrants' fitness to practise and that warnings do not restrict the right to practise or require

any remedial action. As a minimum, previous sanctions should be indicated in a registrant's entry, with further information provided elsewhere or on request.

5.112 Finally, we also consider that the regulators should be required to publish fitness to practise decisions. This would ensure transparency and help to ensure public protection. The relevant clause in the draft Bill is based on existing provisions, such as section 35B(4) of the Medical Act 1983, and would not allow the publication of information about a person's physical or mental health.

Recommendation 39: Each entry in the public register must contain the registrant's name, reference number, registration status, date of registration and primary qualification, and (where appropriate) the part of the register in which the person has been entered.

This recommendation is given effect by clause 53(1) of the draft Bill.

Recommendation 40: The regulators should have powers to include additional qualifications or specialisms in the public register but only if there is a risk to the public if the register is not so annotated and such annotation is a proportionate and cost-effective response to the risks posed.

This recommendation is given effect by clauses 53(6) to 53(7) of the draft Bill.

Recommendation 41: Public registers should indicate all current sanctions imposed on a registrant, cases where impairment has been found but no sanctions imposed, current interim orders and consensual disposals. The public registers should include details of all previous sanctions (except warnings which are over five years old).

This recommendation is given effect by clauses 53 to 59 of the draft Bill.

Recommendation 42: The regulators should be required to maintain lists of persons whose entry has been removed following a finding of impairment or voluntary erasure.

This recommendation is given effect by clause 93 of the draft Bill.

Recommendation 43: the regulators should be required to publish all fitness to practise decisions.

This recommendation is given effect by clause 193 of the draft Bill.

REGISTRATION APPEALS

5.113 The legislation provides that most decisions to refuse registration and certain other registration decisions can be appealed. The main exceptions are decisions to refuse registration or remove a person's name from the register by reason only that the person failed to pay the registration fee, make an application or produce the required certificates.[50]

5.114 At most of the regulators, a registration appeals panel or similar body has been established for this purpose and the regulators can make rules as to the procedure and rules of evidence which are to apply.[51] The right to appeal against the decision of the registration appeals body is to the county court or, in Scotland, the sheriff.[52]

5.115 The consultation paper proposed that each regulator should be required to establish a registration appeals process, but be given discretion to decide the precise process it wished to introduce. We also proposed that the statute would introduce a further right to appeal to the higher courts.[53]

Consultation responses

5.116 An overwhelming majority agreed that the statute should require each regulator to establish a registration appeals process. However, many argued that the processes established by the regulators should be as consistent as possible (for example, by the legislation requiring the establishment of a registration appeals committee). It was argued that there should be a right to appeal decisions to register the applicant in a category of registration other than that applied for, or subject to a condition. Others thought that appeals should not extend to cases where registration is refused because the applicant does not possess an acceptable qualification. Many felt that the regulators should be required to give reasons for the decision and to supply all relevant documentation. A significant majority agreed with a right to appeal to the higher courts. However, some expressed concern that this would be much more expensive than the current right

[50] See, for example, Medical Act 1983, sch 3A, para 2(2) and Dentists Act 1983, sch 2A, para 2(2).

[51] See, for example, Dentists Act 1984, s 50C, Medical Act 1983, sch 3A, para 4 and sch 3B, para 3, and Opticians Act 1989, sch 1A, para 4.

[52] See, for example, see Medical Act 1983, sch 3A, para 5.

[53] Joint CP, paras 5,78 to 5.83.

to appeal to the county court. The Administrative Appeals Chamber of the Upper Tribunal argued there should be a right of appeal to the First-tier Tribunal.[54]

Discussion

5.117 It is our view, given the significant public interest in appeals against registration decisions, that this is an area where consistency is necessary. The draft Bill should require the regulators to set up a panel adjudication system for the purposes of registration appeals. These panels would be convened in exactly the same way as fitness to practise panels (see Part 9), but would be recognised separately in the draft Bill due to their differing functions; registration appeals will rarely involve any matters which could amount to an allegation of impairment. It should be possible for fitness to practise panellists to sit on registration appeals panels.

5.118 In general terms, the decisions that should be appealable are those not to register or renew registration, or to remove the person from the register, which have been taken by the regulator and not ordered by a fitness to practise panel. We think that the regulators should be able to specify in rules any other decisions that should be appealable, such as refusals to provide certificates confirming registration or to require additional tests prior to registration. We also think that the current powers of registration appeals bodies to dispose of cases should be retained – namely, to dismiss or allow the appeal, substitute a different decision, refer the matter to a fitness to practise or interim orders panel or remit the case to the registrar to dispose of in accordance with a panel's directions. There should also be a further right to appeal against the decision of the panel to the higher courts. While concerns were raised at consultation relating to costs, we consider the higher courts to have the requisite level of experience to make these decisions. This issue is discussed in more detail in Part 9.

5.119 We also intend to apply – as far as possible – the same approach to the procedure for panel hearings that we recommend for fitness to practise panels in Part 9 of this report. The draft Bill therefore imposes consistency on certain matters concerning due process and the powers of panels. On matters concerning the procedure at a hearing, the draft Bill enables the Government to make "model rules".

5.120 Some registration appeals panels currently have powers to award costs as they see fit. Under the draft Bill the ability to award costs is subject to a Government

[54] Consultation Analysis, paras 5.146 to 5.155.

regulation-making power (see Part 9). Subject to the above framework, the regulators will have rule-making powers in respect of the panel procedures.

Recommendation 44: The regulators should be required to establish registration appeals panels and provide a further right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

This recommendation is given effect by clauses 73 to 89 of the draft Bill.

RESTORATION TO THE REGISTER

5.121 A person who has been removed from the register can apply to be restored. Where the person has been removed following fitness to practise proceedings, applications are normally considered by a fitness to practise panel.[55] In such cases, there is a prescribed period (usually five years) during which applications for restoration cannot be made. A different procedure applies to applications for restoration in cases not related to fitness to practise proceedings, such as where the person has been removed from the register because they have been working abroad, taken a career break, not complied with continuing professional development requirements or failed to pay the registration fee. In most of those cases the application for restoration is decided by the registrar, with a right of appeal to, for example, an appeals committee.[56]

5.122 The consultation paper proposed that all applications for restoration in cases where a registrant's entry has been removed following fitness to practise proceedings must be referred to a fitness to practise panel. We also asked for further views on whether the legislation should establish a consistent period of time before the end of which applications for restoration cannot be made. In other cases, we proposed that each regulator should be required to establish in rules a process for considering applications for restoration and given broad discretion to determine the precise process they wish to adopt.[57]

Consultation responses

5.123 An overwhelming majority agreed with our proposal on restoration in fitness to practise cases. Some sought clarity on whether this process would apply in cases

[55] See, for example, Medical Act 1983, s 41(3) and General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004 No 2608, r 23(1).

[56] General Pharmaceutical Council (Registration) Rules 2010, SI 2010 No 1617, r 16.

[57] Joint CP, paras 5.95 to 5.101.

of voluntary removal where allegations of misconduct have been made. It was also suggested that restoration following a failure to comply with continuing professional development requirements should always be dealt with by a fitness to practise panel. However, some argued that the regulators should be able to make their own decisions regarding the process for determining restoration applications. It was also argued that all registration applications should be treated procedurally as an initial registration application, with a right of appeal to the First-tier Tribunal.

5.124 A majority considered that the statute should set a consistent time period before the end of which applications cannot be made. It was argued that there was no logical justification for a different period applying to different professions. The General Medical Council reported difficulties before it had introduced a five year time period, with people seeking restoration in inappropriate circumstances. Most favoured a period of five years but others suggested three years or ten months. The Department of Health suggested that the regulators should have the ability to prevent someone from repeatedly making applications for restoration within a short space of time. However, some felt it should be left to the regulators to determine the time limit because this will need to vary according to the profession and the risk that the person posed to the public. Others argued that the legislation must provide for exceptional cases to which the period of time requirement would not apply.

5.125 There was unanimous support for the proposal that regulators should be able to develop their own processes for restoration in cases not related to fitness to practise.[58]

Discussion

5.126 Consultation has confirmed our view that applications for restoration in cases where a registrant's entry has been removed following fitness to practise proceedings should be referred to a fitness to practise panel. This is already common practice for most of the regulators. In view of the public interest in the outcome of restoration decisions, we do not consider that the regulators should be given discretion over the process or that all restoration applications should be treated in the same way as initial applications.

5.127 In cases of applications for restoration following voluntary removal, we think that the regulator should have discretion to specify in rules the circumstances in which applications may require a referral to a fitness to practise panel to make the

restoration decision. We are also not persuaded that it would be in the public interest to impose a uniform process for restoration following removal for failing to comply with continuing professional development requirements.

5.128 We are persuaded that there should be a uniform time period before which applications for restoration in fitness to practise cases cannot be made. This is an important matter on which greater consistency and certainty would be beneficial for professionals and members of the public. We are not persuaded that the draft Bill should provide for exceptional cases. A minimum time period would be sufficiently fair to the registrant, while also reflecting the permanency and gravity of a decision to remove the person from the register. The current period used by most regulators is five years and we think it would be appropriate to establish this consistently across all of the regulators. We also accept the argument that the legislation should limit the frequency of applications to one every 12 months. In addition we consider that after a second or subsequent unsuccessful application for restoration following removal on fitness to practise grounds, a panel should be able to direct that the right to make further applications is suspended indefinitely. If a person's right to make further applications is suspended indefinitely, the regulator would be required to serve, as soon as reasonably practicable, on the person a notification of the direction and of their right to appeal to the higher courts. After three years from the date on which the direction was given, the registrant would be able to apply to the regulator for that direction to be reviewed by a fitness to practise panel and would be permitted to make further applications for review every three years.

5.129 In non-fitness to practise cases, the regulators should be able to develop their own processes. The draft Bill requires each regulator to establish in rules a process for considering applications for restoration. This could include, for example, a system whereby all applications are referred to the registrar or to a committee. The regulators should also have broad powers to establish rules on a range of procedural matters.

[58] Consultation Analysis, paras 5.168 to 5.189.

Recommendation 45: All applications for restoration to the register in cases where a registrant's entry has been removed following a finding of impairment must be considered by a fitness to practise panel. In other cases, regulators should be required to establish in rules a process for considering applications for restoration.

This recommendation is given effect by clauses 69 to 72 of the draft Bill.

PART 6
EDUCATION, CONDUCT AND PRACTICE

6.1 This Part considers how the new statute should enable the regulators to set standards for professional education, conduct and practice. This includes activities such as overseeing the quality of teaching on approved courses, issuing codes of conduct and standards of proficiency, and setting requirements for continuing professional development. It covers specifically the following matters:

(1) overlapping responsibilities;

(2) education;

(3) standards of conduct, performance and ethics; and

(4) continuing professional development.

OVERLAPPING RESPONSIBILITIES

6.2 There are a number of different bodies with varying degrees of responsibility for ensuring proper standards of professional education, conduct and practice. These bodies include education institutions, Royal Colleges, the NHS and systems regulators such as the Care Quality Commission. The regulators are only a single element – albeit an important one – within this complex field, and there is considerable overlap. Consequently, the regulators' ability to monitor and deliver standards is heavily reliant on others. The consultation paper asked for views on how or whether our new scheme could go further to encourage a streamlined and coordinated approach to the regulation of education, conduct and practice.[1]

Consultation responses

6.3 A large majority argued that our scheme should go further in this respect, and many pointed to problems caused when there is no joint working between the various bodies. Some argued that the regulators should be required to promote inter-professional collaboration and ensure the involvement of professional bodies in education and training. It was also argued that greater co-operation will demand certain consistencies to be established. Others felt that there should be greater demarcation of responsibilities between the regulator and other bodies.

[1] Joint CP, paras 6.3 to 6.14.

The Scottish Government called for the creation of a new body with representation from individual regulators to ensure a more co-ordinated and streamlined approach (a "hub and spoke" model). A number of consultees called for a generic code of conduct for all health and social care professionals. However, some urged caution in developing a co-ordinated and streamlined approach, on the grounds that specific issues that relate to individual professions need specialist knowledge and expertise and the reforms should not be driven by a "one size fits all dogma".[2]

Discussion

6.4 In general terms, we think that the regulators should be given greater autonomy over how they regulate education, conduct and practice. The activities undertaken by each regulator will, to a significant degree, need to be tailored according to the circumstances of the relevant profession. This would allow for a more streamlined and co-ordinated approach. For example, it would be possible for a regulator to reduce its regulatory activity or withdraw from specific tasks, especially where the impact is marginal and other agencies are undertaking similar tasks. Furthermore, the Professional Standards Authority would continue to play an important role through its duty to promote co-operation (see Part 12) and the draft Bill would place duties of co-operation on the regulators and provide for functions to be undertaken in partnership with other bodies (see Part 10). We are not convinced that further statutory provision would be appropriate and therefore do not make any specific recommendations.

6.5 The suggestions made by the Scottish Government for the establishment of a new central body to co-ordinate activity in these areas and a combined code of conduct are interesting. At this point, there are no concrete plans to take these suggestions forward. However, the draft Bill would certainly not preclude the establishment of such a body or the development of joint codes and indeed would facilitate these through partnership arrangements (see Part 10).

EDUCATION

6.6 Most of the regulators are required to establish standards and requirements for qualifications leading to initial registration. For example, the General Medical Council has the general function of promoting high standards of medical education. In doing so, the Council must ensure that teaching is sufficient to equip students with the necessary knowledge and skills, and that the qualifying

[2] Consultation Analysis, paras 6.1 to 6.22.

examinations secure the necessary standards of proficiency.[3] In order to make certain that the standards are met, the regulators undertake a wide range of activities such as inspections, auditing, performance reviews and surveys.

6.7 Most regulators also have powers to oversee post-registration qualifications. This role is normally linked to continued professional development requirements and in some cases can lead to an annotation of the register in respect of a specialisation.[4] In addition, the General Medical Council approves programmes and sets educational standards for provisional registration, where registrants must undertake a foundation programme plus optional specialist training.[5]

6.8 The consultation paper argued that the regulators should be given greater autonomy to determine their own approaches to the approval of education and training. We proposed that the regulators should be required to make rules on approved qualifications, the approval of (and withdrawal of approval from) education institutions and courses, quality assurance and monitoring of providers, and the appointment of visitors and an inspectorate system.[6]

Consultation responses

6.9 This proposal received unanimous support. However, many consultees also commented on specific elements. For example, it was argued that the statute should enable prior experience and vocational education to be recognised, as well as traditional academic education. Several responses noted the importance of securing effective practice placement settings and pointed to the key role of professional bodies in education and training. Some felt that the regulators should have greater discretion over the use of visitors and inspectors since this was only one way of assuring the quality of education provision. It was suggested that the regulators should have additional powers to take over institutions, similar to Ofsted's special measures, to charge for inspection activity and to restrict the extent of their approval to education and training delivered in the UK. Others argued that the regulators should not be able to introduce excellence schemes which would stray into the role of professional bodies. Many argued that the statute should go further in imposing consistency on matters such as who can act as a visitor or inspector, rights of appeal and monitoring and reviews of

[3] Medical Act 1983, s 5(1) and (2).

[4] See, for example, Health and Social Work Professions Order 2001, SI 2002 No 251, art 19(4) and Pharmacy Order 2010, SI 2010 No 231, art 4(3)(e).

[5] Medical Act 1983, ss 10A and 34H.

[6] Joint CP, paras 6.15 to 6.48.

approvals. However, it was also pointed out that some regulators do not have an existing internal appeals process for decisions regarding the approval of training providers and therefore any duty to introduce this might impose additional financial burdens.[7]

Discussion

6.10 Consultation has persuaded us to revise our approach to education and training. In several areas, we think that the draft Bill should go further in giving the regulators autonomy over how they undertake this function, but there are a small number of tasks that should be mandated and which require a more detailed statutory framework than proposed at consultation. We also think that the framework needs to focus much more on the setting and approval of educational standards. This is more consistent with how the education function is implemented in practice by the regulators.

6.11 First, we think that an overarching duty should be placed on the regulators to set standards for education and training and ensure the maintenance of those standards. The regulators should have discretion about how this duty is implemented, such as whether post-registration education is to be the subject of express standards. There should also be an ability to set standards for practice placements, which we agree is an important aspect of this regulatory function. Second, in order to ensure the maintenance of those standards, the regulators should be given powers to approve matters relating to education such as education institutions, examinations or other tests, courses, programmes, environments, training posts and individuals. The regulators would have discretion as to how approval is determined and how the standards are monitored and reviewed.

6.12 We do not agree that the regulators should have similar powers to Ofsted. The regulators' powers to impose conditions and issue advice would seem to be adequate in this regard. We continue to be of the view that excellence schemes may be a useful means of ensuring the maintenance of standards. In many cases this will be an appropriate role for a professional body, but in some professions where there is no extensive network of Royal Colleges and professional bodies, this may need to be undertaken by the regulator. In any event, this would be a power and individual regulators would not be obliged to introduce such schemes. We also continue to think that the regulators should be given powers to charge fees for any aspect of their educational activity (including visits).

[7] Consultation Analysis, paras 6.23 to 6.36.

6.13 The legislation should also give the regulators powers to refuse or withdraw approval if the standards are not met, and the ability to attach conditions or suspend any approvals (as well as time limits for the approval if necessary) and to issue warnings. We recognise the concern that few regulators currently provide internal rights of appeal against such decisions and that the imposition of such a system would be onerous. A right to appeal could also undermine the ability of a regulator to act swiftly in cases of educational failure. We therefore think it would be better for the legislation to encourage dialogue before any decision is made. Some of the current Acts and Orders provide that the regulators must ensure that those affected by the refusal or withdrawal decisions are given the ability to make representations. We think this should be made consistent across the regulators. In effect, if a regulator has formed the provisional view that approval should be refused, withdrawn, suspended, or conditions applied, it should be required to notify the education provider in writing. The body (and any other person with a substantial interest in the matter) would be given a reasonable opportunity to make representations before a decision is made. In addition, education providers should be able to make observations on any report made by visitors on which a decision to refuse or withdraw approval or to impose conditions would be based (see below). Where approval is withdrawn, the regulator should also be required to ensure that anyone receiving education or training is given an opportunity to continue their studies elsewhere. Any decision to withdraw approval should not affect the registration status of any person awarded a qualification from the institution before the decision. These requirements are consistent with existing statutory provisions. Decisions to withdraw or refuse approval could also be subject to judicial review.

6.14 We accept that there should be a greater degree of discretion in relation to systems of inspection since there are other ways of ensuring that standards are being met. Therefore, we think that the regulators should be given a power – and not required – to appoint a person to inspect an education or training provider and report on any relevant matters. We do not think it necessary to define who can undertake this role, except that the legislation should exclude anyone who has a significant connection with the provider. The draft Bill also requires the regulator to send to the provider a copy of the report and notification of the period within which it may make observations on the report. The regulators should have powers to determine fees and allowances (including payment to employers of visitors), and reimbursement of expenses. There should be a general power of the regulator to require information from the provider for the purpose of this function. These recommendations are all in line with existing legislative requirements.

6.15 Our approach to approved qualifications for the purposes of pre-registration and post-registration is set out in Part 5 of this paper. The draft Bill ensures that the regulators can set requirements and rules relating to prior experience, vocational training and education other than formal approved education schemes.

Recommendation 46: The regulators should be required to set the standards for education, training and experience, and have broad powers to approve matters such as institutions, examinations, tests, courses, programmes, environments, posts and individuals.

This recommendation is given effect by clauses 105 to 109 of the draft Bill.

Recommendation 47: The regulators should have powers to refuse, withdraw or suspend approval of education providers, attach conditions to any approvals and issue warnings.

This recommendation is given effect by clauses 112 to 114 of the draft Bill.

Recommendation 48: The regulators should be given a power to appoint one or more persons to inspect an education or training provider and report on any relevant matter. There should be a general power for the regulators to require information from the education or training provider.

This recommendation is given effect by clauses 110 to 111 of the draft Bill.

Other matters relating to education and training

6.16 The consultation paper discussed further issues relating to education and training. We proposed that the regulators should be required to publish a list of approved institutions, courses and programmes, and a record of all approval decisions. In addition, education providers should be required to pass on to the regulators information about student fitness to practise sanctions (including warnings, conditions, undertakings, suspension and expulsion). We also asked for views on whether the regulators should have powers over the selection of those entering education and whether our proposals could go further in promoting multi-disciplinary education and training.[8]

Consultation responses

6.17 All those who expressed a view agreed that the regulators should be required to publish a list of approved institutions, courses and programmes, and a record of all approval decisions. This was seen as assisting students and prospective students to make an informed choice about their education and training provider. Some suggested additional duties, such as a duty to publish details of approved practice placements and the decision-making process that has been adopted for approval decisions.

6.18 A large majority agreed that education institutions should be required to pass on information about student fitness to practise sanctions. Several consultees suggested that the proposal reflected existing practice. It was also argued that such a duty should not undermine the responsibilities of education providers such as universities to manage misconduct. However, some felt that this duty would only be effective alongside a compulsory register of students and sought further

[8] Joint CP, paras 6.41 to 6.48.

clarification about how this information should be managed. Others argued that a blanket requirement would be disproportionate to the risks presented and that a power for the regulator to request information would be preferable.

6.19 A majority felt that regulators should not have powers to introduce a national assessment of students. It was argued that national assessments would be bureaucratically complex and expensive, would fail to test professional competence adequately and were unnecessary over and above existing final examinations and registration requirements. However, a significant number were in favour of giving regulators powers in this area. National assessments were seen as a means of ensuring patient safety – if restricted to certain high risk areas – and consistency of educational standards. The British Pharmacological Society reported that it is working with the Medical Schools Council to develop a national assessment of the prescribing competencies of foundation doctors. The General Pharmaceutical Council pointed out that it holds a national assessment for pre-registration pharmacy students which it considered to be "a helpful tool".[9]

6.20 A large majority argued that the regulators should not be given powers over the selection of those entering education. It was felt that this would duplicate and usurp the role of education providers and be impractical and costly to administer. It was acknowledged that the regulators have a legitimate interest in the standards applied by providers for selecting students who may in time become registrants. Some argued that such powers would be appropriate in respect of post-registration qualifications which involve unsupervised patient contact.

6.21 A small majority felt that our proposals could not go further in providing a framework for the approval of multi-disciplinary education and training. It was argued that multi-disciplinary education is not always appropriate and should never be at the expense of specific professional competencies. Those who felt our proposals could go further suggested joint inter-professional courses, an inter-professional education strategy and a common first year syllabus for all undergraduate training.

Discussion

6.22 We remain convinced that the regulators must publish a list of approved institutions, examinations, tests, courses, programmes, environments, posts and individuals. This would include approved practice placements where the regulators approve this aspect of education. The regulators would also be required to publish a list of approvals that have expired or have been withdrawn.

However, we do not think it is necessary to require the publication of information beyond these matters. As set out in Part 2, the regulators would already be subject to a general duty to publish information about the exercise of their functions and the Professional Standards Authority would continue to be able to oversee how the regulators implement this duty.

6.23 We are persuaded that a requirement on all education providers to share information about any fitness to practise sanction may be disproportionate and inflexible and may not be necessary for some regulators where alternative systems have been put in place. Instead, the regulators should have powers to require such information. We do not agree that this power would only be effective alongside a student register. It is possible to take on board and monitor such concerns without a register, and many of the regulators already have systems in place to manage such information. How this information is retained and used would continue to be a matter for the regulators to determine – taking into account their existing public law responsibilities relating to data management. But it would be acceptable for such information to be taken into account in some cases, for example where a student is applying for registration.

6.24 Opinion was divided over the efficacy of national assessments and many expressed significant concerns. However, some of the regulators already have broad powers to approve examinations, assessments and other tests of competency in order to secure the standards they have set relating to education. Moreover, the General Pharmaceutical Council has implemented a national assessment for pre-registration pharmacy students. We therefore think that all the regulators should have powers in this area, but national assessment should not be a statutory requirement. On the other hand, we do not think that the powers of the regulators should be extended to include the ability to select those entering education. This is not currently a role that is undertaken by any of the regulators. However, the regulators should continue to be able to set standards for the selection process which is undertaken by the education provider. This would apply to both pre-registration and post-registration education.

6.25 We are not convinced that any further provisions are needed to promote multi-disciplinary education and training. This is an area that the Professional Standards Authority could encourage and report on, but it is not something that should be mandated by the legislation.

[9] Consultation Analysis, paras 6.59 to 6.74.

Recommendation 49: The regulators should be required to publish a list of approved institutions, examinations, tests, courses, programmes, environments, posts and individuals. The regulators should also be required to publish a list of approvals that have expired or have been withdrawn.

This recommendation is given effect by clause 115 of the draft Bill.

Recommendation 50: The regulators should have powers to require information from an education or training provider about student fitness to practise sanctions.

This recommendation is given effect by clause 111 of the draft Bill.

Recommendation 51: The regulators should have powers to approve national assessments of students.

This recommendation is given effect by clause 116 of the draft Bill.

STANDARDS OF CONDUCT, PERFORMANCE AND ETHICS

6.26 Most of the regulators are required to issue standards of conduct, performance and ethics. These normally take the form of a code of conduct which provides a summary of how registrants are expected to behave. The duty is sometimes supplemented by a general power to issue guidance on specific aspects of the standards (such as education and training).[10] The regulators are also required to determine from time to time the standards of proficiency for safe and competent practice. These are the minimum professional standards which every professional must meet in order to become registered, and must continue to meet in order to maintain their registration.[11] There is a range of different approaches to professional ethics across the relevant Acts and Orders. For example, some establish a clear separation between ethical guidelines and standards of conduct and performance, while others fail to mention ethical guidance at all.

6.27 The consultation paper raised concerns about the quantity of codes, standards and guidance produced by the regulators, and the lack of clarity about the legal status of such documents. We asked whether too much guidance is produced and how useful it is in practice. We proposed that the statute should require the regulators to produce guidance for professional conduct and practice but give discretion over how this is done. This would enable the regulators to streamline

[10] See, for example, Health and Care Professions Order 2001, SI 2002 No 254, art 21(2).

[11] See, for example, Dentists Act 1984, s 36D and Medical Act 1983, s 5.

the amount of documentation produced, for example by issuing a code of conduct but not other forms of guidance.

6.28 We also proposed that – in order to ensure greater clarity about the legal status of the documents produced – the statute should provide for two separate types of guidance:

(5) *tier one guidance* which has a higher legal status and must be complied with by registrants unless there are good reasons for not doing so; and

(6) *tier two guidance* which is lower in status than tier one guidance but must still be taken into account by registrants and given due weight.

6.29 When issuing guidance, the regulators would be required to state in the document itself whether the document is tier one or tier two guidance. We also asked for further views on how the legal framework should deal with the regulators' responsibilities in relation to professional ethics.[12]

Consultation responses

6.30 Opinion was divided on whether too much guidance is issued by the regulators, and its usefulness. Several professional groups and defence unions argued that there is too much guidance and it is impossible for busy professionals to keep abreast of the documents produced. It was also felt to be difficult to determine the legal status of the codes and guidance. Many suspected that, in practice, few practitioners read the guidance from their regulatory body, and some emphasised the role of professional bodies rather than regulators in producing effective guidance. A number of consultees suggested that the regulators should issue joint guidance in certain areas, and some suggested a single code of conduct for all the regulated professions. However, many argued that it is important for the regulators to issue guidance, and that professionals welcome clear statements from the regulator on the conduct and standards expected of them. Some also warned against dismissing what might seem high level and generalised statements in the codes, since these provide important statements of the standards expected of professionals. The regulators generally felt that the guidance they produce reflects the needs of registrants and, in some cases, a wider audience.

6.31 An overwhelming majority agreed that the regulators should be required to produce guidance on professional conduct and practice. Some suggested

[12] Joint CP, paras 6.61 to 6.75.

specific amendments to the proposal, such as a duty to address the needs of vulnerable children in the codes of conduct or to identify fire risks and for fire training to be mandatory. Many questioned whether "guidance" is the appropriate term for a professional code of conduct. A small number disagreed with the proposal and argued that professional bodies – not the regulators – should be charged with producing guidance.

6.32 Opinion was divided on our proposed two-tier system of guidance. Some argued that this approach would provide greater clarity for registrants and the public about the purpose of and the legal significance attached to the documents issued. Others felt that the proposal was more straightforward than the approach taken by some regulators, who indicate mandatory guidance in their codes through the use of the words "should" and "must". However, some felt that the proposal would be too complicated and lead to inconsistency, since one regulator may classify guidance as tier one when the same guidance is classified as tier two by another. It was suggested that in practice it is difficult to distinguish between guidance that must be complied with and guidance that must be taken into account and given due weight, and that the proposal was unclear over the implications of a persistent disregard of level two guidance, which can be serious.

6.33 Most of the regulators felt that their approach to guidance already provided clarity through the use of "must" and "should" and that the existing legislation already provided clarity by distinguishing between standards which must be met and guidance which explains *how* the standards could be met. Many commented on the terminology used in the proposal. It was argued that calling both tiers "guidance" can be confusing. It was also argued that the word guidance itself implies that it is non-binding, and therefore the concept of binding guidance may cause confusion. Some queried whether the distinction between guidance which must be complied with unless there are good reasons for not doing so, and other guidance that must be taken into account, is sufficiently clear.

6.34 Opinion was divided over how the statute should deal with professional ethics. Some called for a clear separation between ethics and standards, while others pointed to the difficulties in achieving this. Many argued that ethics are not a matter for the regulator and should be left to professional bodies. Some felt that a single code of ethics should apply to all the regulated professions.

Discussion

6.35 A range of views were expressed on the quantity and efficacy of the guidance issued by the regulators. Some interesting suggestions were made regarding the possibility of consolidating some of the codes and guidance and of the regulators producing joint documents on some issues. We do not think that that these matters should be prescribed by the legislation. It is accepted that the regulators (often working jointly with professional bodies) are best placed to make judgements about the needs of their registrants. However, we do consider that the Professional Standards Authority, through its duty to promote co-operation, should play a role in identifying areas where a common or shared approach by the regulators might be useful in relation to the issuing of codes and guidance (see Part 12).

6.36 We think that there should be a requirement on the regulators to set standards for the profession or professions they regulate. However, the regulators should have

flexibility over how to carry out this duty. Those standards may include matters such as proficiency, professional performance, conduct and ethics with which a person practising the profession is expected to comply.

6.37 We agree that the legislation should be sufficiently flexible to enable the standards to be produced by the regulator in partnership with professional bodies, by professional bodies on behalf of the regulator and as a joint document with one or more of the other regulators (see Part 10). We do not think it right that the draft Bill should require certain matters to be included in guidance (such as child protection). Content should be a matter for the regulator to determine following consultation with relevant parties. We do not think it is necessary to require the regulators to establish a clear separation between their ethical guidelines and standards of conduct and performance. How ethics are instilled into the profession should be a matter for the regulator to decide.

6.38 The proposed two tier system of guidance divided opinion at consultation. One of the most common criticisms was that it would be confusing for registrants to have two levels of guidance. However, the proposal reflected the existing systems of statutory and non-statutory guidance used by the Government (which reflects existing case law[13]) when issuing guidance to, for example, local authorities and NHS bodies, and therefore should be familiar to most registrants. Nevertheless, we concede that it may be less familiar for those working primarily outside the NHS.

6.39 A further criticism was that the proposal failed to appreciate the difference between a standard which is mandatory, and guidance which explains how standards should be applied in practice. To some degree this criticism has force. Regulators do currently issue standards which are characterised as being mandatory. Indeed, the majority of standards are expressed at such a high level that it is difficult to conceive of any circumstances in which they should be deviated from (for example, “you must treat service users with respect and dignity” and “you must keep high standards of personal conduct”). In the consultation paper we questioned the utility of some of these statements and suggested they could be described as at best vague and rhetorical. But we accept the broad point that these types of statements establish important principles of professional behaviour and can help frame the appropriate sanctions when those standards are breached. However, some of the standards do not have the same mandatory effect. For example, professional standards on confidentiality include statements such as “you must respect patient

[13] For example, *R v. Islington Borough Council, ex parte Rixon* (1998) 1 CCLR 119.

confidentiality and only use information for the purpose it was intended", but public law may require the disclosure of such information where there is a sufficient public interest.[14] Similarly, there is an extensive body of academic literature on the professional standard of "being open and honest" and the circumstances in which this will not be in the best interests of patients.[15] The original proposal was intended to encapsulate this difference by requiring that tier one guidance be followed unless there is good reason not to. However, we can see that additional guidance can help to assist in such matters by explaining how the standards can be met (or not) in practice, and that conceptually it is clearer to differentiate standards from guidance. This would not mean necessarily the publication of separate documents, *Good Medical Practice* being the best known example of where standards and guidance co-exist.[16]

6.40 Many consultees preferred the approach adopted by *Good Medical Practice* which indicates the status of the guidance through the use of terms "you must" and "you should". We argued in the consultation paper that our two tier system would allow the regulators to continue this approach. In effect, such documents could contain a mixture of tier one and two guidance. However, we appreciate that the proposal adds little to the current distinction between standards, codes and guidance and may be confusing for some practitioners.

6.41 We are not convinced by the argument that under our proposal a danger arises that something classified as tier one by one regulator could be seen as tier two guidance by another. This issue relates to how status is identified, and is just as likely to occur under current arrangements where a statement could be seen as mandatory ("you must") by one regulator and guidance ("you should") by another. The solution to this lies in greater joint working (including joint guidance where appropriate) and the Professional Standards Authority identifying such discrepancies. We are also not persuaded by the suggestion that it would be unclear whether a persistent disregard of tier two guidance would lead to regulatory intervention. The position would be exactly the same as a persistent disregard of "you should" statements, and would need to be considered on a case by case basis.

[14] See, for example, *R v Chief Constable of the North Wales Police ex parte Thorpe* [1999] QB 396, 428B and *Ashworth Hospital Authority v MGN Ltd* [2002], UKHL 291, [2002] 1 WLR 2033.

[15] See, for example, D Sokol, "Truth-telling in the Doctor-Patient Relationship: A Case Analysis" (2006) 3 *Clinical Ethics* 103.

[16] General Medical Council, *Good Medical Practice* (2013).

6.42 Some consultees suggested that it was wrong in principle to distinguish between different categories of guidance. In effect, all guidance should be treated as binding or otherwise given equal effect and only disregarded in the individual circumstances of the case. However, this approach fails to achieve the clarity that is required when regulators have powers to take action against a professional when they are in breach of a standard. Clarity is especially important given that the regulators already differentiate between standards and guidance, the former being seen as more mandatory than the latter

6.43 Nevertheless, on balance we accept that a two tier approach to guidance may cause unnecessary confusion and that it would be better to persist with existing definitions which are relatively familiar to many professionals. It is also important for the draft Bill to provide greater clarity and consistency over the meaning of these definitions. We therefore think that the regulators should be required to issue standards for the profession(s) which are mandatory in their effect on registrants. The draft Bill will therefore confirm that a failure to comply with the standards may be taken into account in fitness to practise proceedings. The regulators would also have powers to issue guidance on these matters as they see fit. We would expect – but it is not mandated by the draft Bill – that the regulators should always indicate as far as possible the extent to which the provisions contained in the guidance must be followed.

Recommendation 52: The regulators should be required to set the standards for the profession(s) they regulate. Where a registrant fails to comply with the standards, that failure may be taken into account in fitness to practise proceedings. The regulators would have powers to give guidance on these standards as they see fit.

This recommendation is given effect by clause 105 of the draft Bill.

CONTINUING PROFESSIONAL DEVELOPMENT

6.44 Most of the regulators must put into place requirements for continuing professional development which enable registrants to demonstrate that they keep their knowledge and skills up to date. For example, the General Pharmaceutical Council must set the standards of continuing professional development which are necessary in order for a registrant to practise safely and effectively.[17] Many of the regulators require registrants to undertake and keep a record of continuing professional development which can include a range of different learning activities. Registrants are normally asked to confirm that they have met the

[17] Pharmacy Order 2010, SI 2010 No 231, art 43.

standards for continuing professional development when registration is renewed, and an audit is carried out of a random sample of registrants.

6.45 The General Optical Council runs a points-based system which requires registrants to gain 36 continuing education and training points in a three year cycle. Registrants are required to participate in a peer review or discussion group. The General Medical Council has introduced revalidation, which is a regular process whereby doctors must demonstrate that they are up to date and fit to practise. In order to renew their licence to practise in the UK, doctors must maintain a portfolio of supporting information drawn from their practice which demonstrates how they are continuing to meet the principles and values set out in *Good Medical Practice.* They must also participate in a process of annual appraisal based on their portfolio. A Responsible Officer[18] makes a recommendation to the Council about a doctor's fitness to practise, normally every five years, based on the outcome of annual appraisals and information drawn from the clinical governance system of the organisation in which they work. The General Medical Council's specific system of revalidation – which is based on renewing the licence to practise rather than the renewal of registration – was introduced to enable it to apply to all doctors practising in the UK, including those from the EU. It is considered that the effect of the Qualifications Directive is that de-registration resulting from a failure to revalidate would represent a disproportionate obstacle to the recognition of EU doctors' qualifications.[19]

6.46 The consultation paper proposed that the regulators should be required to ensure ongoing standards of conduct and practice through continuing professional development (including the ability to make rules on revalidation). It would be left to the regulators to decide how to perform this duty.[20]

Consultation responses

6.47 The vast majority agreed with this proposal. Many pointed to the important role played by professional bodies in performing this duty. It was also argued that continuing professional development should only be one option available for the regulators when doing so. Some consultees expressed concern that continuing professional development can too easily become a tick box exercise and that the regulators rarely check practice portfolios. Others felt that the demands put on

[18] A Responsible Officer is a senior licensed medical practitioner and must be appointed by designated bodies such as Primary Care Trusts in England and Health Boards in Scotland.

[19] Qualifications Directive 2005/36/EC, Official Journal L 255 of 30.09.2005 p 22.

[20] Joint CP, paras 6.76 to 6.90.

registrants were sometimes impractical and that employers were unsupportive. The Department of Health wanted to explore further whether there is scope for the regulators to have powers to assure the quality of assessments of the professional standards of staff to ensure local processes are working effectively rather than waiting until an issue is raised through fitness to practise procedures.[21]

6.48 A number of consultees commented specifically on revalidation. Many were supportive of the extension of revalidation beyond doctors. It was emphasised that revalidation is concerned with continuing fitness to practise and considers a range of evidence, not solely continuing professional development records. However, some were concerned that revalidation was disproportionately burdensome and expensive to run and therefore proposed that its introduction should be subject to a cost-benefit analysis yielding evidence of clear benefits for public protection. Some sought clarity over what is meant by revalidation and how it differs from continuing professional development. A number of consultees felt that the General Medical Council's system of revalidation would not be appropriate for all professions and that the statute should therefore provide for alternative forms of revalidation.

Discussion

6.49 Ensuring ongoing standards of conduct and practice is an essential aspect of professionals regulation. We continue to think that the regulators should be required to undertake this activity but be given discretion about how it is carried out in order to meet the specific needs of their registrants. We also agree that clarity is needed about revalidation and how it differs from systems based on continuing professional development. We are aware that increasingly the regulators are developing "enhanced" models of continuing professional development which bear many similarities to revalidation. Indeed, in recent months the Nursing and Midwifery Council has announced that it intends to introduce a system of "revalidation" which will require a third party (such as an employer or manager) to confirm that a nurse is complying with the relevant code, and nurses will also be expected to reflect on feedback from service users, carers and colleagues.

6.50 The draft Bill will establish a two tier system. The first tier will be based on setting standards and requirements in respect of, for example, the number of hours, points or days of continuing professional development required or the outcomes

[21] Consultation Analysis, para 6.189.

required of it. These standards could relate to matters such as the amount and type of training and education required, and what information must be provided by registrants to demonstrate compliance. The regulators should have power to remove registrants from the register if they fail to comply. We agree with the Department of Health's suggestion that regulators should be given powers to quality assure assessments made at a local level. However, these standards and requirements would need to be compatible with EU law; for example, in some cases the standards will not apply to visiting professionals.

6.51 The second tier provides for systems of revalidation. The aim of revalidation is to require registrants to demonstrate their continuing fitness to practise in their chosen fields. It is linked, therefore, directly to competence in a way that continuing professional development is not. The term revalidation is defined in clause 98 of the draft Bill. We agree that the legislation needs to be sufficiently flexible to allow different forms of revalidation to be introduced, including the system currently used by the General Medical Council based on the renewal of a licence to practise. It will also allow for alternative systems of revalidation, such as that being proposed by the Nursing and Midwifery Council, which does not use a licence to practise. But the introduction of any such system could be expensive and costly for a body like the NHS to comply with. We have therefore been persuaded by consultation that revalidation is a matter that should be left to Government to implement (either directly or by authorising the regulator itself to make rules) via its regulation-making powers.

Recommendation 53: The regulators should be required to set standards of continuing professional development, and should have the power to make rules setting out the circumstances in which registrants will be regarded as having failed to comply and the consequences.

This recommendation is given effect by clause 107 of the draft Bill.

Recommendation 54: The Government should have regulation-making powers to introduce or authorise systems of revalidation for any of the regulated professions.

This recommendation is given effect by part 4 of the draft Bill.

PART 7
IMPAIRED FITNESS TO PRACTISE

7.1 The concept of impaired fitness to practise is of central importance to the regulation of health and social care professionals. An investigation begins when an allegation of impaired fitness to practise is made to the regulator; and a fitness to practise panel may only impose sanctions in cases of impairment. This Part considers how the draft Bill should approach this concept.

7.2 The relevant legislation normally provides that a person's fitness to practise is to be regarded as impaired by reason only of one or more statutory grounds. The statutory grounds are categories of conduct or underlying reasons for impairment. The precise wording of the statutory grounds varies between the regulators but in broad terms the grounds consist of:

(1) misconduct;

(2) deficient professional performance;

(3) adverse physical or mental health;

(4) criminal conviction or caution; and

(5) a determination by another regulatory body.

7.3 Not every finding of, for example, misconduct or deficient performance will mean automatically that the practitioner's fitness to practise is impaired. Other relevant factors will be taken into account, including whether the issues are easily remediable, whether action has been taken to address the failings and the likelihood of such actions or omissions being repeated.

7.4 The consultation paper asked whether the statutory grounds needed to be reformed. In particular, it was suggested that the current system is difficult for complainants and the public to understand, due in part to the use of imprecise and baffling concepts. For instance, what amounts to deficient professional performance, and how it differs conceptually from misconduct, can appear obscure. Moreover, the statutory grounds can be seen as a historical legacy of the time when allegations were allocated to separate processes and committees based on whether they were viewed as health, conduct or performance cases. This proved to be problematic, given that in practice allegations overlap so that a

single case may demonstrate one or more of the different grounds.

7.5 We put forward three options for reform. First, the existing legal framework could be consolidated (as far as possible) and rationalised. In effect, the statute would set out a single list of statutory grounds of impaired fitness to practise – in general terms reflecting the list set out above – which would apply across the regulators.

7.6 Second, the recommendations of the *Fifth Report of the Shipman Inquiry* could be implemented.[1] These proposed that at the investigation stage a two-stage test would be applied whereby the regulator decided whether the allegation, if proved, might show that fitness to practise is impaired and then considered the adequacy of the evidence – and a further test at the adjudication stage where the panel must consider whether or not fitness to practise is impaired to an extent justifying action. The task for the panel would be to consider previous conduct and/or whether the person is liable in the future to act in the same way.

7.7 The third option would be to remove the statutory grounds altogether and introduce a simplified test of impaired fitness to practise based on the main public protection duty of the regulators. In effect any evidence of risk to public safety could be submitted to support an allegation and it would not be necessary to prove that the evidence amounted to a pre-determined ground. We suggested that this would operate as a two-stage determination whereby the regulator would need to consider:

(1) whether the facts alleged are proved and, if so, whether they indicate that a registrant is a risk to the health, safety or well-being of the public (or– if it were included in the regulators' main duty – that confidence in the profession has been or will be undermined); and

(2) on the basis of those facts, whether a registrant's fitness to practise is impaired.[2]

Consultation responses

7.8 At consultation, opinion was divided over whether the statutory grounds should be reformed. Many of those who supported option one (consolidation of the current framework) felt there was no need to change the existing system. Several

[1] The Shipman Inquiry Fifth Report: Safeguarding Patients, Lessons from the Past – Proposals for the Future (2004) Cm 6394 para 25.63.

[2] Joint CP, paras 7.1 to 7.53.

consultees argued that the statutory grounds are supported by established case law and were not persuaded that any appreciably good reason had been identified to justify any change. However, others argued that the existing system is difficult to understand for complainants, registrants and the public. It was contended that the interpretation of "misconduct" has become too wide and all-encompassing and fails to assist with any strict legal analysis of cases. Several consultees criticised how fitness to practise panels had interpreted the statutory ground relating to health in a way that discriminated against disabled people.

7.9 Those who supported option two (the *Shipman* recommendations) felt it would ensure objective standards for fitness to practise procedures, provide a clearer definition of impairment and underline the ability of panels to consider the effect of the registrant's conduct on the reputation of the profession. However, many described option two as overly legalistic and complicated, and felt it would generate significant delays and additional costs. Some described the *Shipman* recommendations as being too inflexible, since if any of the statutory grounds are met then impairment follows, and which is at odds with modern case law on the role of personal mitigation. Many also argued that this option was flawed because it enabled impairment to be found on the basis of future risk alone, rather than on past misconduct and the risk flowing from it.

7.10 A small majority of consultees preferred option three (removing the statutory grounds). Many argued that it was simpler, more straightforward and aligned with what was suggested to be the paramount duty of professionals regulation. The Royal College of Nursing supported an amended version of option three to the effect that the registrant must pose a "significant risk" to the public "in the course of their professional activities", thus reducing the ability of fitness to practise panels to intervene in matters of private morality. However, several consultees opposed option three. It was described as a scattergun approach which could lead to more registrants facing disciplinary charges. Others felt that it lacked the rigour of approach that is necessary when considering the statutory grounds; they predicted that if the grounds are removed, panels will continue to apply similar grounds informally. It was also argued that under option three the impairment stage is otiose, since it is hard to see a panel concluding that a professional was a risk to patients but unimpaired.[3]

Discussion

7.11 Of the three options for reform, option two (the *Shipman* recommendations) was

[3] Consultation Analysis, paras 7.2 to 7.39.

the least popular at consultation by some distance. It was described frequently as overly legalistic, complex and confusing. We think these criticisms have force but there are also more fundamental problems. First, this option would provide that a past failure alone would be sufficient to justify a finding of impairment. In our view, this would represent an unhelpful shift away from the current legal position that fitness to practise must be impaired at the time of the hearing (rather than when the incidents took place), and would mean that personal mitigation would become irrelevant. Secondly, future risk alone could justify a finding of impairment. We do not think it would be acceptable to sever the important link between future risk and previous conduct. In other words, impairment should not be found on the basis of future risk alone, rather than previous misconduct and the risk flowing from it. For these reasons, we have discounted this option.

7.12 There was also some justified criticism of option three (removing the statutory grounds). We accept that it lacked the level of precision necessary to justify a finding of impairment. We are also persuaded that it would cause difficulties conceptually to require a panel to decide that a person is a risk to the public before a finding of impairment is made, and would render the fitness to practise decision unnecessary. Of course, it might be argued that a single test based on public protection is to be preferred. But this would lower the threshold for sanctions substantially. Moreover, the impairment stage does provide an important break where issues such as remediation can be considered. As noted above, not every finding of, for example, misconduct or deficient performance will mean automatically that the practitioner's fitness to practise is impaired. Other relevant factors will be taken into account.

7.13 This leaves the option of consolidating the existing framework. There are obvious attractions to this approach. As many consultees argued, the current system is long established and has been the subject of a notable body of case law, which – at least in respect of the meaning of the statutory grounds – is now largely settled. There would need to be a compelling case for reform to justify overhauling this system. We have therefore concluded that the current legislative approach should be retained and that the draft Bill should provide that a person's fitness to practise may be regarded as impaired by reason only of one or more statutory grounds.

7.14 In considering the substance of the statutory grounds, our starting point has been that the same grounds should apply to all the regulators. In broad terms we have used the same list that we put forward at consultation. However, there are two areas in which we think that reform is desirable.

7.15 First, consultation demonstrated that the concept of misconduct has become too nebulous. We have therefore revised this ground to provide greater clarity and in particular to demarcate the boundaries between deficient performance and misconduct. According to case law, misconduct is of two principal kinds: serious misconduct in the exercise of professional practice and conduct of a morally culpable or otherwise disgraceful kind.[4] Our revised definition has removed most of the first category from misconduct on the basis that it is encompassed adequately by deficient professional performance. However, there would be classes of serious professional misconduct which would not fall within the meaning of deficient professional performance. For example, a "single instance of negligent treatment" would be unlikely to constitute deficient professional performance.[5] In addition, a failure by a registrant to comply with an agreed undertaking (in this case to undergo professional performance assessments) may not constitute deficient professional performance.[6] It is therefore necessary to expand deficient professional performance to incorporate these cases. This leaves disgraceful misconduct (category (2) above) which has been retained to deal with conduct which may or may not be related to the exercise of professional skills, but which brings disgrace upon the practitioner and thereby prejudices the reputation of the profession.

7.16 The separation of deficient professional performance and disgraceful misconduct has the added advantage that most cases would in future be dealt with as matters of deficient performance. This would emphasise that public safety should be the main justification for regulatory interventions, and that there are limits to intervention based on matters of private conduct and belief (see Part 3).

7.17 The second reform that we think desirable is to introduce a new statutory ground of impaired fitness to practise based on insufficient knowledge of the English language. Our intention is to provide that fitness to practise proceedings may be initiated where a professional's language capability is insufficient for the purpose of safe and competent practice. At present, there are no powers to investigate a professional on the grounds of concerns about their language skills, unless those concerns have resulted in deficient performance. We want the regulators to have

[4] *R (Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin), [2010] Med LR 330 at [37].

[5] *R* (*Calhaem) v General Medical Council* [2007] EWHC 2606 (Admin), [2008] LS Law Medical 96 at [39].

[6] *Depner v General Medical Council* [2012] EWHC 1705 (Admin), [2012] (unreported, 4 May 2012).

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powers to investigate concerns relating to a professional's knowledge of English before specific instances of deficient performance occur. This new ground should include, for example, inability or likely inability to communicate a diagnosis or advice to patients and service users, or an inability to read dosage levels when administering medication. The regulators will be able to set the specific standards required of practitioners, for example as part of their codes of conduct and performance and standards of proficiency (see Part 6).

7.18 A number of consultees raised concerns about the inclusion of "adverse health" as a separate ground of impairment. Health concerns may be a reason for deficient performance or misconduct but the automatic inclusion of adverse physical or mental health as a statutory ground is, at the very least, difficult to reconcile with the Equality Act 2010 and the United Nations Convention on the Rights of Persons with Disabilities. We have therefore considered whether this ground should be removed altogether. However, we can also see that the removal of the ground might undermine the ability of the regulators to undertake preventive measures to assist a practitioner before their performance or conduct is affected to an extent falling within one of the other statutory grounds. Nevertheless, it is important to emphasise that there are limits to the ability of the regulators to take preventative action on health (or any other) grounds. The decision of a panel relates to whether a professional's fitness to practise is impaired as a result of a health condition. It would not be open to the regulators to determine that a practitioner is impaired without any evidence of behaviour that calls into question their ability to practise safety. In other words, a diagnosis alone would rarely – if ever – suffice.

7.19 We also accept that there are important procedural reasons for keeping the health grounds separate. For instance, the presumption of a public hearing is reversed in cases concerning the physical or mental health of the registrant, and most regulators do not remove practitioners from the register in cases of adverse physical or mental health. On balance, therefore, we have decided reluctantly to retain the health ground. However, in coming to this conclusion we wish to stress that it would be unacceptable for the regulators or their panels to use this ground to justify any general requirement that a practitioner must be in good health mentally or physically. Nor should it be used to support a finding of impairment based on assumptions about the impact of disability or ill health generally, rather than defensible findings about the practitioner's condition and its consequences.

7.20 The draft Bill also consolidates the other statutory grounds across the existing Acts and Orders. For instance, some of the legislation makes specific reference to the inclusion of a person in a "barred list", which means a list kept under the Safeguarding Vulnerable Groups Act 2006, Protection of Vulnerable Groups (Scotland) Act 2007 and Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. This ground is included in the draft Bill.

7.21 The draft Bill also provides that impairment can be found by reason of a determination by another regulator concerned with professionals regulation to the effect that the person's fitness to practise is impaired. This could include a decision made by one of the other regulatory bodies, the Care Council in Wales, the Scottish Social Care Council, and an overseas professionals regulator.

7.22 Finally, the draft Bill also consolidates the existing grounds based on convictions,

cautions and non-conviction disposals. Therefore, it provides that impairment can be found on the basis of a criminal conviction or caution in the British Isles, or elsewhere if the conduct is also criminal in England and Wales. This is the approach already followed in, for example, the Medical Act 1983. We have also included certain other court determinations which currently appear in some of the regulators legislation: these are certain disposals under the Criminal Procedure (Scotland) Act 1995; a penalty under the Social Security Administration Act 1992; and being bound over to keep the peace by a magistrates' court.

Recommendation 55: A person's fitness to practise a regulated profession should be regarded as impaired by reason only of:

(1) deficient professional performance;

(2) disgraceful misconduct;

(3) the inclusion of the person in a barred list;

(4) a determination by a relevant body to the effect that the person's fitness to practise is impaired;

(5) adverse physical or mental health;

(6) insufficient knowledge of the English language;

(7) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;

(8) the person having accepted or been dismissed with an admonition under section 302 of the Criminal Procedure (Scotland) Act 1995, been discharged under section 246(2) or (3) of that Act, accepted a conditional offer under section 302 of that Act, or accepted a compensation offer under section 302A of that Act;

(9) the person having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992; or

(10) the person having been bound over to keep the peace by a magistrates' court in England or Wales.

This recommendation is given effect by clause 120 of the draft Bill.

OTHER ISSUES

7.23 The consultation paper asked for views on whether the statutory grounds should include a broader range of non-conviction disposals (for example, fixed penalty notices for theft and public disorder offences). We also asked for views on the adequacy of the powers of the regulators to require disclosures from the Disclosure and Barring Service and Disclosure Scotland. A further question was asked about what practical difficulties, if any, arise as a result of differences between the protection of vulnerable groups schemes in England, Wales,

Northern Ireland and Scotland.[7]

Consultation responses

7.24 A majority disagreed that the statutory grounds should include a broader range of non-conviction disposals. Some argued that such matters could already be considered under misconduct. Others felt that it was unfair in principle to include matters that have not been tested by the courts and will often have little relevance to fitness to practise.

7.25 A majority felt that the regulators' powers to require disclosures from the Disclosure and Barring Service and Disclosure Scotland were inadequate. Several consultees pointed out that up until recently these bodies did not have powers to share the reasons for barring decisions with regulators. The Disclosure and Barring Service argued that this will be addressed by the coming into force of the Protection of Freedoms Act 2012. Some consultees provided examples of practical difficulties which arise as a result of differences between the protection of vulnerable groups schemes in England, Wales, Northern Ireland and Scotland. These included lack of clarity over legal responsibilities and the complexity of systems in place.[8]

Discussion

7.26 For most regulators, non-conviction disposals are already included in the

[7] Joint CP, paras 7.34 and 7.35.

[8] Consultation Analysis, paras 7.40 to 7.67.

statutory grounds, for example disposals under the Criminal Procedure (Scotland) Act 1995; a penalty under the Social Security Administration Act 1992; and being bound over to keep the peace by a magistrates' court. As noted above, the draft Bill would retain the grounds. We do not think the grounds need to be expanded to include, for example, fixed penalty notices (other than social security fraud and public order offences). Such matters are already adequately dealt with through consideration of whether the allegation amounts to misconduct.

7.27 In relation to the adequacy or otherwise of the powers to require disclosures from the Independent Safeguarding Authority and Disclosure Scotland, we note that reform is already under way to address many of the reported difficulties. We have provided the Department of Health, the Scottish Government, the Independent Safeguarding Authority and Disclosure Scotland with a full analysis of the consultation responses in this area, to inform their policy work.

PART 8
FITNESS TO PRACTISE INVESTIGATIONS

This Part considers how the legal framework should provide for the investigation of allegations of impaired fitness to practise. Specifically, it covers:

(1) preliminary procedures;

(2) investigation procedures;

(3) the realistic prospect test;

(4) disposal of cases;

(5) mediation; and

(6) reviews.

PRELIMINARY PROCEDURES

Making an allegation

8.2 The gateway for an investigation is based on the legal concept of an allegation. In general terms, any complaint or information which falls within the definition of an allegation will trigger an investigation.[1] In most cases, the allegation must be that a registrant's fitness to practise is impaired by reason only of one or more of the statutory grounds and must be made to the regulator in question.

8.3 The consultation paper raised concerns that this legislative structure was cumbersome and formulaic. For example, it fails to address complaints or information that fall short of an allegation and situations where it is unclear whether or not the threshold has been met. We therefore asked for views on removing the legal concept of an allegation entirely and instead giving regulators broad discretion to deal with all information and complaints in such manner as they consider just. Moreover, we argued that the structure presupposes a complainant and that the regulators' role is essentially a passive and reactive one, and therefore does not encourage the regulators to take a proactive approach to allegations. We proposed instead that the statute should enable the regulators to allow information which comes to their attention to be treated as a

[1] See, for example, Nursing and Midwifery Order 2001, SI 2002 No 253, art 22(5).

potential allegation, and not just formal referrals. We suggested this might be useful when the regulator identifies cases from reports in the media[2] or information is passed to the regulator anonymously.

8.4 The consultation paper also noted concerns that some regulators had adopted a policy of only accepting allegations in writing, thus disenfranchising certain individuals who are uncomfortable with writing or using a keyboard, do not have access to the internet or whose first language is not English. We proposed that the statute should contain a clear statement to the effect that there is no set format for allegations.

Consultation responses

8.5 A majority argued that the legal concept of an allegation should be removed. It was described as too constraining and not reflective of the fact that the regulators will need to consider a wide range of matters in practice. Others felt that it forces parties into an adversarial stance at too early a stage. However, several consultees argued that removing the concept of an allegation entirely would remove the clear gateway to the fitness to practise process and produce inconsistency and uncertainty for both registrants and the public.

8.6 A large majority agreed that any information which comes to a regulator's attention should be treated as a potential allegation. Most of the regulators noted that this proposal was consistent with their existing practice and would make, for example, the status of a registrar's complaint much clearer where there is no complainant involved. However, some consultees raised concerns about "overzealous" and "disproportionate" digging by the regulators.

8.7 An overwhelming majority agreed that the statute should contain a clear statement that there is no set format for allegations. Most felt that this would ensure flexibility and reflect technological developments and public expectations. Some, however, felt that a standard format may enable the regulators to make more efficient use of their resources and provide an unambiguous factual basis for the initial screening process.

Discussion

8.8 The concept of impairment serves to focus the regulators' attention on matters which fall properly within their remit. We think it important to maintain this focus in

[2] Such as in the case of Winterbourne View Hospital where allegations of the abuse of patients with learning disabilities by staff arose as a result of a BBC Panorama broadcast

the draft Bill, particularly when a regulator is determining whether an investigation is necessary. We think that many of the consultees' concerns can be addressed by giving the regulators greater flexibility over how they deal with allegations. Many of the current problems arise because once a complaint becomes an allegation, a formal investigation process is triggered which is directed towards a fitness to practise hearing, and not all of the regulators have adequate powers to dispose of cases through other means. The draft Bill will give regulators broader powers to deal with and dispose of such cases. Moreover, it will encourage the regulators to pass on information falling short of an allegation to other agencies, through duties to co-operate (see Part 10).

8.9 We continue to be of the view that the draft Bill should enable the regulators to treat any information which comes to their attention as a potential allegation. Consultation confirmed that this would encourage the regulators to adopt a more proactive approach. We do not agree that it would require the regulators inappropriately to seek out allegations. While some accusations of over-zealous digging were made, we have no evidence that the regulators are systematically implementing this provision in a disproportionate way. More importantly, it is right in principle that where public safety may be at risk there should be no artificial barriers to further investigation.

8.10 For similar reasons, we think that the legislation should make clear that there are no strict requirements as to the form of allegations. Some argued that it would be difficult to take forward allegations that are not in a standard format. However, this does not mean that such allegations need be closed down at such an early stage. It may be that the difficulties can be addressed subsequently, for example by the regulator completing the relevant documentation or encouraging the complainant to do so. In any event, decisions about whether a case can be progressed are made at the initial consideration or investigation stage, and cases should not be ruled out automatically on the basis of formalities. The regulators would still be free to develop policies and procedures to assist complainants (such as forms or a standard of acceptance setting out the minimum information required for allegations) but they would also need to be clear that there are no legal requirements as to the format of an allegation.

Recommendation 56: A regulator should have the power to initiate fitness to practise proceedings where an allegation suggesting impaired fitness to practise is made to the regulator or the regulator otherwise has reason to believe that a registrant's fitness to practise is impaired. There should be no set format for allegations.

This recommendation is given effect by clause 121 of the draft Bill.

Preliminary consideration

8.11 Once an allegation has been made, some regulators have formal powers of initial consideration to determine whether or not the case should proceed. A number of regulators have a "screening" process for this purpose. For example, the Health and Care Professions Council has a power to refer allegations to a panel of at least two screeners, including a lay and registrant member, which must decide whether the Council has a legal power to take forward the allegations. Certain people, such as Council members and members of the Fitness to Practise

Committee, are prohibited from being screeners.[3] At other regulators initial consideration is undertaken by the registrar.

8.12 The consultation paper proposed that all the regulators should be given powers to establish a formal process for the initial consideration of allegations, including the ability to introduce screeners and to prohibit certain individuals from undertaking the task of initial consideration.

Consultation responses

8.13 There was unanimous support for this proposal. Some of the regulators noted that they are currently required by legislation to open an investigation into every complaint made, even those cases which are relatively minor. There was also unanimous support for giving the regulators powers to prescribe who can and cannot undertake initial consideration. Many agreed that a prohibition should apply to Council members and fitness to practise panellists. Some argued that these matters should be mandated in the legislation and not left to the regulators.[4]

Discussion

8.14 We think that the legislation should require the regulators to refer cases for preliminary consideration in accordance with rules. The purpose of this stage is to decide whether the matter is eligible for "onward referral" (see below). The regulators should be given wide powers to make rules specifying the procedure for preliminary consideration. These rules could, for example, establish a formal screening panel procedure, enable allegations to be considered by one or more case examiners or give this task to the registrar or an Investigation Committee. We are persuaded that the draft Bill itself should exclude some people from this role, rather than leaving this to the regulators. In our view, the prohibition should apply to members of the regulatory body, due to the potential conflict with their strategic role of holding the executive to account, and to fitness to practise panellists, in order to establish a sharper divide between investigation and adjudication.

[3] Health and Social Work Professions Order 2001, SI 2002 No 254, arts 23 and 24, and Health Professions Council (Screeners) Rules Order of Council 2003, SI 2003 No 1573, rr 4(2) and 5(1).

[4] Consultation Analysis, paras 8.48 to 8.66.

Recommendation 57: The regulators should be required to refer allegations for preliminary consideration in accordance with rules. The rules may make provision about the procedure for preliminary consideration. Members of regulatory bodies and fitness to practise panels should be prohibited from this task.

This recommendation is given effect by clauses 121 to 122 of the draft Bill.

Eligibility for onward referral

8.15 Some regulators are required to refer all allegations for a formal investigation. However, others are given some degree of discretion in deciding which cases should be referred. For example, the registrar of the General Medical Council is given express powers to sift out vexatious allegations as well as to refer allegations based on serious criminal offences directly to a fitness to practise panel, cutting out the investigation stage.[5] The General Pharmaceutical Council is required to refer all allegations for investigation unless they are of a type specified in threshold criteria.[6] The criteria are published in a separate document and consist of a series of statements (for example, the registrant's conduct or performance has caused moderate or severe harm or death, or the registrant deliberately caused harm or was reckless). If one or more of these statements applies, the case must be referred for an investigation.[7]

8.16 Some of the Acts and Orders establish a time limit for allegations. For example, allegations made to the General Medical Council cannot proceed if more than five years have elapsed from the most recent events giving rise to the allegation. However, there are exceptions to this rule, such as where the regulator considers that it is in the public interest for the case to proceed.[8]

8.17 We proposed that the regulators should have powers to establish referral criteria for an investigation and specify cases which must be referred directly to a fitness to practise panel. However, we also asked for views on whether the statute

[5] General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004 No 2608, r 4(3).

[6] Pharmacy Order 2010, SI 2010 No 231, art 52(1) and (2).

[7] General Pharmaceutical Council, *The Threshold Criteria* (2011) and General Pharmaceutical Council, *Guidance on the General Pharmaceutical Council's Threshold Criteria Policy* (2011).

[8] General Medical Council (Fitness to Practise) Rules 2004, SI 2004 No 2608, r 4(5).

should impose greater consistency.[9] In addition, we asked for views on whether the statute should prohibit the regulators from setting a time limit for making an allegation against a registrant or whether there should be a uniform time limit for allegations across the regulators.[10]

Consultation responses

8.18 The vast majority agreed that the regulators should have powers to establish referral criteria for an investigation and to specify cases which must be referred directly to a fitness to practise panel. Some, however, felt that the statute should impose more consistency on which cases must be referred. The Professional Standards Authority argued that any powers to sift out cases should be restricted to certain cases, such as where the allegation is vexatious or does not relate to impaired fitness to practise. Others disagreed with the proposal and argued that the investigation committee stage was an important procedural safeguard which should not be by-passed.

8.19 A significant majority argued that the statute should set a consistent time limit across the regulators (and of those, a majority said it should be five years). Some argued that it is difficult to conduct an effective investigation many years after the events and that there is no public interest in pursuing cases that involve a protracted investigation with a low success rate. Many also emphasised the importance of exceptions to the time limit in certain cases, such as certain criminal convictions where there is no need to consider the facts giving rise to the conviction, and where there was a clear public interest in an investigation due to the seriousness of the allegation.[11]

8.20 In addition, the General Medical Council informed us that it is seeking powers to introduce a *presumption of erasure* for certain serious criminal convictions that are incompatible with registration as a doctor (such as murder, rape and child abuse). Currently such cases are referred directly to a fitness to practise panel hearing but the Council argued that they should trigger automatic erasure (along with a right for the doctor to make written representation). It was argued that this would enable the Council to take swift and robust action in the most serious cases and boost public confidence in the regulatory process.

[9] Joint CP, paras 8.19 to 8.31.

[10] Joint CP, paras 8.3 to 8.18.

[11] Consultation Analysis, paras 8.1 to 8.29.

8.21 Several consultees argued that the statute should provide greater clarity and consistency on the information that is given to registrants and complainants when an allegation is made. The Medical Defence Union found it unfair that the registrant is not informed that a complaint has been made against them but is not being taken forward by the regulator, even though the information is retained and may be used if further complaints are received. Some argued that complainants must be informed that their name and address may be made available to the registrant involved and any other health care body who may be approached for information relating to the case. The Professional Standards Authority thought that the statute should make it clear that a regulator "may take forward an allegation even in circumstances where the complainant at a later date seeks to withdraw their allegation". It felt that too often complainants regard the allegation as being "their" complaint, and "may fail to understand that a regulator is acting in the general public interest in investigating it rather than acting in their individual interests".[12]

Discussion

8.22 It is our view that decisions concerning which cases are taken forward by the regulators beyond preliminary consideration is an area where there is a strong public interest in achieving such consistency. Nevertheless, this needs to be balanced against the need to give the regulators an appropriate degree of discretion and flexibility.

8.23 We also intend that the legal framework should be clear about which cases should not be taken forward following preliminary consideration. We agree with the Professional Standards Authority that sifting out should be limited to specific cases. These would be cases which do not concern impairment or do not involve a registrant, vexatious complaints, anonymous allegations with no supporting evidence and allegations where the complainant does not wish to participate and the allegation cannot otherwise be taken forward. However, in the case of complainants who do not wish to participate, the regulators should make arrangements to facilitate cooperation as far as possible.

8.24 We are not persuaded that the regulators should have an express power to publish referral criteria. This may give the wrong impression that the criteria could be used to narrow the existing statutory tests. Moreover, we think that the regulators could use their general powers to issue guidance to produce a document similar to the General Pharmaceutical Council's threshold criteria.

[12] Consultation Analysis, paras 8.48 to 8.90.

8.25 Several consultees argued that there should be consistency across the regulators in relation to cases that must be referred directly to a fitness to practise panel. There is already some degree of consistency, in that the vast majority of the regulators refer allegations concerning convictions resulting in custodial sentences directly to a panel. Most also directly refer cautions and determinations by other regulators (with a residual discretion to refer to a health assessor or case examiner). The main exception is the Health and Care Professions Council which has a rule-making power to refer cases directly to a fitness to practise panel but has chosen not to exercise it, and argued at consultation that an investigation should take place in all cases. We think this is a perfectly legitimate position for a regulator to take. The use of an investigation committee hearing in many such cases can be seen as an important procedural safeguard and for some regulators there may be advantages in providing for a break in the system before the case is referred to a fitness to practise panel. The only exception is in relation to convictions resulting in custodial sentences, where we see a clear public interest in ensuring that cases must be considered by a panel (except for the most serious cases where the registrant should be automatically removed – see below). Otherwise, the regulators should be given rule-making powers to prescribe cases that must be referred directly.

8.26 There was strong support amongst consultees for establishing a time limit of five years for the receipt of allegations. To some degree, we remain concerned that setting any time limit for cases would be arbitrary, and think it better that decisions whether or not to proceed are taken on the basis of the quality of the evidence. However, consultation suggested that a time limit works well in practice and, in particular, helps to limit the number of stale complaints which have little prospect of resulting in a finding of impairment. On balance, we accept that the draft Bill should provide that complaints relating to events that occurred more than five years ago should not be eligible for onward referral. In line with most of the existing legal provisions, this time limit should run from the most recent events giving rise to the allegation, as opposed to the date of knowledge of events.

8.27 It is also vital for the draft Bill to provide exceptions to this rule. Some consultees suggested that regulators should have a general discretion to determine the exceptions. Others felt that the draft Bill should prescribe the types of cases which are exempt. This approach may have the advantage of clarity, but there is a danger that it would be too restrictive and prevent the regulators from investigating cases where there is a clear public interest in doing so. Notwithstanding this concern, we think that greater certainty is needed on this matter, and there are some cases that could be specified in the draft Bill as being exempt, namely, criminal convictions leading to a custodial sentence, determinations by other regulatory bodies, or inclusion on a barred list. These cases are relatively discrete, will be accompanied by accepted findings of fact, and raise obvious public protection issues. Alongside these exceptions, we think that the legislation should allow a degree of flexibility for the regulators when considering cases older than five years (while also recognising that the ability to progress such cases will be the exception rather than the rule). We have therefore formulated a public interest test to deal with such cases. The definition of the public interest consists of all three objectives of the regulators contained in clause 2 of the draft Bill (see Part 3).

8.28 We are persuaded that the draft Bill should introduce a new provision for automatic removal for certain serious criminal convictions. From the regulators' perspective, being able to act quickly against registrants convicted of serious offences will have benefits in terms of public confidence and costs. We also agree that some criminal convictions are so serious they are incompatible with continued registration. We think that automatic removal should apply in cases of murder, trafficking people for exploitation, blackmail (where a custodial sentence is imposed), rape and sexual assault (where a custodial sentence is imposed), and certain sexual offences against children. The Government should have powers to amend or add to this list. However, it is our view that automatic removal would only be compliant with article 6 of the European Convention of Human Rights if appropriate safeguards are provided. These are the ability to make representations to the regulator and a limited right to appeal to the higher courts on the factual basis of an error in law or finding of fact.[13]

8.29 We are persuaded that the regulators should be required to notify the registrant once a decision has been made to refer an allegation for an investigation or directly to a fitness to practise panel. We also want to retain the existing legal requirements to notify various people, such as any employer and the Government (including the devolved administrations), and the power to notify any other person if it is in the public interest to do so. We also agree that the registrant concerned should be notified when the regulator decides not to take forward an allegation. This requirement already applies to some regulators and helps to ensure that a registrant is aware of any soft intelligence which is being held by the regulator and may be used when assessing any future allegations. The only exception would be where such notification is not in the public interest, for example where the disclosure is likely to undermine the relationship between the registrant and their patient and restrict the treatment options available to the patient. The regulators would be able to set requirements for matters such as the content of the notification, time limits and how it will decide the cases that are exempt from the notification requirement.

8.30 We do not consider that the regulators should be placed under a duty to provide complainants with certain information, such as that their complaint may be taken forward even if they want to withdraw it. In our view, these are not actions that should be prescribed by statute but are matters of administrative practice that could be monitored and encouraged by the Professional Standards Authority.

[13] *R (Royal College of Nursing) v Secretary of State for the Home Department* [2010] EWHC 2761 (Admin), [2011] 2 FLR 1399 at [92].

Recommendation 58: An allegation should not proceed if it is received more than five years since the most recent events giving rise to the allegation, except where the allegation relates to certain convictions, determinations by other regulatory bodies, inclusion on a barred list or where the regulator considers that it is in the public interest for the case to proceed.

This recommendation is given effect by clauses 123(1)(a) and 123(4) of the draft Bill.

Recommendation 59: The regulators should not be able to refer for investigation any case that does not amount to an allegation, is vexatious, has been made anonymously and cannot be otherwise verified, and where the complainant refuses to participate and the allegation cannot be verified.

This recommendation is given effect by clause 123(1)(b) and (c) of the draft Bill.

Recommendation 60: The regulators should be required to refer allegations concerning convictions resulting in custodial sentences directly to a fitness to practise panel and have powers to specify in rules any other categories of cases that must be referred directly.

This recommendation is given effect by clause 124 of the draft Bill.

Recommendation 61: Following a decision to proceed with an investigation or make a direct referral to a fitness to practise panel, the regulators should be required to notify the registrant, the complainant, the UK Government and devolved administrations, and any employer. The regulators should have powers to notify any other person where it is in the public interest to do so. The regulators would be required to make rules about notification requirements.

This recommendation is given effect by clause 126 of the draft Bill.

Recommendation 62: The regulators should be required to notify the registrant and the complainant once a decision has been made to close a case following initial consideration, except where this is not in the public interest.

This recommendation is given effect by clause 125 of the draft Bill.

Recommendation 63: A regulator must remove automatically any registrant who has been convicted of murder, trafficking people for exploitation, blackmail (where a custodial sentence is imposed), rape and sexual assault (where a custodial sentence is imposed), and certain offences against children. There should be a right to make representations to the regulator and a right to appeal to the higher courts on the factual basis of an error in law or finding of fact.

This recommendation is given effect by clauses 66 and 67 of and schedule 4 to the draft Bill.

INVESTIGATION PROCEDURES

8.31 There is a range of different legislative frameworks for conducting an investigation. Most of the regulators are required to establish an investigation committee which must decide whether a case should proceed to a fitness to practise hearing, or should be disposed of in some other way. Some regulators

have systems of case examiners, who are professional or lay persons appointed by the regulator for the purpose of exercising the functions of the investigation committee. The use of case examiners has been developed by the General Medical Council with the aim of ensuring that the investigation process is faster, more efficient and reduces the workload of the investigation committee.[14]

8.32 Most regulators have a specified procedure for undertaking medical and professional performance assessments. These assessments enable the regulator to seek such advice and information as it considers necessary to assess the registrant's health or performance. At some of the regulators, the registrant is required to submit to examination and inferences can be drawn from a failure to co-operate.[15]

8.33 Most of the regulators have a general power to require the disclosure of information from any person, except the registrant concerned.[16] This power can be used at the investigation and adjudication stage of fitness to practise proceedings. It is seen as particularly useful where a complainant withdraws their co-operation but the case concerns a serious issue which might impact on public protection.

8.34 The consultation paper proposed that the regulators should be given broad powers to investigate allegations. This would include the ability to introduce case examiners and enable investigations to be conducted by an individual officer. The regulators would be able, but not required, to establish an investigation committee. We also proposed that the statute should give all the regulators a general power to require the disclosure of information where the fitness to practise of a registrant is in question (including from the registrant). We asked whether any enforcement powers should be attached to this power.[17]

Consultation responses

8.35 The proposal to give the regulators broad investigation powers received unanimous support at consultation. However, many also expressed concern about the current lack of uniformity in the way that the regulators undertake an

[14] General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004 No 2608, r 8.

[15] General Optical Council (Fitness to Practise) Rules Order of Council 2005, SI 2005 No 1475, rr 8 and 12 and General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999, SI 1999 No 1847, r 13.

[16] For example, Dentists Act 1984, s 33B.

investigation, and the possibility that such divergence would increase under the proposed reforms. A significant majority agreed that the statute should enable but not require the regulators to establish an investigation committee. Most agreed that the investigation committee model provides one way of making a decision about which cases to refer to a fitness to practise panel but there are a variety of other models. Some expressed concern that the use of case examiners limits the amount of discussion and views taken on board during an investigation compared with a committee. Others felt that an investigation into a registrant's fitness to practise is so important that a committee should always be convened which includes a member of the profession. It was also suggested that in some cases article 6 of the European Convention on Human Rights demands the establishment an investigation committee, for example when a warning is being considered.

8.36 The vast majority agreed that the statute should give the regulators a general power to require the disclosure of information. This was seen as a vital power which supported the regulators in implementing their public protection role. A large majority felt that the power to require information should be extended to include registrants themselves. However, support was often conditional on the understanding that the power should be limited to factual information and should not include, for example, information concerning their defence and anything else that might undermine a registrant's right against self-incrimination. A majority felt that enforcement powers should be attached to the power to require information. It was suggested that such powers might include an automatic referral to a fitness to practise panel and an interim suspension order. Others disagreed because the facility already exists to present evidence to a court and obtain a court order.[18]

Discussion

8.37 Consultation demonstrated that systems of investigation designed around an investigation committee do not always represent the most efficient or effective way of conducting an investigation. This is reflected by the development of case examiners by some regulators. Clearly, the use of a committee works well for some and it is therefore important that the draft Bill enables this to continue. We remain of the view that the investigation committee should no longer be a statutory requirement.

[17] Joint CP, paras 8.32 to 8.56.

[18] Consultation Analysis, paras 8.91 to 8.149.

8.38 We agree that investigations are of great consequence, but it does not necessarily follow that a committee is required. The crucial point is to ensure that an investigation is conducted effectively, efficiently and fairly, and the regulators are best placed to determine how this can be achieved. While we would disagree with any statutory right to be investigated by a fellow professional, many investigations will need input from a professional assessor or investigator who can deal with any technical issues raised. However, the input of a professional can be secured without a formal committee hearing.

8.39 We disagree that article 6 requires a committee hearing when the regulator is considering whether to impose a warning. Indeed, article 6 would not be engaged at all since this decision does not amount to a determination of a registrant's civil rights, namely the right to practise the profession.[19] Given the line of reasoning in the relevant jurisprudence, it is unlikely that article 6 could be engaged by anything falling short of suspension or removal.[20]

8.40 Consultation has confirmed our view that the regulators should have broad rule-making powers concerning how and by whom an investigation is carried out. The regulators would be required to make rules specifying their investigation process, thus preventing the emergence of any informal and impromptu systems. The rules could be used to establish a range of different structures, including:

(1) an investigation committee which carries out all inquiries;

(2) investigations by the registrar or another individual (such as a member of staff, professional or a lay person);

(3) two or more case examiners who carry out all investigations;

(4) the appointment of professional and lay performance assessors, medical examiners, and specialist health and performance advisors; and

(5) a combination of individuals, case examiners, and an investigation committee carrying out inquiries.

8.41 Several consultees raised powerful arguments about the need for greater consistency, pointing to cases where different professionals facing the same set

[19] *R (Nicolaides) v General Medical Council* [2001] EWHC Admin 625, [2001] Lloyd's Rep. Med. 525 at [28] to [32].

[20] See, for example, *R (Thompson) v The Law Society* [2004] EWCA Civ 167, [2004] 1 WLR 2522 at [77] to [88].

of factual allegations will be treated differently depending on which regulator was involved. To some degree this will be addressed by giving the regulators the same powers to dispose of cases at the end of an investigation. This is discussed below. However, we do not think that it would be right to impose consistency in this area. The regulators will need to tailor investigations according to the specific circumstances of the professions they regulate and to some extent to take into account the individual facts of the particular case.

8.42 It was also suggested that there needs to be consistency in relation to the appointment of performance and health advisors and dealing with cases of non-compliance by a registrant. We think that it would be difficult to impose consistency in respect of when advisors should be involved, since this will be case-specific. There could be some consistency imposed on who can undertake this task to the extent that members of the regulatory body and fitness to practise panels should be prohibited. As noted previously, we think there are actual and perceived conflicts of interest that would arise if such individuals took part in the investigation (this issue is also discussed in Part 9). However, beyond this, we do not think it would be right to impose consistency.

8.43 We think it important for the draft Bill to continue to provide a general power to require the disclosure of relevant information in fitness to practise proceedings. At consultation, we received evidence that this is an important investigation tool that is used in a small number of cases, and the proposal received almost unanimous support. We also agree that this power should be available at all stages of the fitness to practise process and not just during an investigation.

8.44 Extending the power so as to require information from registrants themselves, and enforcement powers, proved to be more contentious. Many consultees – including the regulators themselves – argued that the power to require information from the registrant concerned should be limited to factual information and should not include, for example, evidence relevant to their defence. We agree that the power should be limited to information that a person could be compelled to supply or produce in civil proceedings. The draft Bill also makes clear that the power cannot be used to require or permit any disclosure of information which is prohibited by any other enactment.

8.45 Most agreed that enforcement powers should be attached to the power to require information, but there was little consensus on what powers would be appropriate. We think that the best approach would be to give the regulators powers to seek an order of the court requiring information or documents to be supplied. The courts would have powers to make costs awards in such cases. The relevant court would be the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland. We also think that the regulators should continue to have powers to refer to fitness to practise panels and interim order panels if this is necessary.

8.46 We have been made aware of problems that occur under some of the existing legislation when registrants are subject to fitness to practise proceedings but their registration lapses. The specific concern is about the need to allow the registrant to be retained on the register during an investigation even if they would otherwise have lapsed (to prevent them avoiding those procedures) but not allowing them to be able to continue to practise or use a protected title during this period. Linked

to this wider public protection issue is the narrower issue where a registrant lapses at the end of fitness to practise proceedings before the time limit for an appeal by the Professional Standards Authority (see Part 12), for example, because no sanction has been imposed, which means their registration is no longer artificially continued. These issues are addressed by clause 45 of the draft Bill.

Recommendation 64: The regulators should be required to make rules specifying their investigation process. The regulators would have discretion over the content of the rules, except that members of the regulatory body and fitness to practise panellists would be prohibited from the task of investigation.

This recommendation is given effect by clause 128 of the draft Bill.

Recommendation 65: The regulators should be given a power to require the disclosure of relevant information by any person (including the registrant) in fitness to practise proceedings. However, a person cannot be required to supply any information or documents which are prohibited by or under any enactment. The regulators should have powers to seek an order for disclosure from the High Court in England and Wales, the Court of Session in Scotland or the High Court in Northern Ireland.

This recommendation is given effect by clause 192 of the draft Bill.

REALISTIC PROSPECT TEST

8.47 Having undertaken the appropriate inquiries, the regulator must decide whether or not to refer the case to a fitness to practise panel. Some regulators take this decision by reference to a test stated in their legislation itself. For example, the General Pharmaceutical Council must determine if there is a "realistic prospect" that the panel will be able to establish impairment.[21] In contrast, the Nursing and Midwifery Council must decide if there is a "case to answer".[22] Some regulators do not have a specific test stated in their legislation.[23]

[21] General Pharmaceutical Council (Fitness to Practise and Disqualification etc) Rules Order of Council 2010, SI 2010 No 1615, r 9(7)(a).

[22] Nursing and Midwifery Order 2001, SI 2002 No 254, art 26(2)(d)(i).

[23] The General Dental Council, General Medical Council, and General Optical Council do not specify a test.

8.48 However, the practice adopted by most of the regulators, irrespective of whether or not this is stated in their legislation, is to use the realistic prospect test.[24] That test is derived from *Swain v Hillman* where Lord Woolf MR noted:

> The words "nor real prospect" do not need any amplification, they speak for themselves. The word "real" distinguishes fanciful prospects of success … or, as [Counsel] submits, they direct the court to the need to see whether there is "realistic" as opposed to a "fanciful" prospect of success.[25]

8.49 The General Medical Council's "aide-memoire" describing the realistic prospect test has been approved by the courts.[26] This confirms that the test applies to both the factual allegations and to the question of whether, if found proved, the facts could support a finding of impairment.[27]

8.50 The consultation paper proposed that the statute should provide that the test for all referrals to a fitness to practise panel across the regulators is the realistic prospect test.[28]

Consultation responses

8.51 The vast majority agreed with this proposal. Many felt that the realistic prospect test is well understood and workable, and moreover it is in no-one's interests for cases to be referred to a hearing where there is no real prospect of a finding of impairment. Some consultees also argued that the regulators must be required to notify the registrant without delay once the decision has been taken to refer the case. However, a small number of consultees disagreed. For example, it was argued that in the interests of transparency and to avoid conflicts of interests all allegations should be fully investigated and put before a panel.[29]

[24] See, for example, Health and Care Professions Council, *Practice Note: Case to Answer Determinations* (2011) p 1.

[25] [2001] All ER 91 at [7].

[26] *Woods v General Medical Council* [2002] EWHC 1484 (Admin) (unreported, 18 July 2002).

[27] General Medical Council, *Aide Memoire,* http://www.gmc-uk.org/The_Realistic_Prospect_Test.pdf_25416411.pdf (last visited 21 February 2013).

[28] Joint CP, paras 8.32 to 8.56.

[29] Consultation Analysis, paras 8.150 to 8.154.

Discussion

8.52 Consultation has confirmed our view that the realistic prospect test should be applied consistently across the regulators. No-one argued that the test should be whether there is a case to answer – not even those regulators that currently have this test stated in their legislation. Moreover, it is right that a regulator should not refer a case to a panel unless it is satisfied that there is a realistic prospect that the panel will make a finding of impairment.

8.53 However, the current legislation is not clear on whether all cases that satisfy the realistic prospect test must be referred to a panel or whether there is discretion to refer to a panel. In the majority of cases, we think that the law should require a referral. There are exceptions, such as cases where the professional has agreed undertakings which place restrictions on their registration or been granted voluntary removal. In such cases, the regulators would not be required to refer to a panel if this is not in the public interest (for example, the registrant is too ill to represent themselves).

8.54 Where the decision is that the case is to be referred to a panel, the regulator would be required to serve notice of the decision in writing upon the practitioner and the maker of the allegation (if any). Regulators would be required to give the reasons for the decision in the notice.

Recommendation 66: The regulators must refer a case to a fitness to practise panel if there is a realistic prospect that the panel will find that the professional's fitness to practise is impaired and it is in the public interest to refer to a panel.

This recommendation is given effect by clause 129(2) of the draft Bill.

DISPOSAL OF CASES

8.55 The regulators have various powers to dispose of cases following an investigation where conduct has fallen below acceptable standards but the case is not being referred to a fitness to practise panel. For example, some can issue warnings (including published warnings) and advice to registrants and third parties. Many of the regulators can dispose of cases by agreeing with the registrant concerned that the registrant will comply with such undertakings as the regulator considers appropriate or by granting a registrant's application for voluntary removal from the register.

8.56 The consultation paper argued that all the regulators should have the same powers to dispose of cases, namely warnings, undertakings, voluntary erasure and giving advice to any person with an interest in the case. The regulators would have broad powers to make rules governing such disposals; including who or which body can make the decision and the criteria to be used. We asked whether the statute should require that some disposals must be made or agreed by a formal committee or fitness to practise panel, and whether the Professional Standards Authority should have power to refer decisions to the higher courts. We also proposed that the Government should be able to add new disposal powers, and to remove any such powers. Finally, we asked whether the language used to describe the proposed powers accurately conveys their purpose.[30]

Consultation responses

8.57 A significant majority agreed that all the regulators should have powers to issue or agree warnings, undertakings, voluntary erasure and advice at the investigation stage, and broad powers to make rules governing the use of such powers. Many felt that without such powers the regulators would be forced to refer all less serious cases for a formal panel hearing, even when both parties agree on the outcome, thereby wasting resources and causing delays.

8.58 However, a number of specific comments were made about the individual powers proposed. Some were concerned that the power to give advice to any person with an interest in the case would be too wide. It was argued that advice should be issued under a general rather than specific power, to ensure that it remains an informal mechanism and therefore avoids any publication and disclosure requirements. Others contended that a statutory power to give advice would prevent the regulators from taking letters of advice into account in the event of future allegations. Some said it was unhelpful to allow warnings to be used both following a finding of impairment *and* by investigators where there is no realistic prospect of proving impairment, and felt that warnings should be preserved for the hearing stage. A number of specific comments were made about the use of consensual disposals (undertakings and voluntary erasure). On the one hand, the Patients Association described them as “inappropriate, unfair and obscure” and deficient in securing transparency and accountability. On the other hand, the regulators defended the use of consensual disposals as reflecting their role of public protection rather than punishment.

[30] Joint CP, paras 8.57 to 8.71.

8.59 A majority felt that any decision to issue or agree warnings, undertakings, voluntary erasure and advice must be made or approved by a formal committee or fitness to practise panel. It was argued that public confidence would be compromised if there were no independent oversight of these decisions. In particular, many regarded warnings as in effect a form of sanction which should therefore only be imposed by a fitness to practise panel. Against this, it was argued that introducing formal constraints will introduce unnecessary delay and bureaucracy and that the use of such powers can be challenged through the courts. Some made the point that consensual disposals had been introduced in order to remove the need for formality and mini-hearings.

8.60 A large majority argued that the Professional Standards Authority's powers to refer decisions of fitness to practise panels to the High Court in England and Wales, the Court of Session in Scotland or the High Court in Northern Ireland should be extended to cover consensual disposals. A large majority also agreed that the Government should be given a regulation-making power to add or remove disposal powers.

8.61 A majority felt that the language used to describe the proposed powers accurately conveys their purpose. Of those who disagreed, most argued that the term "voluntary erasure" was not clear. Alternative suggestions included "erasure by mutual consent", "consensual erasure", "voluntary removal" or "removal by consent". Some felt that the term "warnings" was not sufficiently strong and preferred "cautions". It was also argued that "undertakings" fails to indicate that there are conditions or monitoring in place.[31]

Discussion

8.62 Currently, the range of powers available to dispose of cases at the end of an investigation varies across the regulators. We remain convinced that there is no good reason for this situation to continue and that all the regulators must have the same set of powers. We continue to think that the specific disposal powers should be advice, warnings, undertakings and voluntary removal. It should not be open to the regulators to pick and choose which disposals from this list they wished to avail themselves of; instead, the regulators should be required to make rules governing the use of each of these powers.

8.63 We do not agree that the ability to give advice should fall within a general rather than a specific power. The ability to dispose of cases should be transparent and specified clearly in the legislation to ensure that registrants and the public are

aware of which disposal powers are available to the regulators and when they can be used. We do not agree that a specific power would prevent the regulators from adopting a policy that letters of advice may be taken into account when considering any future allegations. Indeed, some of the regulators who have specific powers to give advice currently adopt such a policy.[32]

8.64 Several consultees expressed concern about the potential scope of the proposal to enable the regulators to give advice to "any person with an interest in the case". We accept these concerns and have reviewed the wording of this provision to ensure that it is clear that advice on matters related to the allegation can only be given to the registrant concerned and to any other person or body involved in the investigation. We do not consider that in the vast majority of cases it would be appropriate for the power to be used to give advice to complainant or members of the public.

8.65 Some concern was expressed that a warning can be imposed by a regulator, without the agreement of the registrant or the safeguard of a panel hearing, even though this could impact on the person's right to practise their profession. As noted above, article 6 does not require a hearing in such cases. But we accept the broader point being made about the lack of appropriate safeguards. We have therefore concluded that where a warning is the regulator's preferred option, the registrant should have a right to request a formal hearing. It would be left to the regulators to decide if this should be undertaken by an investigation committee, fitness to practise panel or some other bespoke panel of three members constituted for this purpose. The procedure for such a hearing would be left to the regulators to determine in rules, but the constitution of the panel must be the same as a fitness to practise panel (see Part 9).

8.66 It was also argued that because warnings can also be issued as a sanction by a fitness to practise panel following a finding of impairment, it follows that they should not also be available at the investigation stage. We do not agree. Some regulators already have powers to issue warnings at both stages, and we received no evidence to suggest that this causes any practical or conceptual difficulties. We think that the more plausible concern is that the public may be unclear whether warnings indicate a finding of impairment or not. However, we

[31] Consultation Analysis, paras 8.155 to 8.202.

[32] See, for example, General Pharmaceutical Council, *Guidance on the General Pharmaceutical Council's Threshold Criteria Policy* (2010) p.3.

think this is addressed by requiring this fact to be indicated in the public register (see Part 5).

8.67 We think that the arguments are finely balanced over whether or not consensual disposals should be subject to additional approval by a committee or panel. Such oversight might help to ensure greater transparency and public confidence in the system of regulation. But it could undermine the ability to deliver efficiencies and savings, and it is difficult to argue that, where the regulator considers that this option will protect the public and the registrant agrees, both parties should be forced to undergo a hearing (especially since the process is not meant to be punitive). On balance we think that a requirement of formal approval in every case is unnecessary, although this would continue to be an option for the regulators. There should be some additional checks on the use of consensual disposals. First, the power of the Professional Standards Authority to refer fitness or practise decisions to the higher courts should be extended to include consensual disposals. This would ensure that all individual decisions to dispose of cases consensually would be subject to review by the Authority. The resource implications are discussed in the impact assessment and Part 12 of this report. Also, as discussed in Part 5, we think that the public registers must include the details of consensual disposals.

8.68 We continue to be of the view that the Government should be given a regulation-making power to add and remove powers to dispose of cases. Some consultees suggested that new powers might include suspension, removal, financial reimbursement and requiring an apology. However, such decisions would be left to the Government and the devolved administrations.

8.69 The suggestions for the language and terminology that should be used to describe the various powers are discussed in more detail in Part 9.

Recommendation 67: Following the conclusion of an investigation and where the case is not being referred to a fitness to practise panel, the regulators should have powers to:

(1) take no further action;

(2) give advice on any matter related to the allegation to the registrant and to any other person or body involved in the investigation, in respect of any matter related to the investigation;

(3) give a warning to the registrant regarding their future conduct or performance;

(4) agree with the registrant that they will comply with such undertakings as the regulator considers appropriate; or

(5) grant a registrant's application for voluntary removal.

The Government's regulation-making powers should include the ability to add new powers and remove any powers from this list.

This recommendation is given effect by clause 129(3) of the draft Bill.

Recommendation 68: The Professional Standards Authority's power to refer fitness to practise decisions to the higher courts should be extended to include consensual disposals.

This recommendation is given effect by clause 167(6) and (7) of the draft Bill.

MEDIATION

8.70 The Health and Care Professions Council and Nursing and Midwifery Council have specific powers to undertake mediation between a complainant and a registrant.[33] When the investigation committee concludes there is a case to answer it can undertake mediation or refer the case to screeners for mediation. The health committee or the conduct and competence committee can also mediate cases after the allegation has been declared to be well-founded or refer to the screeners for mediation.[34]

8.71 The consultation paper considered the use of mediation and whether it is appropriate in the context of fitness to practise proceedings where there is a public interest in investigation and prosecution. We argued that mediation will only be suitable in a limited number of cases, such as relatively minor misdemeanours where an apology is being sought, and its relevance will vary between the various sectors depending on the availability of other forms of dispute resolution. We proposed that the regulators should have powers to introduce mediation if they wished to do so. We also asked for views on whether mediation is appropriate in this context.[35]

Consultation responses

8.72 A large majority agreed that all the regulators should have powers to mediate, and a majority felt that mediation was appropriate in the context of fitness to practise procedures. It was argued that mediation can be particularly useful where the registrant has made a mistake that has caused harm to a complainant, but is unlikely to repeat the mistake and is assessed as being currently fit to practise. It was also suggested that mediation was appropriate where the registrant was not aware of the impact of their behaviour on the patient and where the fundamental issue concerned communication. It was also pointed out that the General Medical Council is pursuing the idea of a "statement of agreed

[33] Nursing and Midwifery Order 2001, SI 2002 No 253, arts 26(6) and 29(4) and Health and Social Work Professions Order 2001, SI 2002 No 254, arts 26(6) and 29(4).

[34] Health and Social Work Professions Order 2001, SI 2002 No 254, arts 26(6) and 29(4).

[35] Joint CP, paras 8.72 to 8.79.

facts" which is arguably a form of mediation. The Health and Care Professions Council stated that it planned to undertake a mediation pilot. However, a number of consultees remained opposed to mediation in a fitness to practise context; they argued that the regulators must always seek the minimum outcome necessary to protect the public and maintain confidence in the profession and that this outcome should never be subject to negotiation with the registrant.[36]

Discussion

8.73 Despite the widespread support for mediation, we remain unconvinced that it is an appropriate process for dealing with allegations of impaired fitness to practise. Mediation tends to be used in disputes involving individuals, and outcomes are negotiated rather than imposed. In contrast, a regulatory body is charged with investigation and taking action in order to protect the public; sanctions are imposed on this basis and are not properly the subject of negotiation. Mediation would only be appropriate early in the process and perhaps only where there is no question of an allegation amounting to impaired fitness to practise being raised. Certainly, in our view, mediation would never be appropriate in cases where there is a realistic prospect of a finding of impairment. Nevertheless, this is a developing area and we are reluctant to close down the option of mediation entirely. Due to the strong concerns that the use of mediation may undermine confidence in the system of regulation, we think this is an area which requires Government oversight. In our view the introduction of mediation is analogous to the introduction of new powers of disposal (see previous discussion) and therefore should be subject to the use of Government regulation-making powers.

Recommendation 69: The Government's regulation-making powers should include the power to introduce mediation for one or more of the regulators.

This recommendation is given effect by clause 133 of the draft Bill.

REVIEW OF DECISIONS

8.74 Some regulators have the power to review certain decisions made at the end of an investigation. This power is normally restricted to decisions not to refer a case for an investigation or to a fitness to practice panel. A review can be initiated by

[36] Consultation Analysis, paras 8.203 to 8.224.

anyone with an interest in the case, on the grounds that new evidence has come to light, an error has occurred or it is necessary in the public interest.[37]

8.75 The consultation paper argued that the review power should be given to all the regulators and put forward the following proposals:

(1) the review power would apply only to decisions not to refer a case for an investigation following initial consideration, not to refer the case to a fitness to practise panel, to issue a warning or to cease consideration of a case where undertakings are agreed;

(2) anyone who has an interest in the decision should be able to initiate a review of an investigation decision, including but not limited to the registrar, registrant, complainant and Professional Standards Authority;

(3) the grounds for a review of an investigation decision should be that new evidence has come to light which makes review necessary for the protection of the public or the regulator has erred in its administrative handling of the case and a review is necessary in the public interest; and

(4) the statute should give the regulators broad rule and regulation-making powers on all aspects of the process for the review.[38]

Consultation responses

8.76 An overwhelming majority agreed with the proposal as to which decisions could be reviewed. Some also felt it should be extended to decisions to refer cases to a fitness to practise panel. Several consultees argued that any right to seek a review must be subject to strict time limits.

8.77 A majority agreed that anyone with an interest should be able to initiate a review. Some however were concerned that there should be no automatic right for an interested party. It was suggested that employers should specifically be able to initiate a review. Several consultees felt that that giving anyone, including the registrant, the ability to initiate a review might be too wide and could potentially include anyone who happened to disagree with the decision.

[37] See, for example, General Medical Council (Fitness to Practice) Rules Order of Council 2004, SI 2004 No 2608, r 12.

[38] Joint CP, paras 8.80 to 8.89.

8.78 A large majority agreed with the proposed grounds for a review. However, some supported a broader threshold which included a wrongly decided investigation decision. It was also suggested that the references to "public protection" or "public interest" were unnecessary and should be removed, while others felt these terms needed to be defined. Some, however, supported narrow criteria based, for example, on whether a review is necessary and proportionate or significant administrative errors.

8.79 The vast majority agreed that the regulators should be given broad rule-making powers on all other aspects of the review process.[39]

Discussion

8.80 Consultation has confirmed our view that the draft Bill should include a review mechanism for certain investigation decisions. This enables the regulators to reconsider decisions to ensure they are properly made and to respond to legitimate concerns. We think it is right that the range of people who can apply a review should include anyone whom the regulator thinks has an interest in the decision. The draft Bill specifies that those who could seek a review would include the regulator, registrant, complainant and Professional Standards Authority. This will not in our view be particularly onerous and leaves some room for discretion. We do not think it necessary to specify any further bodies or individuals, such as employers. Our intention is not to provide an automatic right to a review, but that certain people would be able to request the review. The regulator would need to consider any such request against the relevant criteria.

8.81 We do not agree that the review power should include decisions to refer cases to an interim orders or fitness to practise panel. The regulators will have separate powers to cancel such referrals. These would cover a broader range of cases including where evidence becomes available that the practitioner's fitness to practise is not impaired, an interim order is not necessary or the hearing should not be held for some other reason. In our view, the two sets of powers are conceptually different. However, we think that, for reasons of clarity and to ensure consistency, the criteria governing cancellation of a referral should be stated in the legislation.

8.82 We agree that the criteria for a review should be broadened to cover cases where a decision appears to be materially flawed, either procedurally, legally or factually. This would include where the regulator may have made an error in the

[39] Consultation Analysis, paras 8.243 to 8.248.

administrative handling of the case (for example, not disclosing details to employers), as well as enquiries or cases where there has been an error of judgement or reasoning on behalf of the decision-maker. Some queried whether our proposal would include consensual disposals and any mediation schemes. We confirm that these will be included, as their incorrect or inappropriate use could also have implications for public protection.

8.83 We are not persuaded that new evidence or administrative errors should require additional public protection or public interest requirements. In other words, if new evidence or an administrative error suggests that the investigator could have reached a different decision, then a review should take place. The issue of public protection would be central to the decision reached as a result of the review, but we do not think it should be determinative of whether a review can take place. We also intend that there should be a time limit of two years from the original decision, except where it is in the public interest to review the case.

8.84 We also continue to think that the regulators should have broad rule-making powers to determine the precise process that would apply. For example, some regulators may want the registrar or case examiners to make the final decision, while others may wish to establish a formal panel hearing.

Recommendation 70: The regulators should have powers to review decisions:

(1) not to refer an allegation for an investigation following initial consideration;

(2) not to refer a case to a fitness to practise panel and to take no further action; and

(3) to dispose of a case following investigation by giving advice, issuing a warning, agreeing undertakings, granting voluntary erasure, or referring to mediation where applicable.

A regulator should have power to undertake a review on its own initiative or on the application of the registrant, the maker of the allegation, the Professional Standards Authority or any other person who, in the opinion of the regulator, has an interest in the decision.

A review must take place if the regulator considers that the decision may be materially flawed or that there is new information which may have led to a different decision. A review cannot take place if more than two years have elapsed since the decision was made, unless a review is necessary in the public interest.

The regulator may, as a result of the review, substitute a new decision, refer the allegation for reconsideration or decide that the original decision should stand.

This recommendation is given effect by clause 134 of the draft Bill.

Recommendation 71: A regulator should have the power to cancel a referral to a fitness to practise or an interim orders panel, if it no longer considers that there is a realistic prospect of a finding of impairment or it considers that it is no longer appropriate for the registered professional to be subject to fitness to practise proceedings.

This recommendation is given effect by clause 135 of the draft Bill.

PART 9
FITNESS TO PRACTISE PANELS AND ADJUDICATION

9.1 This Part considers the legal framework governing fitness to practise hearings. It addresses the following matters:

(1) article 6 ECHR compliance;

(2) separation of investigation and adjudication;

(3) constitution and appointment of panels;

(4) case management;

(5) the location of hearings;

(6) rules of evidence;

(7) standard of proof;

(8) public hearings;

(9) witnesses eligible for assistance;

(10) the overriding objective;

(11) procedural matters;

(12) final sanctions and other disposals;

(13) review hearings; and

(14) appeals.

ARTICLE 6 COMPLIANCE

9.2 It is vital that the fitness to practise process satisfies the requirements of procedural fairness guaranteed by article 6 of the European Convention on Human Rights. These include, but are not limited to, the right to a hearing within a reasonable time, access to legal representation, and an opportunity to attend a

public hearing. However, the general approach of the judiciary has been to regard the regulators' processes as being article 6 compliant because the legislation provides for subsequent control of the fitness to practise decision by the higher courts on both issues of fact and law.[1] The consultation paper raised concerns that this approach might – at least in theory – allow the regulators' procedural standards to fall short of those normally associated with article 6. We asked whether the statute should ensure that all proceedings are compliant with article 6 without taking into account the right to appeal to a court of full jurisdiction.[2] We refer to this as internal article 6 compliance.

Consultation responses

9.3 A significant majority agreed that the statute should require internal article 6 compliance. For example, the Association of Regulatory and Disciplinary Lawyers criticised the case-law for allowing "rescue by appeal", which it did not regard as "an appropriate response to procedural defects in a mature fitness to practise jurisdiction". However, some questioned whether a right of appeal on fact and law could be justified if the statute were to require internal article 6 compliance. Others argued that the regulators' systems are already article 6 compliant and that a statutory requirement for compliance over and above the role of the higher courts is likely to lead to protracted arguments about the requirements of article 6 at hearings, causing delay and increasing costs. Some felt that article 6 compliance should be monitored by the Professional Standards Authority.[3]

Discussion

9.4 We remain of the view that the regulators' fitness to practise processes should fulfil the procedural requirements of article 6 notwithstanding the right of appeal to the higher courts. The regulators' procedures have improved significantly in recent years and may well already be internally article 6 compliant. For instance, in *Sadler v General Medical Council* the court found the General Medical Council's fitness to practise adjudication process at that time to be in itself article 6 compliant, without needing to consider whether the process was subject to review by a court of full jurisdiction.[4] We nevertheless consider that this position

1 See, for example, *Tehrani v UK Central Council for Nursing, Midwifery and Health Visiting* [2001] ScotCS 19, [2001] IRLR 208 at [52] and *Ghosh v General Medical Council* [2001] UKPC 29, [2001] 1 WLR 1915 at [31].

2 Joint CP, paras 9.3 to 9.9.

3 Consultation Analysis, paras 9.1 to 9.15.

4 *Sadler v General Medical Council* [2003] UKPC 59, [2003] 1 WLR 2259 at [80].

must be underpinned by the legislation, especially since for many registrants the safeguard of a right to appeal is illusory due to the costs involved. It is notable that most appeals are generated by doctors, and that some regulators (especially those responsible for lower paid professionals) have never had a fitness to practise decision challenged in the higher courts.

9.5 However, we are not persuaded that internal article 6 compliance is best achieved through a simple statement in the draft Bill. Crucially, this would give a regulator considerable discretion to decide how to achieve compliance, and therefore fail to achieve the necessary level of consistency across the regulators. We can also see that there might be consequences, in terms of delays to cases and costs, as legal representatives seek to challenge whether procedures achieve the required standard of article 6 compliance absent the role of the higher courts.

9.6 We therefore think that the draft Bill must be clear about the procedures to be adopted by the regulators, identifying the key procedural elements of fitness to practise hearings and imposing them on all the regulators. The precise elements are considered on an issue by issue basis in the rest of this Part and therefore we do not make a formal recommendation at this point. We do not think that such an approach would necessarily mean that the right to an appeal on both fact and law should be removed. For those able to take advantage of this right, it does provide an important safeguard. But we anticipate that our revised approach will reduce the number of challenges in the higher courts and the need for "rescue by appeal".

SEPARATION OF INVESTIGATION AND ADJUDICATION

9.7 In law, the regulators are responsible for the investigation and adjudication of allegations of impaired fitness to practise. This has led to criticism that as the setters of standards, prosecutors and adjudicators, the regulators' adjudicatory independence is open to question. In 2004, the *Fifth Report of the Shipman Inquiry* recommended the clear separation of adjudication from the General Medical Council's other functions through the establishment of an independent judicial body.[5]

9.8 This recommendation was accepted by the previous Government. The Health and Social Care Act 2008 provided for the transfer of the General Medical Council's and General Optical Council's adjudication functions to a new

[5] The Shipman Inquiry Fifth Report: Safeguarding Patients, Lessons from the Past – Proposals for the Future (2004) Cm 6394, paras 27.204 to 27.210.

independent body called the Office of the Health Professions Adjudicator.[6] This was to be a separate body responsible for recruiting and training panellists, running hearings and adjudication. It was to be funded by fees paid by the referring regulators. Following the General Election, the current Government reviewed the case for an independent adjudicator and concluded that the Office of the Health Professions Adjudicator should be abolished. Instead, it was decided to take steps to enhance the independence of the General Medical Council's processes. The rationale for this was that such steps would deliver substantially the same benefits as an independent adjudicator, but in a more cost effective manner. The Office of the Health Professions Adjudicator was abolished by the Health and Social Care Act 2012.

9.9 In 2012, the General Medical Council established the Medical Practitioners Tribunal Service which assumed responsibility for the adjudication of the Council's fitness to practise and interim order cases. The Tribunal Service is part of, and funded by, the Council but is operationally separate from the rest of the Council. It has been given responsibility for running hearings, providing administrative support, and for the appointment and appraisal of panellists, case managers, special advisers and legal advisers. The Tribunal Service is required to report directly to Parliament on an annual basis. The Medical Practitioners Tribunal Service has been established in shadow form only. The General Medical Council is seeking an order pursuant to section 60 of the Health Act 1999 to constitute the Medical Practitioners Tribunal Service as a formal statutory body which is responsible for the operation of fitness to practise panels and interim order panels.

9.10 The consultation paper argued that there are substantial benefits to be gained from the separation of investigation and adjudication, not least of which is enhancing public and professional confidence in regulation. We asked for views on whether the new legal framework should ensure greater separation between these roles, and if so how. We also sought views on whether the statute should allow for the option of transferring the regulators' fitness to practise adjudication systems to the Unified Tribunals System.[7]

Consultation responses

9.11 A majority agreed that the new legal framework should ensure the separation of investigation and adjudication. Many argued that there should be a separate

[6] Health and Social Care Act 2008, ss 98 to 110.

[7] Joint CP, paras 9.10 to 9.26.

adjudication body and criticised the decision to abolish the Office of the Health Professions Adjudicator. Some felt that if the Medical Practitioners Tribunal Service were to offer its adjudicative services to other regulators, the necessary separation and public confidence would be secured. Others argued that governance arrangements had not secured the necessary separation between the Medical Practitioners Tribunal Service and the rest of the General Medical Council. Some felt that the General Medical Council's model would be too expensive for the other regulators. However, not all consultees agreed with a separate adjudication body. Many felt that a better approach would be to improve the quality of panel members through reforms to the appointment and appraisal processes.

9.12 A small majority agreed that the statute should allow for the option of the regulators' adjudication systems joining HM Courts and Tribunals Service. The Administrative Appeals Chamber of the Upper Tribunal argued that the adjudication function should be transferred to the First-tier Tribunal (Health, Education and Social Care Chamber). The First-tier Tribunal (Health, Education and Social Care Chamber) itself argued that such a transfer would be the only way to fully restore, in the long term, public confidence in the regulation of health professionals. Some consultees argued that a right of appeal to HM Courts and Tribunal Service would be more affordable for registrants. However, many consultees disagreed. It was argued that the Tribunal Service would be unable to cope with the volume of work generated by the General Medical Council and the General Dental Council, and lacked the necessary expertise.

Discussion

9.13 Article 6 does not require a separate fitness to practise adjudicator. The test is whether sufficient guarantees exist to exclude any legitimate doubt about impartiality, applying an objective standard.[8] Regard must be had to, amongst other matters, the manner in which panellists are appointed and their terms of office, the existence of safeguards against outside pressures and whether the process appears independent.[9] Nevertheless, we continue to think that there are substantial benefits to be gained from establishing a separate adjudicator, especially sustaining confidence in the system of professionals regulation. The Office of the Health Professions Adjudicator would have secured the necessary degree of separation, but has now been abolished. We have therefore discounted this option.

[8] *Findlay v United Kingdom* (1997) 24 EHRR 221 (App No 22107/93), 245.

[9] *Bryan v United Kingdom* (1996) 21 EHRR 342 (App No 19178/91) at [37].

9.14 The establishment of the Medical Practitioners Tribunal Service is a major step towards achieving separation. Although the Service is not fully separate from the General Medical Council, we consider that this reform has introduced a high degree of independence into fitness to practise adjudication. It is clear that the new legal framework must enable this model to be maintained and developed. The more difficult question is whether the draft Bill should require the other regulators to adopt this, or a similar, system. As argued at consultation, it may be perceived as unjust that doctors have access to a more independent fitness to practise adjudication process than other professionals. This could be resolved by the Medical Practitioners Tribunal Service being used by the other regulators, or the other regulators developing similar systems. We are aware of preliminary discussions between some of the regulators about the possibility of establishing an alternative joint tribunal service.

9.15 However, establishing such a system would have significant cost implications and, since such separation is not required by article 6, we have concluded that it should not be mandated by the draft Bill. The regulators will have the ability to move towards greater separation between investigation and adjudication, without having to establish a new adjudication system based on the Medical Practitioners Tribunal Service. This could be achieved by a regulator establishing a body (such as an individual or committee) responsible for fitness to practise hearings. It would also be open to any regulator to use its powers of delegation (see Part 4) in order to transfer its fitness to practice adjudication function to be carried out by another body – such as the Medical Practitioners Tribunal Service (see Part 10). We would also expect the Professional Standards Authority to provide a significant impetus in this direction by overseeing each regulator's progress towards more independent adjudication, and providing advice on how this could be taken forward. We further consider that a significant degree of separation can be achieved through the system of appointment of panel members and certain operational matters such as appraisals. This is discussed below.

9.16 In addition, the Government should have regulation-making powers to introduce a new adjudication system for any of the regulators, based on the Medical Practitioners Tribunal Service. This would involve:

(1) the establishment of a formal body responsible for recruiting and training panellists and panel advisers, running hearings and adjudication;

(2) the power for the regulator to appeal panel decisions which do not, in its view, achieve sufficient protection of the public;

(3) a requirement that the body must report annually to Parliament; and

(4) a requirement that all fitness to practise guidance for panellists must be issued by the new body and not the regulator (see below).

9.17 Consultation has persuaded us that there would be real advantages in transferring the regulators' adjudication systems to HM Courts and Tribunals Service, such as the cost efficiencies and securing greater consistency. Nevertheless, there would be difficulties with this option. For instance, significant cost issues would arise, at least in the short term. Since the First-tier Tribunal (Health, Education and Social Care Chamber) only covers England and Wales, any new jurisdiction would need to be UK-wide or alternative arrangements would

need to be made for Scotland and Northern Ireland. Moreover, involvement of HM Courts and Tribunals Service is unlikely to be a political option in the short or medium term. The Department of Health has been clear throughout the project that any transfer of powers has been considered and ruled out. The question therefore becomes whether or not the draft Bill should provide for this option in the longer term.

9.18 It is not entirely straightforward how the draft Bill could achieve this. One possibility might be to enable the Government through its regulation-making powers to abolish the regulators' fitness to practise adjudication functions and replace them with a process of referral to the First-tier Tribunal. However, we think that a change of such magnitude should not be effected through subordinate legislation but through statute law, and that in particular members of the UK Parliament and the devolved assemblies should have the opportunity to debate such change fully. On balance, we think that the draft Bill should not contain a specific mechanism and that in the event that such a reform gained political support, it should be achieved through primary legislation.

Recommendation 72: The Professional Standards Authority should oversee the regulators' progress towards introducing greater separation between investigation and adjudication, and provide best practice advice.

This recommendation is given effect by clause 168(4) of the draft Bill.

Recommendation 73: The Government should have regulation-making powers to introduce a separate adjudication system for any of the regulators, based on the Medical Practitioners Tribunal Service.

This recommendation is given effect by clauses 29 and 168 of the draft Bill.

CONSTITUTION AND APPOINTMENT OF PANELS

9.19 The regulators are required to establish committees or panels to consider allegations that a registrant's fitness to practise is impaired. For many regulators, a fitness to practise committee is a large pool of people from which members of a panel are drawn to consider individual cases. In addition, some regulators have set up non-statutory fitness to practise committees for advisory purposes. However, the General Medical Council does not have a formal fitness to practise committee but must instead establish panels to consider cases.[10]

[10] Such panels are referred to as a statutory committee, see Medical Act 1983, s 1(3A).

9.20 Until recently, the regulators applied separate fitness to practise procedures depending on the statutory ground of impairment being considered. Under each procedure, adjudication was undertaken by a separate committee – conduct, performance, or health. Some regulators have abandoned this in favour of a more holistic approach. For example, the General Medical Council replaced its three committees with a single fitness to practise panel to consider all categories of impairment. However, some regulators have retained a separate health committee, while a small number retain three separate committees.

9.21 All of the regulators are required to make rules governing the size and membership of fitness to practise panels. At some regulators, panel members are appointed by an appointments committee. Membership of this committee is determined by the regulator. Members of the regulatory bodies, members of other committees or employees of the regulatory body are normally excluded from membership of this committee.

9.22 The common position across the regulators is that a fitness to practise panel is made up of at least three people, comprising both professionals and non-professionals. In practice, individual panellists often sit on panels at more than one regulator. Some of the rules set out procedures for the appointment of, and give specific responsibilities to, the chair of the panel. Chairs may be legally qualified, but this is not required by any of the regulators. Legal and professional advisers are normally appointed as a source of expertise for the panel. Some regulators make provision for the appointment of other advisers, such as specialist performance advisors.

9.23 The consultation paper proposed that the statute should require each regulator to establish fitness to practise panels of at least three members for the purpose of adjudication (including at least one lay member). In order to ensure that panels are seen to be fair and impartial, we proposed that the statute should require the regulators to establish a body which is responsible for all aspects of the panel appointment process and is separate from the General Council, and that members of the regulatory bodies and investigators should be excluded from panel membership. On all other matters, the regulators would have broad powers to make rules on the constitution of their panels.[11]

Consultation responses

9.24 The proposal that the regulators should be required to establish panels of at least three members received almost unanimous support at consultation. Some felt

that in order to achieve consistency, the statute should require three member panels in all cases. One consultee, whilst agreeing generally with the proposal, also suggested that there are some occasions when a single member panel could be appropriate and that this should be left to the regulators to determine in rules.

9.25 The vast majority agreed that the regulators should be required to establish a body responsible for panel appointments, and members of the regulatory bodies and investigators should be excluded from panel membership. A small number expressed concern that a duty to establish an appointments body would undermine the sharing of experience across the regulators and that the regulators would be prevented from establishing joint arrangements to appoint and recruit panel members. Some felt there should be flexibility to appoint a President or judicial head for this purpose.

9.26 Some argued that in order to secure the necessary level of expertise, the statute should prohibit a lay majority. It was further suggested that one member of the panel must be of the same profession as the registrant. On the other side, it was argued that in order to secure independence, panels should always have more lay than registrant members. It was also argued that registrants should be prohibited from membership altogether and that professional input could be achieved by other means such as specialist advisors.

9.27 Several consultees supported legally qualified chairs and were critical of the role of the legal assessor. For instance, it was suggested that they were risk adverse, merely repeated standard advice and added little value to the conduct of hearings. Others were more supportive of the role of legal assessors in mediating and resolving differences of opinion between the parties. It was further suggested that there should be procedural consistency in the use and appointment of legal and specialist advisers.

9.28 A large majority agreed that the regulators should have broad powers to make rules on the constitution of their fitness to practise panels.[12]

Discussion

9.29 The draft Bill will require the regulators to establish fitness to practise panels. There will be no requirement to establish an overarching committee from which

[11] Joint CP, paras 9.33 to 9.45.

[12] Consultation Analysis, paras 9.66 to 9.95.

panels are drawn, but any regulator could establish such a system if it sees fit. Similarly, it will be open to the regulators to set up committees for the purpose of giving advice on fitness to practise matters. Fitness to practise panels will be able to hear any category of case, or a combination of categories. However, the regulators will have powers to adjust their internal arrangements to establish separate processes for performance, conduct or adverse health cases.

9.30 It was argued at consultation that the draft Bill should prescribe an exact number of panel members to be used in all cases. We do not agree. We think that panels of *at least* three members should be required to hear a case. There may be cases where a larger panel is needed, such as where the professional is dual qualified, and we see no reason to restrict this. However, we do not think that the draft Bill should permit hearings with panels of *fewer* than three members. For the purposes of article 6 of the Convention it would be lawful for hearings to be undertaken by a single legal member, but the establishment of three member panels has a long history in professionals regulation and the potential advantages of expert knowledge, rigorous scrutiny and the appearance of fair and independent decision-making. Therefore, the draft Bill requires that a panel must have three members for a hearing.

9.31 However, we do not think that a panel of three members is necessary when cases are decided without a hearing. In circumstances where both parties agree that a case should be decided on the papers and on how the case should be concluded, we think it would be inefficient and unnecessary to require a full panel to take the decision. Such cases could be decided for example by the chair of a panel sitting alone, the head of the Tribunal service, or panels consisting of two persons. Regulators will therefore be given powers to make rules about the steps which may or must be taken to decide whether it is necessary to hold a hearing. In addition, the person(s) considering the case must agree that a hearing is not necessary, and there will be a requirement for a statement of agreed facts to be agreed so that the factual basis for the decision is on record and indisputable for future purposes.

9.32 It was argued at consultation that the draft Bill should prescribe the number of panel members. We do not agree. While three member panels will be appropriate in the majority of cases, there may be cases where a larger panel is needed, such as where the professional is dual qualified. However, we do not think that the draft Bill – in the vast majority of cases – should permit panels of fewer than three members. For the purposes of article 6 of the Convention it would be lawful for hearings to be undertaken by a single legal member, but the establishment of three member panels has a long history in professionals regulation and the potential advantages of expert knowledge, rigorous scrutiny and the appearance of fair and independent decision-making. Therefore, the draft Bill requires that a panel must have three members.

9.33 The only exception to the requirement of a three member panel will be cases which are decided without a hearing. In circumstances where both parties agree that a case should be decided on the papers and on how the case should be concluded, we think it would be inefficient and unnecessary always to require a full panel hearing. Such cases could be decided for example by the chair of a panel sitting alone, the head of the Tribunal service, or panels consisting of two persons. Regulators will therefore be given powers to make rules about the steps

which may or must be taken to decide whether it is necessary to hold a hearing. In addition, the person(s) considering the case must agree that a hearing is not necessary, and there will be a requirement for a statement of agreed facts to be agreed so that the factual basis for the decision is on record and indisputable for future purposes.

9.34 We remain of the view that – in order to be seen as fair and impartial – panels should be appointed by a "body" which is separate in operational terms from the regulator. The range of options available to the regulators would include the establishment of an appointments committee or the appointment of an individual who is responsible for this function. We are attracted by the idea that the regulators should be able to appoint a President (including a legal office holder), for these purposes. This could ensure strong leadership for panellists and emphasise the separation of adjudication from investigation. We also think that this body should be responsible for the appointment of specialist advisors, including legal advisors. Moreover, the legal framework should go further and require some of the operational management of the fitness to practise process to be managed by this body. This would further underline the separation between investigation and adjudication. For example, we think that the body should be responsible for the appraisal and continued professional development of panellists. Whilst we would not wish to impose the equivalent of the Medical Practitioners Tribunal Service on all the regulators, in our view these operational matters are sufficiently linked to the appointment process to suggest that they should be the responsibility of the same body. The requirement to appoint a body or individual responsible for appointments would not preclude the regulators from, for example, delegating the responsibility for appointments to an agency or establishing joint arrangements with other regulators (see Part 10).

9.35 In addition, we think that the Professional Standards Authority is ideally placed to promote good practice in how appointments are made, for example by producing guidance and standards. The Authority already has a level of expertise and knowledge on appointment procedures – through its formal role in respect of appointments to the regulatory bodies – which could be usefully applied to the appointment of panellists.

9.36 There was no consensus at consultation as to the appropriate balance between lay and registrant panel members. It was argued by some that only an entirely lay panel would ensure the appropriate level of independence. We accept that appropriate professional input could be provided by advisors, but we do not think the argument is strong enough to require lay panels in every case. Some argued for panels made up entirely of registrants. In our view this would not be acceptable, giving rise to a perception of the profession judging itself. We therefore think that our original proposal was correct and that there should be a requirement that panels must always have at least one lay member. We accept that this could lead to inconsistency, in that some panels may have a lay majority (and potentially an all lay membership) while others could have a registrant majority. Such a potential for inconsistency exists at present. We think that the dangers of prescribing a particular composition in all cases would be far greater.

9.37 We are not persuaded that there is a case for requiring legal chairs of panels. Some argued for such a requirement on the basis that lawyers will understand better the legal issues, while others did so because of concerns about the role of

the legal assessor. We do not think it is necessarily true that lawyers will make better chairs, but it may be that some cases would benefit from a panel being chaired by a lawyer with judicial experience. Moreover, some saw benefits in the role of the legal assessor. This is not something that we think should be mandated by draft Bill and it should be left to the regulators to decide whether or not they want to require legal chairs in all cases. Similarly, we do not agree that there should be procedural consistency in the use of legal advisers, assessors and specialist advisers to panels. This is likely to be something that will need to vary according to the expertise of particular panellists and the facts of the case.

9.38 We also continue to think that members of the regulatory bodies and investigators should be excluded from panel membership. Furthermore, we are persuaded that this prohibition should extend to members of the other regulatory bodies and the Professional Standards Authority's board. This would underline the message that the role of the regulatory body does not extend to operational matters.

9.39 Our recommendations in this area also apply to interim order, restoration and registration appeal hearings.

Recommendation 74: All fitness to practise hearings should be conducted by a panel of at least three members (including at least one lay member). Members of the regulatory bodies (including those from other regulators), members of the Professional Standards Authority's board, and investigators should be prohibited from membership of fitness to practise panels. The regulators would have rule-making powers on other aspects of panels, such as the appointment of advisers and legal chairs.

This recommendation is given effect by clauses 137 to 138 of the draft Bill.

Recommendation 75: The regulators should be required to establish a person or body responsible for appointments, appraisal and continued professional development of fitness to practise and interim order panellists. The Professional Standards Authority should produce good practice guidance and set standards for the appointments processes used by the regulators.

This recommendation is given effect by clauses 28 and 139 the draft Bill.

Recommendation 76: The regulators should have powers to make rules about the circumstances in which hearings are not required and the decisions can be made on the papers. Such decisions could only be made where both parties consent and the decision-maker agrees that it is not necessary to hold a hearing.

This recommendation is given effect by clauses 81, 171 and 182 of the draft Bill.

CASE MANAGEMENT

9.40 Some of the regulators have pre-hearing case management powers. For example, the Health and Care Professions Council is required to conduct fitness to practise proceedings "expeditiously". In order to perform this duty, the Council's practice committees have powers to give directions for the conduct of cases and for the consequences of failures to comply with such directions.[13] The Council has issued standard directions which apply automatically in every case. Those standard directions relate to the exchange of documentation, notices to admit facts, documents and witness statements, and the withdrawal of admissions.[14] The General Medical Council is required to assign one or more legally qualified case managers when an allegation is referred for a fitness to practise, review or restoration hearing. A case manager – rather than a panel – may issue directions to both parties on a range of matters.[15] The consultation paper proposed that the statute should give all the regulators powers to establish rules for pre-hearing case management.[16]

Consultation responses

9.41 All those who expressed a view agreed with this proposal. It was questioned whether the establishment of case management rules should be a duty rather than a power on the basis that there are no circumstances where case management would be inappropriate. Most felt there should be sanctions for non-compliance with directions, whilst recognising that the use of such sanctions may be less relevant in a regulatory context. It was argued that case managers must be independent of the regulator and there must be a right of appeal or review of decisions. A number of consultees suggested that existing case management arrangements are heavily weighted against registrants. Some felt that case management is only effective if it is undertaken by the panel chair.[17]

Discussion

9.42 The use of pre-hearing case management for fitness to practise proceedings received unanimous support at consultation; it was even suggested that the use of case managers should be a statutory requirement. We remain of the view that

[13] Health and Social Work Professions Order 2001, SI 2002 No 254, art 32(3).

[14] Health and Care Professions Council, *Practice Note: Case Management and Directions* (2011).

[15] General Medical Council (Fitness to Practise) Rules 2004, SI 2004 No 2608, r 16.

[16] Joint CP, paras 9.27 to 9.32.

[17] Consultation Analysis, paras 9.45 to 9.53.

the regulators should be given a power rather than a duty. Some of the smaller regulators who have relatively few fitness to practise cases may not need case management in all cases, or a system of case management at all. We also think that the case management power should also apply to interim order, registration appeal and restoration hearings.

9.43 Several consultees made suggestions about how this power should be implemented, such as independent case managers, an appeals mechanism, sanctions and the ability to cancel cases. Due to the cost implications, we do not think that the draft Bill should mandate specific forms of case management. However, we do think that the draft Bill should ensure clarity about the status of case management. Therefore it should ensure that – when a regulator exercises its rule-making power – case managers shall act independently of the parties and only exercise any power to give directions to secure the just, expeditious and effective running of proceedings.

9.44 The regulators would have broad powers to make rules about pre-hearing case management, including making provision for a fitness to practise panel to draw such inferences as it considers appropriate in respect of the failure by a party to comply with directions issued by a case manager. We do not think that any further sanctions should be available to case managers.

9.45 The use of case management by panels is considered later in this Part during the discussion of the overriding objective.

Recommendation 77: The regulators should have powers to establish rules for pre-hearing case management.

This recommendation is given effect by clauses 82, 172 and 183 of the draft Bill.

Recommendation 78: Case managers should be required to act independently of the parties and given powers to give directions to secure the just, expeditious and effective running of proceedings before fitness to practise panels. Rules may provide that a panel can draw appropriate inferences from the failure by a party to comply with directions issued by a case manager.

This recommendation is given effect by clauses 82(3), 172(3) and 183(3) of the draft Bill.

THE LOCATION OF HEARINGS

9.46 Currently, most of the regulators have discretion to determine where fitness to practise panel hearings take place. However, the Health and Care Professions Council and Nursing and Midwifery Council are required to hold hearings in the part of the UK in which the registrant is situated or resides. The consultation paper asked whether the statute should impose this requirement on all the regulators. [18]

Consultation responses

9.47 A small majority felt that hearings should not be required to be held in the relevant part of the UK. For example, the Nursing and Midwifery Council described its legal duty as "unhelpful, inefficient and costly". Some also argued that such a requirement is often not convenient for all those involved, especially the complainant. It was also pointed out that the General Medical Council has recently moved its hearings to Manchester in order to secure savings for registrants as a whole. Some professional bodies argued it would be difficult to gain a fair hearing in geographically smaller areas. Others pointed to further anomalies that could arise. For example, a registrant living in Northumberland might find it easier to get to Edinburgh than London, or one living in North Wales find Birmingham easier than Cardiff.

9.48 However, many supported a requirement that hearings should take place in the relevant part of the UK. The Health and Care Professions Council described its existing legal duty as "fair and reasonable and accords with principles of open and transparent justice". Others felt that such a requirement will enable the panels to have some local knowledge and intelligence, limit travel and accommodation costs, and prevent regulators simply listing hearings for their own administrative convenience. Others felt there should be a presumption that a hearing will take place in the relevant UK country, but that this could be overridden if necessary. Some consultees argued that the location of the hearing should be where the alleged incident took place or where the person practises rather than resides.

Discussion

9.49 We find the arguments on this issue finely balanced. On the one hand, local hearings may help to secure fairness and justice, and requiring all witnesses and complainants to travel to some central location in London or Manchester is not

[18] Joint CP, paras 9.46 to 9.60.

satisfactory. On the other side, it was argued that a requirement for local hearings will produce anomalies, be impractical and prevent the regulators from delivering cost efficiencies.

9.50 On reflection, we are persuaded that it would be wrong for the regulators to be given complete discretion over the location of hearings. However, we remain concerned about the cost implications of any new requirement to hold hearings in the relevant part of the UK. We think that in cases where an interested party requests a local hearing in the relevant UK country the regulator should be required to comply, unless the regulatory body considers that there are reasons that justify refusing the request. Such reasons might include avoiding significant costs and inconvenience for the other parties, ensuring fairness to all parties, and caring or professional responsibilities of the other parties. The relevant part of the UK would be where the registrant resides or where the incident that led to the allegation took place. Where the regulator receives requests from more than one party for the hearing to be held in different locations, it will be for the regulator to determine the location having considered the merits of each request. In making this decision, the regulators should be able to give consideration to whether any difficulties in attending might be alleviated by the use of technology.

9.51 This recommendation also applies to interim order, restoration and registration appeal hearings.

Recommendation 79: The regulators must comply with an interested party's request that a fitness to practise hearing takes place in the UK country in which the registrant resides or where the incident took place, unless the regulatory body considers that there are reasons that justify refusing the request.

This recommendation is given effect by clauses 84, 174 and 185 of the draft Bill.

RULES OF EVIDENCE

9.52 Most regulators apply the civil rules of evidence to fitness to practise hearings, whereby a panel cannot admit evidence that would not be admissible in civil proceedings, but some use the criminal rules. The relevant civil or criminal rules are those that apply in the part of the UK in which the hearing takes place. However, the strict rules of evidence do not apply to fitness to practise hearings and panels are given discretion to admit a wide range of evidence. For instance, some panels may admit any evidence they consider to be "fair and relevant" to

the case before them – or on the basis of public protection – whether or not such evidence would be admissible in a court of law.

9.53 The consultation paper proposed that all the regulators should be required to apply the relevant civil rules of evidence, and that panels should be able to admit evidence which would not be admissible in court proceedings if the admission of such evidence is fair and relevant to the case.[19]

Consultation responses

9.54 There was widespread support for these proposals at consultation. Almost all consultees referred to the benefits of harmonisation on this issue. It was recognised that most of the regulators already use the civil rules and that fitness to practise proceedings are essentially civil in nature. However, a small number argued in favour of the criminal rules. It was suggested that most of the relevant case law in this field is based on criminal jurisprudence and that the significant sanctions available to panels justified the use of the criminal rules.[20]

Discussion

9.55 It is important to recognise that fitness to practise panels are granted flexibility in determining issues of admissibility based on the concepts of relevance and fairness, with the civil or criminal rules of evidence deployed as guidance. However, we think that the set of rules taken as the starting point should be consistent across all of the regulators, and should be the civil rules. Only three of the regulators, all of whom supported our proposal, currently apply the criminal rules of evidence.[21] The courts have confirmed that disciplinary hearings are civil in character, although there are differences between civil proceedings and fitness to practise proceedings.[22] We also continue to think that the relevant civil rules should be those that apply in the part of the UK in which the hearing takes place.

9.56 The existing provisions which enable panels to admit evidence which would not be admissible in court proceedings appear to be a useful way of ensuring that appropriate evidence can be admitted. At consultation, there was a variety of suggestions about the precise terminology that should be adopted. Having reviewed these suggestions we have decided to include the tests of relevance

[19] Joint CP, paras 9.48 to 9.49 and 9.62 to 9.64.

[20] Consultation Analysis, paras 9.118 to 9.135.

[21] The General Chiropractic Council, General Medical Council and General Optical Council.

and fairness which are relatively straightforward and easy to understand, and subsume most of the additional criteria used by some of the regulators (for example, the public protection test).

9.57 This recommendation also applies to interim order, restoration and registration appeal hearings.

Recommendation 80: Fitness to practise panels should not admit evidence that would not be admissible in civil proceedings in the UK country where the hearing takes place, unless such evidence is relevant and it is fair to admit it.

This recommendation is given effect by clauses 83(2), 173(2) and 184(1) of the draft Bill.

STANDARD OF PROOF

9.58 All of the regulators apply the civil standard of proof, on the balance of probabilities, to fitness to practise hearings. This is either stated in the regulator's rules or required by virtue of section 60A of the Health Act 1999. The consultation paper proposed that the civil standard should be stated in the new statute.[23]

Consultation responses

9.59 The vast majority agreed with this proposal. It was accepted that the civil standard was appropriate in the context of professionals regulation and that there had been no reported difficulties with the move from the criminal standard. However, a small number argued that the civil standard is prejudicial towards registrants and argued for the criminal standard, or suggested that a sliding scale should be adopted in line with the degree of seriousness of the matter under consideration.[24]

Discussion

9.60 Consultation has confirmed our view that the draft Bill should retain the civil standard of proof in fitness to practise hearings. This standard would apply only to findings of fact. Whether those facts amount to one of the statutory grounds and constitute impairment is not a matter which needs to be proved but is a

[22] See *Meadow v General Medical Council* [2006] EWCA Civ 1390, [2007] QB 462 at [33] by Sir Anthony Clarke MR.

[23] Joint CP, paras 9.50 and 9.65.

[24] Consultation Analysis, paras 9.136 to 9.142.

matter of judgment for the panel.[25] Case law has confirmed that there is no flexible civil standard of proof and the seriousness of the allegation has no special significance.[26] We also think that the standard should be applied to interim order, restoration and registration appeal hearings.

9.61 It was argued by some that the sanctions imposed by the regulators can be so devastating to an individual registrant's livelihood and reputation that the criminal standard of proof must apply. We think this would set the threshold too high and could lead to a situation where a registrant survived a challenge to continued registration, but was not regarded as someone who, for example, the NHS could safely employ to look after patients. It is not acceptable that a registrant who is more likely than not to be a danger to the public should be allowed to continue practising because a panel is not certain that he or she is such a danger.

9.62 This recommendation also applies to restoration and registration appeal hearings.

Recommendation 81: The civil standard of proof should apply to all fitness to practise hearings.

This recommendation is given effect by clauses 83(1) and 173(1) of the draft Bill.

PUBLIC HEARINGS

9.63 The default position is that fitness to practise hearings should be in public, meaning that non-parties can attend. This can apply to all or part of the hearing. However, this position can be overridden in certain cases. For example, some panels can hold hearings (or any part of the hearing) in private if this is in the interests of any person, or if the circumstances of the case outweigh the public interest in a public hearing. In cases involving consideration of the practitioner's physical or mental health (health cases) and interim order hearings, the default position is that hearings must be in private except if a public hearing is appropriate or in the public interest.

9.64 The consultation paper proposed that the fitness to practise rules should be brought into line with the Civil Procedure Rules on this matter. In effect, there

[25] *Council for the Regulation of Healthcare Professionals v General Medical Council* [2006] EWHC 464 (Admin).

[26] *Re B (Children)* [2008] UKHL 35, [2009] 1 AC 11 at [13] to [16] and [69] to [73] and *Re Doherty* [2008] UKHL 33, [2008] 1 WLR 1499 at [27] to [29] and [44] to [52].

would be a general rule that a hearing is to be in public unless one or more of the specified exceptions apply.[27]

Consultation responses

9.65 A large majority agreed with the proposal. However, opinion was divided over whether the default position of private hearings should be removed for health and interim order hearings. Many agreed that the exceptions in the Civil Procedure Rules would include interim order and health hearings. However, others argued that without the default position, proceedings will be delayed as a result of applications for private hearings. Many felt that, in principle, professionals have a right to confidentiality about their health care. In respect of interim orders, it was argued that the evidence presented is often untested and limited. A small number felt this should be left to the regulators to decide in rules.[28]

Discussion

9.66 There is a significant public interest in establishing clarity and consistency on when hearings can be held in public and private, and therefore this should not be left to the regulators to deal with in their own rules. However, we accept that the importation of the Civil Procedure Rules on this matter may not achieve the desired clarity and it would be more straightforward to require public hearings unless the particular circumstances justify a private hearing based on the public interest. Our intention is to emphasise that there is a significant public interest in holding fitness to practise hearings in public and that a high threshold should apply for a private hearing.

9.67 This recommendation also applies to restoration and registration appeal hearings.

9.68 We have also considered whether the statute should provide exceptions for health and interim order cases. It is accepted that our proposal might increase delays if registrants were forced to apply for the hearing to be held in private in all such cases. We can see that there are strong reasons in principle that health cases should be held in private since they are essentially rehabilitative in nature and often consider information of a personal and private nature. The public will usually be excluded from any part of a hearing dealing with the registrant's health, even if it is not the basis of the alleged impairment.

[27] Joint CP, paras 9.51 to 9.52 and 9.66 to 9.70.

[28] Consultation Analysis, paras 9.143 to 9.160.

9.69 We are less convinced of the arguments relating to interim order hearings. On the one hand, the evidence of wrongdoing is not tested at this stage and to have details of serious allegations laid out in public could result in irreparable damage to professionals' reputations. On the other hand, such cases raise important issues of public protection. On balance, we think that such hearings should be in private but that the fact that an interim order has been imposed must be made public (see Part 5 on the content of registers). In relation to health and interim order cases, we think that private hearings should not be required where a registrant requests a public hearing, and where the panel considers that it would not be against the public interest for the hearing to be held in public.

Recommendation 82: Fitness to practise hearings should be held in public, unless the particular circumstances of the case outweigh the public interest in holding the hearing in public. Interim order hearings and cases where the health of the registrant is under consideration should be held in private unless a registrant requests a public hearing, and where the panel considers that it is not against the public interest for the hearing to be held in public.

This recommendation is given effect by clauses 85, 175 and 186 of the draft Bill.

WITNESSES ELIGIBLE FOR ASSISTANCE

9.70 "Special measures" can be provided to help witnesses at fitness to practise hearings who may experience particular difficulties giving evidence. Such measures are normally available if the person has a "mental disorder", "impaired intelligence", "physical disabilities", the allegations are of a sexual nature, or the witness has been intimidated.[29] Some regulators are required to treat any witness under 18 as being eligible for such measures, whilst for others the age is under 17. The General Chiropractic Council and General Osteopathic Council have no express provisions for special measures.

9.71 The consultation paper proposed that the statute should follow the approach taken in the Youth Justice and Criminal Evidence Act 1999. In effect, a witness would be eligible for assistance if under 17 at the time of the hearing or if a panel considered that the quality of evidence given by the witness is likely to be diminished as a result of mental disorder, significant impairment of intelligence and social functioning, physical disability or physical disorder. In addition, assistance could be provided if the panel was satisfied that the quality of the evidence given by the witness is likely to be diminished by reason of fear or

[29] See, for example, General Medical Council (Fitness to Practise) Rules 2004, SI 2004 No 2608, r 36.

distress in connection with testifying in the proceedings. We also asked whether the statute should specify which special measures might be provided, such as screening witnesses from the accused, giving evidence by live link and examination through an intermediary. [30]

Consultation responses

9.72 An overwhelming majority agreed with our proposal as to when a witness would be eligible for assistance. In addition, some suggested that panels should be given residual discretion to make special arrangements for any witness where to do so is in the public interest. It was also suggested that victims in sexual abuse cases should be eligible for assistance. Some felt that some of the terminology used in the existing legislation and in our proposal was outdated and offensive in relation to disability. One consultee queried the extent to which this proposal overlapped with the duty to make reasonable adjustments in the Equality Act 2010. However, a small number of consultees disagreed with the proposal. It was argued that all vulnerable witnesses should be given the right to be appropriately supported irrespective of any considerations of whether the quality of evidence given might be diminished. It was also suggested that the definition should be left to rules.

9.73 A large majority agreed that the statute should provide for special measures that can be directed by a panel. Some felt that the statute should prohibit cross examination by the registrant personally in sexual abuse cases. Many argued that the rules should detail which special measures would be provided. It was also argued that special measures should be available for registrants as well as witnesses.[31]

Discussion

9.74 Consultation has confirmed our view that there should be a consistent approach to when witnesses are eligible for special measures. This is a matter of wider public interest and it is not acceptable that some regulators do not have any express provisions, while others have high thresholds for the availability of special measures. We also think that the same criteria should apply to interim order, restoration and registration appeal hearings.

9.75 We agree that children and young people should be automatically entitled to assistance. This should be available to those aged under 18 at the time of the

[30] Joint CP, paras 9.54 and 9.71 to 9.73.

[31] Consultation Analysis, paras 9.161 to 9.176.

hearing. We recommend below that there should be a qualified right to opt out; some 17-year-olds will no doubt do so.

9.76 We accept that some of the language used in our proposal was outdated. The draft Bill should adopt a straightforward approach to the categories of disability, which is less closely linked to medical concepts. We want the legislation to include broad categories that are inclusive and easy for panels and witnesses to understand. It is accepted that there is some overlap between the requirement for reasonable adjustments under the Equality Act 2010 and our proposal. However, the narrow definition of disability in the 2010 Act means that it is necessary for the draft Bill to provide a more inclusive approach and guarantee assistance for a wider range of people. It would therefore be unhelpful to harmonise the language used.

9.77 Some suggested a much broader approach to the provision of special measures, for example by giving panels a residual discretion to provide assistance in all cases and providing a right for all vulnerable witnesses to be appropriately supported. We are concerned that a right to, for example, "appropriate support" would lack precision. There needs to be some degree of specificity to ensure a consistent approach. However, we do agree that some form of residual discretion might be useful. We also agree that special measures should be made available to both parties.

9.78 We also think that the legislation should require panels to consider the views of the witness when deciding if and what type of assistance will be provided. This should include, for example, whether or not the person considers themselves to be disabled or that their evidence is likely to be diminished as a result. People should also be able to decline assistance if they have the capacity or competence to make this decision. The test for capacity would be that set out in the Mental Capacity Act 2005 and, if the person is assessed as lacking capacity, then the panel would be required to make a best interests decision. Children should also be given the opportunity to opt out of special measures. However, this should be subject to a number of safeguards. Panels should take account of factors such as the age and maturity of the witness and the views of their parents.

9.79 We do not consider that the draft Bill should specify the special measures that can be directed by a panel. In our view this approach is too restrictive in the context of fitness to practise hearings. Panels should be given greater flexibility to adopt the measures that they consider most appropriate, having had regard to the views of the witness. It is also likely that such provisions will become out of date as technology progresses. We also think this is an area where the Professional Standards Authority could play an important role through the provision of guidance.

9.80 We accept the argument that special measures should be made available to protect alleged victims in cases involving allegations of a sexual nature. Also, registrants acting in person should be prohibited from cross-examining the alleged victim in such cases. The registrant would be given the opportunity to appoint a representative for this purpose or, as a default position, the regulator must appoint a representative. The only exception to this prohibition should be where the witness consents and the allegation does not amount to a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999.

Recommendation 83: Any person giving evidence before a fitness to practise panel (including the practitioner) should be entitled to special measures, if:

(1) the person is under 18 (unless the person opts out and this would not diminish the quality of their evidence);

(2) the quality of evidence given by the person is likely to be diminished as a result of physical disability, learning disability, mental health problems, an illness or health condition or a dependency on drugs or alcohol, or fear or distress in connection with testifying; or

(3) the proceedings relate to matters of a sexual nature and the person is an alleged victim.

In deciding whether or not the quality of evidence is likely to be diminished, the panel must take into account the views of the person concerned.

Panels should have powers to offer special measures to a person not entitled to them if this is in the public interest.

This recommendation is given effect by clauses 177 and 188 of the draft Bill.

Recommendation 84: The registrant should not be permitted to personally cross-examine the alleged victim in a case involving allegations of a sexual nature. There should be provision for a representative to be appointed for this purpose. The only exception should be if the witness gives written consent and the allegation does not amount to a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999.

This recommendation is given effect by clauses 177(12) to (14) and 188 (12) to (14) of the draft Bill.

THE OVERRIDING OBJECTIVE

9.81 There are long standing concerns about the length of time it takes the regulators to complete fitness to practise proceedings.[32] In the consultation paper we acknowledged the limitations of the law in addressing matters such as delays, compared to other factors such as resources and culture. We also noted that the Health and Care Professions Council's governing Order requires that fitness to practise proceedings must be conducted "expeditiously", and asked whether a

[32] For example, 2012 Accountability Hearing with the Nursing and Midwifery Council, Report of the House of Commons Health Committee (2012-13) HC 639, paras 29 to 31.

similar provision should be included in the statute.[33] However, we suggested that a better approach would be to provide that the overriding objective of the Civil Procedure Rules – that cases must be dealt with justly, which includes amongst other matters ensuring that cases are dealt with expeditiously and fairly – is made part of the regulators' fitness to practise procedures.[34]

Consultation responses

9.82 At consultation, a large majority felt that the overriding objective of the Civil Procedure Rules should be incorporated into fitness to practise procedures. However, the Administrative Appeals Chamber of the Upper Tribunal and the Administrative Justice and Tribunals Council suggested that, since fitness to practise adjudication is more akin to a tribunal than court process, the rules governing the unified tribunal system might provide a more appropriate model.

9.83 On the other hand, some did not support the proposal. It was argued that an overriding objective would add little to existing fair trial principles such as article 6 of the European Convention on Human Rights and might provide another source of procedural argument and delay. Others felt that the overriding objective did not recognise sufficiently the regulators' public protection objective, and would need to be trumped in cases where the rights of registrants conflicted with this objective.

9.84 Some favoured the inclusion of a duty to "conduct proceedings expeditiously" in order to reflect the need to balance the interests of the registrant against the need to act in the public interest. However, several consultees opposed this wording since it would encourage a culture of rushed proceedings.[35]

Discussion

9.85 At consultation, there was widespread support for incorporating the overriding objective of the Civil Procedure Rules into fitness to practise procedures. In addition, a strong case was put forward that the overriding objective of the Tribunal Procedure Rules might be more appropriate. This objective is adapted from the Civil Procedure Rules. In general terms, it provides that tribunals must try to ensure that the parties are on an equal footing, that cases are dealt with expeditiously and fairly in a way which is proportionate to the "complexity or

[33] Health and Social Work Professions Order 2001, SI 2002 No 254, art 32(3).

[34] Joint CP, paras 9.28 and 9.32.

[35] Consultation Analysis, paras 9.54 to 9.65.

importance of the issues" and that unnecessary expense is avoided.[36] We agree that there are similarities between fitness to practise panels and tribunals, such as the relative informality of hearings, the use of panels and inclusion of professional and lay members to provide expertise. However, there are differences, which also distinguish fitness to practise from court proceedings; for example, a tribunal is independent of the parties and the chairs have judicial status. On balance, we accept that fitness to practise hearings are closer to tribunal hearings than civil court proceedings, and therefore the overriding objective of the Tribunal would be more relevant.

9.86 We disagree that such an objective would be unnecessary or inappropriate. As noted earlier, the application of article 6 to hearings can be uncertain and some procedural defects may be rescued by the right of appeal to the higher courts. Also, article 6 sets out a general framework and does not directly speak to the unique circumstances of a fitness to practise hearing. The objective restates and provides a synthesis of article 6 which we consider would be of more practical relevance to hearings.

9.87 We do not agree with the suggestion that an objective to deal with cases fairly and justly would be incompatible with the public protection objective in clause 3. But it is important to recognise that, in the context of fitness to practise adjudication, an objective to deal with cases fairly and justly cannot be the "overriding" objective. A panel is required to consider all the objectives when carrying out its functions and weigh them in the balance according to the circumstances of the particular case. The draft Bill underlines this position by listing the general objectives of panels, including those established under clause 3. We think it is sufficiently clear that – if there were some tension between the objectives – the main objective of public protection would take precedence.

9.88 We also think that in order to give effect to the objective to deal with cases fairly and justly, the parties should be required to co-operate with the panel. Panels would be entitled to draw inferences where parties failed to comply with this duty. The objective would also apply to interim order, restoration and registration appeal hearings.

[36] See, for example, the Tribunal Procedures (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, SI 2008 No 2699, r 2.

Recommendation 85: Fitness to practise panels should have the general objective of dealing with cases fairly and justly (and meet the objectives set out in clause 3 of the draft Bill). The parties should be required to co-operate with the panel, and panels would be entitled to draw inferences where parties failed to comply with this duty.

This recommendation is given effect by clauses 80, 170 and 181 of the draft Bill.

PROCEDURAL MATTERS

9.89 The regulators have established detailed and wide ranging rules governing the conduct of fitness to practise hearings. These rules cover matters including representation, attendance of the registrant, adjournment and postponement, joinder, order of proceedings and the pronouncement of judgment. At consultation we proposed that – except on the specific matters discussed above (namely location, rules of evidence, standard of proof, public hearings, entitlement for assistance and the overriding objective) – the statute should not standardise fitness to practise hearings. Instead, the regulators should be given broad rule-making powers.[37]

Consultation responses

9.90 A large majority agreed with this proposal. However, a significant minority challenged our approach and argued that the statute should go much further in imposing consistency in this area. For example, it was argued that the benefits of the proposed flexibility do not outweigh the benefits that would be achieved by ensuring greater procedural consistency. The Professional Standards Authority suggested that as a result of its experience of reviewing all the final fitness to practise decisions made by all the regulators, it could see little advantage in the variations in the procedures that are currently in place.[38]

Discussion

9.91 It is our view that, given the significant public interest in fitness to practise hearings, the conduct of such hearings is an area where greater consistency should be imposed. We have reviewed comprehensively the various aspects of all of the regulators' fitness to practise rules. On many matters we think that the draft Bill should impose consistency but there should also be some flexibility. Our intention is therefore to create a two-tier legal framework governing fitness to practise hearings. First, the draft Bill will impose consistency on certain matters

[37] Joint CP, paras 9.46 to 9.60.

[38] Consultation Analysis, paras 9.96 to 9.101.

concerning due process and include provisions which clarify the powers of panels. This would include the right to be represented and make representations, the issuing of witness summons, and the ability of panels to postpone, adjourn, and join cases and allegations.

9.92 Secondly, on procedural matters we intend that there should be a degree of flexibility, while also allowing for the option of greater consistency in the future if this is seen as necessary. Regulators should be required to make rules about the procedures to be followed in fitness to practise hearings. The draft Bill enables the Government to produce guidance about the contents of those rules, including doing so in the form of "model rules". These rules could apply to any or all aspects of hearings not addressed by the draft Bill. The Government could decide whether to draft the rules itself, or arrange for this to be undertaken by another body such as a legal firm or the Professional Standards Authority. In either case, the model rules would be subject to the same duty to consult as applies to the Secretary of State's regulation-making powers. The regulators would be required have regard to any guidance issued by the Government. If the Government has made model rules, the regulators would be required to publish a document explaining any significant departures from or additions to the model rules.

9.93 Our recommendations in this area also apply to interim order, restoration and registration appeal hearings.

Recommendation 86: Consistency should be imposed on certain matters concerning due process and the powers of fitness to practise panels (such as the right to representation, witness summons and powers to join cases).

This recommendation is given effect by clauses 86, 88, 176, 178, 187 and 189 of the draft Bill**.**

Recommendation 87: The regulators should be required to make rules on the procedures to be followed in fitness to practise hearings.

This recommendation is given effect by clauses 89, 179 and 190 of the draft Bill**.**

Recommendation 88: The Government should be given a power to give guidance about the content of fitness to practise hearings rules, including in the form of model rules.

This recommendation is given effect by clauses 89(2), 179(2) and 190(2) of the draft Bill**.**

FINAL SANCTIONS AND OTHER DISPOSALS

9.94 All fitness to practise panels have powers to impose sanctions following a finding of impairment. It is well established in case law that the purpose of sanctions is not punitive but to protect the public, although they may have a punitive effect.[39] The main sanctions are removal from the register, suspension and conditions of practice orders. Many panels also have powers to agree undertakings as an alternative to a formal sanction, and to grant voluntary removal from the register. Some, but not all, panels may issue warnings and a small number can issue fines. Most of the regulators have powers to take interim measures pending a direction of a fitness to practise panel taking effect, known as an immediate order. Some regulators use interim orders for this purpose.

9.95 The consultation paper argued that harmonising these sanctions would help to promote legal clarity and further safeguard patients and the public. We provisionally proposed that all fitness to practise panels should have powers to order removal from the register, suspension, conditions, and warnings – and agree undertakings and voluntary erasure. The regulators would have powers to introduce immediate orders (or use interim orders for this purpose). The Government would have a regulation-making power to introduce new sanctions and powers (including financial penalties and cost awards) or remove sanctions.

9.96 The consultation paper also noted the range of different terms used to describe the same or similar sanctions. We asked for views on whether the nomenclature used in the consultation paper to describe the sanctions and consensual disposals accurately conveyed their purpose. [40]

9.97 We also proposed that the test for imposing any final sanction or disposal should be to protect, promote and maintain the health, safety and well-being of the public (and maintain confidence in the profession). This was in accordance with the proposed main duty of the regulators set out in Part 3 of the consultation paper. We also proposed that the regulators should be given broad rule-making powers on how sanctions are imposed. For example, the regulators could establish that erasure is not available where impairment is found on the basis of adverse physical or mental health, that cautions are available where there is no finding of

[39] See, for example, *Raschid v General Medical Council* [2007] EWCA Civ 46, [2007] 1 WLR 1460 at [18] and *Meadow v General Medical Council* [2006] EWCA Civ 1390, [2007] QB 462 at [32].

[40] Joint CP, para 9.89 to 9.118.

impairment or that some sanctions can only be extended by, for example, a year at a time.[41]

Consultation responses

9.98 An overwhelming majority agreed that fitness to practise panels should have powers to order removal and suspension from the register, or impose conditions and warnings. Some queried the role of suspensions because of their punitive element. Others argued that warnings should not be available at both the investigation and sanction stages, as their effect and purpose will be confused. Several consultees suggested additional sanctions, such as a power to order financial reimbursement to the patient, a requirement to make an apology and a power to end pension rights. Some pointed out that there should be a power to take no further action after a finding of impairment.

9.99 The vast majority agreed that fitness to practise panels should have powers to agree undertakings and voluntary erasure. However, consultees' concerns about the use of consensual disposals were noted in Part 8 in relation to the range of actions available to the regulators at the investigation stage. An overwhelming majority agreed that the regulators should have powers to introduce immediate orders (or use interim orders for this purpose). However, a number of consultees felt there should be more consistency on this matter.

9.100 A large majority agreed that the Government should be given a regulation-making power to introduce new sanctions, or remove existing sanctions. Opinion was divided on whether this should include the ability to introduce financial penalties and awards of costs. For example, some felt that costs awards help to ensure effective case management and reduce unreasonable behaviour. Others felt that such awards served as a disincentive to the registrant challenging the allegation and mounting a full defence. It was argued that costs should never be borne by the regulators since this would mean that registrants indirectly foot the bill through increases in fees. Several consultees argued that costs awards would only achieve an increase in the cost of the procedures themselves, as awards would be the matter of argument between the parties, and would also be likely to give rise to satellite litigation.

9.101 A majority agreed that the language did convey the sanctions' purpose. Many consultees combined their answer to this question with their response on the nomenclature used to describe the disposals available at the investigation stage (see Part 8). Some felt that the term "warning" was not appropriate and preferred

[41] Joint CP, paras 9.112 to 9.113.

"caution". Others argued that "warnings" can be misunderstood as amounting to a mere "slap on the wrist". It was suggested that the term "undertakings" does not recognise that there are conditions or monitoring in place and that "conditions" or "agreed conditions" are more appropriate. Several consultees argued that "erasure" is not clear. Alternative suggestions included "striking off" and "removal from the register". Others felt that "striking off" or "struck off" were emotive and outdated. A number of consultees argued that the language was less important than how the sanctions are communicated to the public.[42]

9.102 A significant majority agreed with our proposed test for imposing sanctions. A number of consultees pointed out that the use of the word "and" implies that a sanction could only be imposed on the ground of public confidence where there was also a risk to the public, and suggested that "or" would be more appropriate. It was also argued that the test should be expanded to include upholding professional standards and maintaining confidence in the system of regulation.

9.103 The vast majority agreed that the regulators should be given broad powers to make rules in relation to imposing sanctions and consensual disposals. However, many consultees also argued for a degree of consistency over certain matters such as the length of time that a sanction can be imposed and the prohibition of erasure where impairment has been found on the basis of adverse health. One consultee referred to the need for a "common sanctions framework" across the regulators. Some concern was expressed about the guidance given to panellists by the regulators, which it was argued amounts to advice given to adjudicating panellists by the prosecuting arm.[43]

Discussion

9.104 We remain of the view that giving each of the regulators' fitness to practise panels a comprehensive and uniform range of powers to deal with cases would help to promote legal clarity, and further safeguard patients and the public. Consultation has confirmed that the sanctions available following a finding of impairment should be removal from the register, suspension, conditions, warnings or taking no further action. Where there was no finding of impairment, panels would be able to take no action, issue advice or warnings.

9.105 Some concern was expressed about suspension since it was perceived as containing a punitive element. However, we think that it serves primarily to guide

[42] Consultation Analysis, paras 9.228 to 9.292.

[43] Consultation Analysis, paras 9.267 to 9.279.

future behaviour and the punitive effects are incidental. In respect of warnings, we do not agree that it necessarily follows that, because warnings can be imposed as a sanction by a panel, they should not also be available at the investigation stage. Our reasoning on this point is set out in Part 8.

9.106 Opinion was divided over whether panels should have power to issue financial penalties and costs awards. It was notable that there was less support at consultation for the former, and those who supported costs awards normally accepted that they should be available in limited circumstances where the conduct of a party has been unreasonable. We think it is correct that the Government's regulation-making powers should include the ability to introduce new sanctions and powers, including financial penalties and costs awards. This would also extend to the ability to introduce any of the new powers suggested at consultation.

9.107 As described in Part 8, the topic of consensual disposals generated lively debate at consultation. We concluded in that Part that consensual disposals should continue to be an option for the regulators at the investigation stage. As a safeguard, the Professional Standards Authority would have power to refer such disposals to the higher courts. There are even stronger reasons for making consensual disposals available as an option for fitness to practise panels, not least of which is the public record of such decisions. In addition, the Professional Standards Authority already monitors and has the power to refer these decisions to the courts. We do not consider that there is any reason why fitness to practise panels should not have powers to agree undertakings and voluntary removal. We are also attracted by the suggestion that the regulators should be required to keep a list of those who have removed themselves from the register voluntarily, and agree a published statement of agreed facts with the registrant concerned.

9.108 We agree with consultees that a parallel system of interim orders and immediate orders has the potential to create confusion. However, we are satisfied that the ways in which they need to operate are sufficiently different to justify retaining the two systems. Immediate orders will not be subject to review in the same way as interim orders and the duration will need to be linked to appeal processes.

9.109 The introduction of a single statute offers an opportunity to harmonise the language used to describe the various sanctions. This would help to ensure a common shared language across the regulators and assist legal clarity. However, there was little consensus on the most appropriate terms (although most agreed with the language adopted in the consultation paper). We have reviewed all the suggestions made at consultation. The main change from the language adopted in the consultation paper in this respect is the use of removal from the register rather than erasure.

9.110 We think that the test and rules for issuing sanctions are areas where consistency is important due to the significant public interest in the outcome of case. For example, we do not think it is appropriate for some regulators to remove from the register in cases where a practitioner's fitness to practise is impaired solely on health grounds, while others do not. Similarly, we do not think that the time periods for suspensions or imposing conditions should vary between the regulators.

9.111 As discussed earlier, the draft Bill will require panels in carrying out their functions to deal with cases fairly and justly and apply the general objectives provided for in clause 3. Our intention is that, in the event of any tension between the objectives, the main objective of public protection would take precedence. But as noted in Part 3, all three factors contained in clause 3 (including public confidence in the profession) must be weighed in the balance by panels, irrespective of the particular grounds being considered.

9.112 We do not consider that the draft Bill needs to impose a "common sanctions framework" across the regulators. General public law requirements already require panels to make rational and proportionate decisions when deciding what sanction, if any, to impose. We expect that this requirement should be supported by the indicative sanctions guidance issued by the regulators. The draft Bill sets out the sanctions available, starting with the least restrictive, and we intend that panels should consider the available sanctions in that order.

9.113 Thus the first question for panels should be whether to take action where a registrant's fitness to practise is found to be impaired, though taking no action is only likely to be appropriate in exceptional circumstances. Next, panels should have the power to consider warnings where it would be inappropriate to take no action at all following a finding of impairment.

9.114 Panels should then be able to consider imposing conditions where a more severe sanction than a warning is appropriate. All of the regulators can impose conditions on registrants for a maximum of three years, and we consider that this is a reasonable upper limit in light of the sanction's objectives. The review process for conditions is considered later in this Part.

9.115 Panels should consider suspending a registrant where a more severe sanction than conditions is appropriate. All of the regulators have the power to suspend a registrant for a specified period, which is a maximum of 12 months in the first instance in the majority of cases. This strikes a fair balance between the need to protect the public and the impact on the registrant and their ability to return to practice.

9.116 Some regulators can suspend indefinitely where a panel has determined that the practitioner's fitness to practise is impaired by reason of adverse physical or mental health, and they have already been suspended for two years. We have some concerns about the use of indefinite suspension – since arguably removal would be appropriate in such cases – but accept on balance that indefinite suspension is more suitable. In particular, it would enable a registrant to seek a review if, for example, their health condition improves, as opposed to making an application for restoration which can only be done five years after removal. The review provisions for suspensions (and indefinite suspension) are discussed later in this Part.

9.117 The severest sanction is removal from the register. All regulators but one are prohibited from removing registrants whose fitness to practise is impaired solely on the grounds of adverse physical or mental health. The draft Bill retains the power to remove a person from the register as the sanction of last resort, but provides that this option is not available in cases where the panel has concluded

that a practitioner's fitness to practise is impaired on the grounds of adverse physical or mental health (and no other ground).

9.118 Several consultees raised concerns that regulators can exert influence over fitness to practise panels by issuing indicative sanctions guidance and sets of pre-worded conditions that can be imposed by panels (known as "banks of conditions"), thereby undermining the separation of investigation and adjudication. We have a good deal of sympathy with these concerns. However, it is difficult to envisage how guidance could be issued in a way that is sufficiently independent to address these concerns unless a separate tribunal service (akin to the Medical Practitioners Tribunal Service) is established. We have considered giving the Professional Standards Authority a role in producing a common framework or standards for such guidance. However, this would not address the key underlying concern – the need to separate investigation and adjudication – since the production of the guidance would continue to be undertaken by the regulator. We therefore think that the most that the draft Bill can achieve in this respect is to require that – where a regulator has established a separate tribunal service – the guidance must be delivered by that body. This was addressed in the earlier discussion on Government regulation-making powers to introduce a new adjudication system. Otherwise the draft Bill gives the regulators express powers to publish guidance for fitness to practise and interim order panels. The panels would be required to have regard to such guidance.

9.119 We consider that panels should have powers to issue advice or a warning in cases where a registrant's fitness to practise is found not to be impaired. As noted in Part 5, the register would need to indicate that there had been no finding of impairment.

Recommendation 89: All fitness to practise panels should have the same powers to impose sanctions or otherwise dispose of cases. The sanctions would be advice, warnings, conditions, suspension and removal from the register. All panels would be able to agree undertakings and voluntary removal, and issue immediate orders pending the outcome of any appeal to the higher courts. The Government would have regulation-making powers to amend the powers available to panels.

This recommendation is given effect by clauses 143 to 150 of the draft Bill.

Recommendation 90: The regulators should have powers to publish guidance for fitness to practise and interim order panels. The panels would be required to have regard to such guidance.

This recommendation is given effect by clause 194 of the draft Bill.

REVIEW HEARINGS

9.120 Fitness to practise panels are normally required to review conditions and suspension orders before they expire. If a registrant has been suspended for at least two years, several regulators can extend the order indefinitely (subject to further reviews). Most panels can exercise this power if ill health is the only impairing factor. The consultation paper proposed that the regulators should be required to establish a system of review hearings for conditions of practice and suspension orders. We also proposed that the regulators would have powers to hold review hearings for warnings and undertakings. All review hearings would be

carried out by fitness to practise panels. We also proposed that the regulators should have broad rule-making powers to establish the procedures for such hearings.[44]

Consultation responses

9.121 An overwhelming majority agreed that regulators should be required to establish review hearings for conditions and suspensions. A significant majority agreed that the regulators should have powers to establish review hearings for warnings and undertakings. It was further argued that the registrant should have the right to instigate a review hearing and to appeal against review decisions. Several consultees felt that there should be a duty to establish review hearings for undertakings since they are in effect conditions that have been imposed with a registrant's consent. Some disagreed with reviews of warnings since no action would be required following a warning.

9.122 The vast majority agreed that the regulators should have broad rule-making powers to establish the procedures for review hearings. However, many argued that full hearings are not always necessary especially if they are uncontested. A number of consultees argued for greater consistency in the procedures adopted.[45]

Discussion

9.123 We think that the significant public interest in reviewing fitness to practise sanctions makes greater consistency appropriate in this area. It is accepted that these provisions should also extend to undertakings, which are in effect agreed conditions.

9.124 We believe that there should be a consistent process for initiating review hearings. First, a hearing must take place if this has been directed by the original panel, or agreed in the case of undertakings. A second reason for a review hearing should be that new evidence has come to light suggesting that a review hearing is necessary (for example, if there has been a breach of conditions). The regulator should be responsible for monitoring compliance with the sanctions and be able to refer matters to the panel if necessary. We do not agree that registrants should have the right to a review hearing, but they should be able to request the regulator to treat a matter as new information requiring a review.

[44] Joint CP, paras 9.119 to 9.123.

[45] Consultation Analysis, paras 9.293 to 9.308.

9.125 Some consultees suggested that review hearings should be undertaken through informal meetings with the registrar. We think that it is important that all aspects of fitness to practise adjudication are kept separate from investigation. However, it should be possible for reviews to be undertaken on the papers without a hearing but, as noted earlier, only in cases where both parties agree that a case should be decided on the papers and on how the case should be concluded, and, the person(s) considering the case share that view.

9.126 Our intention is that the legislation should provide the same set of options for all panels reviewing conditions. Panels should be able to decide that the original order should be confirmed or be revoked, to extend or reduce the period of the order, or to adjust or remove any of the conditions. Any extensions should be for up to three years at a time. There should be no limit to the number of such extensions. Panels should have the power to substitute any other sanction or form of disposal that they consider more appropriate. For example, a persistent and serious breach of conditions may mean that removal becomes necessary.

9.127 In the case of undertakings, the panel should have the ability to vary the agreement with the registrant in the same way. Thus the panel could confirm or revoke the agreement, extend or reduce the duration of the agreement, or adjust or remove any of the conditions. Extensions should be for a period of no more than three years. The panel should have powers to impose any sanction or other form of disposal it considers more appropriate.

9.128 The legislation should also provide the same set of options for a panel when reviewing suspension orders. Thus the panel could confirm or revoke the order, extend the period of the order for up to 12 months or reduce it, or impose any other sanction or consensual disposal. In addition, if a registrant has been suspended for at least two years, panels should be able to extend the order indefinitely (subject to reviews) in cases where impairment has been determined by reason of adverse physical or mental health. The draft Bill provides that panels must review an indefinite suspension order (in adverse health cases only) where the person concerned so requests, and at least 24 months have elapsed since the previous review. The panel should be given powers to confirm the order, terminate the order or impose any other sanction (except removal) or consensual disposal.

9.129 We have also concluded that the legal framework governing the procedures for a review hearing should be consistent – as far as possible – with the approach we have set out for fitness to practise panels (see above). The draft Bill therefore imposes consistency on certain matters concerning due process and the powers of panels. On matters concerning the procedure of a hearing, the draft Bill enables the Government to make “model rules”.

9.130 We do not intend that warnings should be subject to the review process. The imposition of a warning does not require any remedial action that could be reviewed at a hearing, and if there were further concerns about a registrant’s behaviour these could be dealt with through the normal fitness to practise processes. The registrant should be able to appeal to the higher courts against the imposition of a warning.

Recommendation 91: Fitness to practise panels should be required to review conditions, suspensions and undertakings as directed in the original order or agreement, or if new evidence comes to light indicating that a hearing is desirable. The options available to a panel should be to confirm the order, extend or reduce the period of the order, revoke or vary any conditions or impose any other sanction or consensual disposal. In the case of undertakings, the panel should have the ability to change the agreement with the registrant in the same way.

This recommendation is given effect by clauses 157 to 163 of the draft Bill.

Recommendation 92: Fitness to practise panels must review an indefinite suspension order (health only cases) where the person concerned so requests, and at least 24 months have elapsed since the previous review. The options available to a panel would be to confirm the order, terminate the order or impose any other sanction (except removal) or consensual disposal.

This recommendation is given effect by clause 162 of the draft Bill

APPEALS

9.131 A professional is normally entitled to appeal against any sanction affecting his or her registration to the High Court in England and Wales, the Court of Session in Scotland or the High Court in Northern Ireland. The basis of the appeal can include issues of fact or law. The consultation paper proposed that this right of appeal should be retained in the new statute.[46]

Consultation responses

9.132 The vast majority agreed with this proposal. However, several consultees pointed out that the costs involved in pursuing an appeal to the higher courts make this more of a theoretical right than a real one. A small number of consultees suggested that the regulators should be given powers to establish an internal appeal process. The General Chiropractic Council pointed out that under its legislation it has powers to establish an internal appeals committee if a registrant is found unfit to practise due to ill health; a further appeal lies to the High Court.[47]

[46] Joint CP, paras 9.129 to 9.131.

[47] Consultation Analysis, paras 9.328 to 9.333.

Discussion

9.133 The right to appeal to a court of full jurisdiction is an important aspect of the fitness to practise procedure. It ensures that professionals receive a full reconsideration of their case based on issues of fact and law.

9.134 Consultation raised an interesting issue of whether the regulators should be given powers to reconsider their decisions more broadly. Currently, the only recourse for a registrant whose fitness to practise is found to be impaired is to the higher courts. A small number of the other professions (for example, accountancy) have an intermediate stage which consists of an internal appeals process. The advantages of such an appeal process would be that it could quickly put right any errors made by a fitness to practise panel and will save the costs of a court hearing. This would however be a radical change to the existing fitness to practise process and might be seen as undermining a practitioner's right to a full court hearing. It would also have significant costs implications for registrants since we would expect that such a system would need to be introduced across all the regulators. We think, therefore, that the right of appeal should continue to be to the higher courts.

Recommendation 93: Practitioners should continue to have a right of appeal against certain decisions of a fitness to practise panel to the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.

This recommendation is given effect by clause 166 of the draft Bill.

PART 10
JOINT WORKING

10.1 This Part sets out how the new legal framework should make provision for the regulators to be able to work together, and with other organisations. It covers:

(1) interfaces with other regulatory systems;

(2) joint working; and

(3) duties to co-operate.

INTERFACES WITH OTHER REGULATORY SYSTEMS

10.2 Health and social care professionals regulation does not exist in a vacuum. The functions of the regulators frequently cross organisational and legal boundaries. Often the same function or a similar function is undertaken by different organisations. For example, there is a complicated landscape governing complaints about health and social care professionals. As well as regulators' fitness to practise procedures, there are locally managed systems such as employment disciplinary processes, the NHS and social care complaints procedures, and the Performers List system. National regulators such as the Care Quality Commission and Health Service Ombudsman handle individual complaints, as well as publishing reports and good practice guides which draw attention to poor performance trends across the sectors. Furthermore, conduct and performance issues may give rise to a serious untoward incident investigation, a safeguarding enquiry, a serious case review or a criminal prosecution. The civil and criminal justice system can also hear allegations of medical and clinical negligence, murder, manslaughter and assault charges. Indeed, criminal prosecutions are often undertaken in parallel with fitness to practise proceedings.

10.3 The consultation paper asked for views on how the legal framework might encourage clearer interfaces between the various regulatory systems. We also welcomed further evidence about the practical difficulties that may arise as a result of parallel criminal and fitness to practise proceedings.[1]

[1] Joint CP, paras 12.2 and 12.10.

Consultation responses

10.4 A range of views were expressed on encouraging clearer interfaces between the regulatory systems. Many pointed to the need for greater co-operation between the regulators and other organisations, but felt this was a matter of good practice rather than something that should be addressed through law reform. Some pointed to resistance from the regulators towards joint working. A number of consultees gave examples of practical measures that could assist, such as public awareness campaigns and a central website for all the regulators. Others felt the statute could define the interfaces through, for example, duties to co-operate, duties to share information and greater clarification of existing powers.

10.5 Some consultees pointed to the practical difficulties that arise as a result of parallel criminal and fitness to practise proceedings. Delay was the most widely reported problem. Others commented on the increased demands on witnesses required to participate in two cases and the financial implications of the regulators duplicating criminal investigations.[2]

Discussion

10.6 The consultation paper suggested that it would not be possible (and would be beyond our remit) to define precisely the roles and responsibilities of, and relationships between, the whole range of organisations operating in the area of health and social care professionals regulation. Most consultees agreed with this view, although others did not consider that the law offered an appropriate solution in any event. We do not agree that the law cannot assist in managing the interfaces – for example, duties to co-operate and partnership arrangements will assist (these are discussed later in this Part) – but clearly there are limitations to what can be achieved. Although we make no specific recommendations in respect of this question, consultation has identified important issues which have helped to inform our thinking on issues such as the power to require information (see Part 6).

10.7 Consultation suggested that problems can arise as a result of parallel fitness to practise and criminal proceedings, including delay of the fitness to practise proceedings which can in turn lead to difficulties in proving current impairment. We do not consider that any legislative change within our remit would address these issues, and most are a natural consequence of having parallel systems where one – the criminal justice system – must rightly take precedence. Most of these difficulties will have to continue to be addressed on a practical basis.

[2] Consultation Analysis, paras 12.1 to 12.33.

However, we consider that duties to co-operate may assist in respect of issues such as information sharing. This is considered later in this Part.

JOINT WORKING

10.8 There have been numerous calls for increased collaboration between the regulators themselves and between the regulators and other bodies. The main benefits include the reduction of unnecessary costs, meeting patient expectations, facilitating learning within health care organisations and improving the ability of the system as a whole to deliver public protection.[3] There is some evidence of the development of shared approaches, such as the agreement of memoranda of understanding between the Care Quality Commission and the regulators.[4] However, the report of the public inquiry into events at the Mid Staffordshire NHS Trust suggested that further work is required in this respect.[5]

10.9 The consultation paper asked for further views on the perceived practical and legal difficulties associated with joint working. We proposed that the statute should include a permissive statement to the effect that each regulator may carry out any of its functions jointly with any other regulators or organisations. We also proposed that the statute should enable formal partnership arrangements to be entered into between any regulator and one or more other organisations (including the other regulatory bodies) in relation to the exercise of regulators' statutory functions. The statute would provide that any such arrangements do not affect the liability of the regulator for the exercise of any of those functions.[6]

Consultation responses

10.10 A number of consultees identified practical and legal difficulties associated with joint working. These included the different working practices of each regulator, poor communication, and uncertainty over data sharing powers. Some consultees pointed to individual regulators being concerned that their independence would be compromised and "defensive professional posturing" being a barrier to joint professional ventures in the past.

[3] Kings Fund, *Building Effective Interfaces: Systems for Complaints, Litigation, Regulation, Discipline and Clinical Governance* (2002) p 1.

[4] See, for example, the Memorandum of Understanding between the Care Quality Commission and the General Medical Council, available at http://www.gmc-uk.org/about/partners/7500.asp (last visited 15 March 2013).

[5] *Final Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry* (2013), vol 2, pp 1049 and 1050.

[6] Joint CP, paras 12.11 to 12.23.

10.11 An overwhelming majority agreed that the statute should include a permissive statement to encourage joint working. This was mostly on the basis that joint working should be encouraged and promoted. Our proposal on formal partnership arrangements received unanimous support. Some consultees suggested particular partnerships that would be beneficial, such as between the General Chiropractic Council and the General Osteopathic Council, and the regulators and the Care Quality Commission. Some emphasised that any partnership working must not affect the regulators' liabilities for their functions. However, some concerns were expressed. For example, it was suggested that partnership arrangements may increase costs and complexities, and might not always be appropriate. Some consultees also queried whether partnership arrangements are necessary if there was already a joint working power in the statute.[7]

Discussion

10.12 There was overwhelming support for the inclusion of clear statutory provision to encourage joint working. Rather than a permissive statement, we think that it would be more effective to introduce an express power for any two of more of the regulators to jointly exercise their functions. Such an express power is not necessary in strict legal terms, since the regulators can undertake joint working arrangements as a matter of public law. However, the context here is the persistent failure of the regulators to work jointly with each other, despite the numerous benefits associated with joint working. We therefore think that the draft Bill needs to provide an impetus towards joint working by clarifying that the law does not provide a barrier. We also think that a further impetus could be provided through the role of the Professional Standards Authority. We consider that the Authority should be given a general function to promote co-operation between the regulators in relation to the performance of their functions. In undertaking this duty, the Authority could for example identify opportunities for joint working and monitor the regulators' progress in this respect.

10.13 We also consider that the regulators should have express powers to delegate any of their functions to any regulator or any other body (except for the power to make rules). This might include authorising the maintenance of the register by a commercial company, a professional body to produce the code of conduct or the investigation of fitness to practise cases by a firm of lawyers. The relevant regulator would be able to determine the extent to which it delegates the function in any particular case. For example, it may delegate the carrying out of

[7] Consultation Analysis, paras 12.34 to 12.57.

recruitment campaigns to a third party organisation or it may choose to delegate recruitment campaigns only for certain appointments. When delegating any function, the regulator should be able to impose conditions on the way the third party may exercise the function. The draft Bill makes it clear that delegation of any function does not affect any liability or responsibility of the regulator for the exercise of its functions. In other words, the draft Bill does not absolve the regulator from ultimate responsibility for ensuring the function is carried out properly and in accordance with all relevant statutory obligations.

10.14 There are some functions that a regulator should not be able to delegate. These include the power to make rules. As recommended in Part 9, the establishment of separate adjudication systems for any of the regulators should be a matter for Government regulation-making powers.

Recommendation 94: Any two or more regulators should be able to arrange for any of their respective functions to be exercised jointly. The Professional Standards Authority should be given a general function to promote co-operation between the regulators.

This recommendation is given effect by clause 12 of the draft Bill.

Recommendation 95: Each regulator should be given an express power to delegate any of its functions (except the power to make rules) to another regulator or any other person. This would not affect any liability or responsibility of the regulator for the exercise of its functions.

This recommendation is given effect by clause 11 of the draft Bill.

DUTIES TO CO-OPERATE

10.15 Most of the governing legislation places a general duty on the regulator in question to co-operate as far as is appropriate and reasonably practicable with various other bodies concerned with health and social care.[8] As noted in the previous discussion, there has been a growing emphasis in recent years on achieving greater co-operation. For example, the report of the public inquiry into events at the Mid Staffordshire NHS Foundation Trust highlighted the importance of co-operation between the regulators and employers in respect of disciplinary

[8] See, for example, Dentists Act 1984, s 2A.

matters, and the effective sharing of information between regulators and educational and training institutions.[9]

10.16 The consultation paper argued that the current legislative provisions provided a sound foundation on which to build a framework to further encourage and promote co-operation. We proposed the introduction of two statutory duties in this respect. The first was a general duty to promote co-operation with other relevant organisations, including those involved in employment, education and training of registrants, other health and social care regulators and service providers. We asked if the statute should give any examples of the types of arrangements that could be made. The second duty was a specific duty to co-operate when the regulator is undertaking certain functions. The requested authority would be required to give due consideration to any such request made by the regulator, and if it refuses to co-operate, must give written reasons. We asked if there were any further circumstances in which the specific duty should apply.[10]

Consultation responses

10.17 A significant majority supported the proposed general duty to promote co-operation. It was suggested that the statute should provide concrete examples of how the regulators could discharge the duty. However, some felt that the statute should permit co-operation but not impose a duty. Others were concerned that such a duty could become costly, mechanistic and artificial. A small number felt that co-operation is not a matter for legislation. Many consultees suggested specific additions to the list of organisations with whom regulators should be required to promote co-operation. A small majority agreed that the statute should specify or give examples of the types of arrangements that could be made under the general duty. The suggestions included data sharing and the provision of assessment and record reviews. Others felt that examples should be left to guidance and the discretion of the regulators.

10.18 A significant majority supported the proposed specific duty to co-operate. Some reiterated their concerns in respect of the general duty, namely the risk of significant and unnecessary bureaucracy. Some felt that greater sanctions should be available for failures to co-operate. Most of the formal written responses did not support extending the circumstances in which the duty would apply beyond those suggested in the consultation paper. Several consultees queried whether

[9] See recommendations 223 and 224 of the *Final Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry* (2013), vol 2, pp 1048, http://www.midstaffspublicinquiry.com/report (last visited 14 March 2013).

[10] Joint CP, paras 12.36 and 12.38.

the statute would be able to bind the various organisations and persons with whom regulators would be required to co-operate. A small majority felt there were no other circumstances in which the duty should apply.[11]

Discussion

10.19 Consultation has confirmed our view that the draft Bill should impose a general duty on the regulators to co-operate with each other and the Professional Standards Authority. The regulators should also be required to co-operate with certain specified bodies ("relevant authorities") which include NHS bodies, the police, and the health and social care inspectorates. These are listed in clause # of the draft Bill. Our recommended list has been formulated following a review of the suggestions made at consultation. A similar duty will be placed on the Professional Standards Authority.

10.20 There may be initial resource implications in setting up arrangements to co-operate, but these are likely to be outweighed substantially by the efficiency benefits associated with co-operation and joint working. We disagree with the suggestion that co-operation cannot be a matter for legislation. Duties to co-operate have long been a feature of health and social care professionals regulation and in other related areas of law.

10.21 In broad terms, general duties are not expressed as being owed to any specific individual, and organisations are given considerable discretion in determining how to implement them. Therefore, the draft Bill does not specify what actions constitute co-operation. Our intention is that the scope of the duty should remain as wide as possible to encourage innovation.

10.22 There was also strong support at consultation for our proposed duty to co-operate in specific cases. Several consultees queried how enforceable this would be in practice. It is important to recognise that there are limits to this type of duty. It is right that organisations should be given appropriate flexibility where, for example, co-operation would impose excessive financial burdens or would involve breach of other legal requirements. However, the duty would assist by imposing an administrative hurdle for an organisation which refuses to co-operate, in the form of providing written reasons. As a last resort, the failure to co-operate could be subject to judicial review proceedings. We also think that the enhanced duty should be reciprocal and require the regulators to give due consideration to requests from other bodies and give written reasons for a decision not to co-operate.

[11] Consultation Analysis, paras 12.58 to 12.90.

10.23 We agree that the Professional Standards Authority could assist in addressing any issues that might arise (at least in cases involving a request made by a regulator to another regulator). As noted previously, we are recommending that the Authority be given a statutory function of promoting co-operation between the regulators, and there may be merit in guidance being produced on matters such as how the regulators should deal with any refusals to co-operate. It may also be possible for the Authority to become involved as a mediator in such cases where the need to co-operate is disputed. However, we think that these activities should be a matter for the Authority to decide and should not be mandated by the draft Bill.

Recommendation 96: The regulators should be required to co-operate with each other, the Professional Standards Authority and specified "relevant authorities". A similar duty should be placed on the Professional Standards Authority.

This recommendation is given effect by clauses 13, 15, 235 and 237 of the draft Bill.

Recommendation 97: When a regulator requests the co-operation of a relevant authority (or when such an authority makes a similar request of the regulator), the requested party must comply with the request unless doing do would be incompatible with its own duties or would otherwise have an adverse effect on the exercise of its functions. A person who decides not to comply must give written reasons.

A similar power should be given to the Professional Standards Authority.

This recommendation is given effect by clauses 14, 15, 236 and 237 of the draft Bill.

PART 11
PREMISES AND BUSINESS REGULATION

11.1 Some of the regulators have powers to regulate premises and businesses with the aim of ensuring that infrastructure supports proper standards of practice. This Part considers how the new legal framework should approach these areas. Specifically, it covers:

(1) regulation in a commercial environment;

(2) premises regulation;

(3) regulation of bodies corporate;

(4) consumer complaints;

(5) extending business regulation.

REGULATION IN A COMMERCIAL ENVIRONMENT

11.2 Some of the regulators are responsible for regulating professionals who practise outside formal NHS structures and work primarily in commercial settings. These settings range from small high street firms providing, for example, pharmacy or opticians' services, to multinational corporations. This may impact on how the task of regulation is undertaken. For example, regulators may need to consider the particular regulatory and commercial burdens that are placed on practitioners working in single handed practices. The potential regulatory overlap in the private sector includes, but is not limited to, systems regulators such as the Care Quality Commission, and other regulators such as the Health and Safety Executive, Human Tissue Authority, and Medicines and Healthcare Products Regulatory Agency.

11.3 The consultation paper discussed some of the tensions that may arise between running a business and professional responsibilities, and the possibility of business disputes being referred to regulators spuriously in the guise of a complaint. We asked for views on whether regulation of those operating in a commercial context makes a significant difference to the task of professionals regulation and whether the law is adequate.[1]

[1] Joint CP, paras 11.2 to 11.6.

Consultation responses

11.4 A majority felt that a commercial context makes no difference to the task of professionals regulation. Some argued that, for example, pharmacists working in a supermarket or a private dentist should work to the same standards as those as those working in the public sector, albeit that the regulatory procedures and apparatus may need to be different. The General Pharmaceutical Council felt that it was not a business regulator but instead regulates the services provided by registered pharmacies, many of whom operate in a commercial setting. Therefore, while financial pressures are a relevant factor, the Council's key focus was the provision of patient care.

11.5 However, others argued that regulation within a commercial setting is significantly different. For example, it was argued that there was added pressure in the commercial sector to contain cases of misconduct in-house rather than expose the organisation to public scrutiny. The General Osteopathic Council pointed out that its registrants work predominantly in private practice and that there has been "intense scrutiny" of advertising and promotion issues, and the sales of various items to patients.

11.6 Opinion was divided over whether the law is adequate. The General Optical Council felt that its effectiveness was undermined by the ability of businesses to restructure, in order to avoid the requirement to be registered, and continue operating. The General Dental Council expressed an interest in exploring the possibility of regulating dental entities as an adjunct or alternative to the regulation of individuals. Several consultees pointed out that the Care Quality Commission and Monitor have regulatory functions in respect of commercial health care providers, and argued that the functions and roles of all regulators should not overlap. Many concerns were expressed about the dangers of over-regulation.[2]

Discussion

11.7 A range of views were expressed about the role of professionals regulation in a commercial context. Whilst we make no specific recommendations in respect of this question, consultees raised important points about the need to minimise regulatory burdens on businesses and to consider the overlap between professionals regulation and the other regulators, in particular the systems regulators, such as the Care Quality Commission. These arguments have helped to inform many of the recommendations we put forward in this Part.

[2] Consultation Analysis, paras 11.1 to 11.15.

PREMISES REGULATION

11.8 The General Pharmaceutical Council is required to establish and promote standards for the safe and effective practice of pharmacy at registered pharmacies.[3] In effect, this establishes the Council as a systems regulator in addition to its role as a regulator of individual professionals, and makes it unique amongst the regulators.

11.9 The Council is required to establish and maintain a register of premises at which persons are conducting retail pharmacy businesses and to set standards for carrying on a retail pharmacy business at a registered pharmacy. These standards apply to matters such as record keeping, staff training, the handling and storage of medicinal products, the condition of the premises, the conduct of clinical procedures and the management of waste. Owners and superintendent pharmacists are responsible for ensuring that the standards are met.

11.10 The Council is required to establish an inspectorate which is responsible for enforcing standards and assisting in fitness to practise investigations. The inspectors have wide powers to enter, inspect and search premises, to remove any items and to require access to documents, including electronic documents, or records. These powers are supported by a series of criminal offences of obstructing or failing to assist an inspector. Failures to meet the relevant standards can lead to the issue of an improvement notice setting out the measures that must be taken in order to rectify the failure. A failure to comply with an improvement notice can lead to a criminal conviction and fine.[4]

11.11 The consultation paper considered the role of the General Pharmaceutical Council and also set out the legal framework of the Pharmaceutical Society of Northern Ireland. We provisionally proposed that the statute should retain both regimes and also asked whether any further reforms are needed.[5]

Consultation responses

11.12 The vast majority agreed that the statute should retain the existing premises regulation regimes of both the General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland. The General Pharmaceutical Council described its current legislative framework and powers as "helpful in supporting patient protection" and in ensuring a focus on compliance with standards at an

[3] Pharmacy Order 2010, SI 2010 No 231, art 4(3)(b).

[4] Pharmacy Order 2010, SI 2010 No 231, arts 8 to 15.

[5] Joint CP, paras 11.7 to 11.19.

organisational level, rather than purely on issues of individuals' fitness to practise. The Pharmaceutical Society of Northern Ireland felt that under its legal framework "the accountability for pharmacists is well defined, clear and firmly established".

11.13 A small majority felt that further reforms were needed. For example, it was argued that a "fit and proper person" test should be applied to owners of pharmacies and that the Council's remit should be expanded to include dispensing doctors and other professionals. However, the General Pharmaceutical Council thought it was too early to state definitely whether the law is adequate. The Pharmaceutical Society of Northern Ireland felt that under its regime "the accountability for a body corporate is less well defined" and there should be "greater accountability to the board and directors of companies". Many consultees argued that there should be a single UK pharmacy regulator.[6]

Discussion

11.14 We continue to be of the view that, as a minimum, our reforms should retain the General Pharmaceutical Council's current legal framework of business regulation. Due to the nature of the legal powers involved – which place requirements on other bodies and are enforceable through the criminal justice system – much of this would continue to be specified in the draft Bill itself.

11.15 Although the General Pharmaceutical Council felt it was too early to tell if further reform was needed, others put forward suggestions for change. Many of these related more to the operational policies of the General Pharmaceutical Council than to the underlying legal framework. However, others would require amendments to the legal framework and have resource implications. We therefore think that such decisions are properly a matter for political policy rather than law reform. The relevant consultation analysis has been provided to the Government and the General Pharmaceutical Council.

11.16 Nonetheless we propose some minor changes to the Council's powers to regulate premises. In broad terms, the intention is to remove the duty to set standards in rules, and turn them into code of practice style obligations, and enforce them via the disciplinary committee procedure set out in section 80 of the Medicines Act 1968. The changes have been developed with the agreement of the General Pharmaceutical Council and the Government.

[6] Consultation Analysis, paras 11.22 to 11.32.

11.17 As recommended in Part 2, the Pharmaceutical Society of Northern Ireland would remain outside of the scope of the draft Bill. We therefore make no recommendations for its legal framework.

Recommendation 98: The draft Bill should retain the premises regulation provisions of the Pharmacy Order 2010 (with some minor amendments).

This recommendation is given effect by schedule 7 to the draft Bill.

REGULATION OF BODIES CORPORATE

11.18 The General Optical Council is required to maintain a register of bodies corporate carrying on a business in the UK as an optometrist and/or a dispensing optician. In general terms, a business can be registered if it satisfies the Council that it is fit to carry on such a business and a majority of its directors are registered practitioners. The Council must publish standards of conduct and performance required for business registrants and allegations against a business registrant's fitness to practise are potentially subject to fitness to practice proceedings.[7]

11.19 The Dentists Act 1984 contains provisions for regulating the business of dentistry, but these have only been partially brought into force.[8] In the past, the General Dental Council maintained a list of 28 Dental Bodies Corporate. This list is no longer in force and any corporate body can now carry out the business of dentistry provided that it can satisfy the requirements in relation to directors set out in section 34 the Dentists Act 1984.

11.20 The consultation paper identified several difficulties with the current systems in this area. For example, the General Optical Council's register does not extend to all businesses or to all individual high street outlets, which can cause confusion for registrants and members of the public about its purpose and coverage. We asked whether the statute should retain the existing systems for the regulation of bodies corporate.[9]

Consultation responses

11.21 The vast majority agreed that the existing systems should be retained. The General Optical Council supported retaining its system but was interested in exploring the regulation of all providers of the services protected under its

[7] Opticians Act 1989, ss 5C(1)(b), 9 and 13D(1)(b).

[8] Dentists Act 1984, ss 43A to 44B.

[9] Joint CP, paras 11.20 to 11.28.

legislation, regardless of their business structure (with the possible exception of sole traders). The Council also pointed out that it lacked powers available to other systems regulators, and the financial penalties available "are modest relative to the turnover of a large corporation".

11.22 The General Dental Council felt that some of its current provisions required further clarification and called for a review of the purpose and effectiveness of regulation based on business titles. It pointed out that some titles are currently covered by the Dentists Act 1984 and others by the Companies Act 2006, which the Council felt was a "source of confusion". It also stated that it wanted to "explore the potential for regulating dental entities (the teams within practices/businesses), irrespective of the business model".

11.23 Some argued that a fitness to practise regime does not sit well with a registration scheme for bodies corporate, and that a "fitness for business" regime would be more appropriate. Others argued that the General Dental Council should be able to regulate large businesses such as bodies corporate owning chains of practices and that its list of dental bodies corporate should be reinstated.[10]

Discussion

11.24 Post-consultation, the General Optical Council has undertaken a formal review of its system of business regulation. In November 2013 the Council announced that as a result of this review it will seek to introduce a new model which will require the regulation of optical businesses providing restricted functions as opposed to regulation of specific business titles and structures as in the current model. The draft Bill will enable this system to be introduced through Government regulation-making powers.

11.25 It is also notable that the General Dental Council felt that some aspects of its system were in need of review and was interested in exploring alternative models. We have concluded that the unimplemented provisions of the Dentists Act 1984 relating to the list of bodies corporate are unnecessary and should be removed. Instead, the Government would be able to issue regulations to introduce a register of bodies corporate for the Council or any new model of regulation. However, the draft Bill includes powers to replicate the requirements that must be satisfied in order for a dental body corporate to carry out the business of dentistry.

[10] Consultation Analysis, paras 11.33 to 11.42.

Recommendation 99: The Government's regulation-making powers should include the ability to introduce a new system of business regulation, including business registration, for the General Optical Council and General Dental Council.

This recommendation is given effect by clause 33 of the draft Bill.

CONSUMER COMPLAINTS

11.26 The regulators do not have powers to deal with consumer complaints. However, the General Optical Council has a power to allocate resources to any individual or body set up to investigate and resolve consumer complaints in relation to the supply of goods and services by registrants.[11] The Council has contracted with the Optical Consumer Complaints Service which deals with such complaints. In addition, the General Dental Council has established and funds a Dental Complaints Service which provides a UK wide complaints resolution service for private dental patients. This is described as a department of, but operationally at arm's length from, the Council.[12] The consultation paper asked if the regulators should have powers to finance or establish a complaints service.[13]

Consultation responses

11.27 Opinion was divided on this question, although most considered that the regulators should not have such powers. Many felt that the role of professionals regulation is to protect the public, not to provide general resolution to consumer complaints. It was also argued that every business should be required to have a complaints procedure and that this should be separate from any regulatory process. However, others argued that consumer complaints and professional conduct can be intertwined, for example a complaint that an optician supplied defective glasses might involve both. It was also argued that in the commercial sector this type of service helps to minimise the number of allegations made to the regulator.[14]

Discussion

11.28 Consultation has persuaded us that it would not be appropriate for the regulators to have power to run their own consumer complaints services. This would create

[11] Opticians Act 1989, s 32.

[12] http://www.dentalcomplaints.org.uk/pages/index.asp?area=2 (last visited 15 February 2012).

[13] Joint CP, paras 11.29 to 11.32.

a potential conflict of interest between their regulatory and complaints functions, and place demands on the regulators' existing resources. We consider that running such a scheme would fall outside the general powers conferred on regulators by the statute, and so do not think that an express prohibition is required.

11.29 However, we consider that the ability to fund a consumer complaints service is a different matter, on the basis that the service is run by another independent organisation. Furthermore, in some sectors there are limited alternative avenues for consumer complaints and therefore this type of service may help to ensure that the regulator can focus on its core regulatory functions and do not get bogged down dealing with complaints. However, the arguments are less cogent in the case of the General Dental Council, which is organisationally responsible for this service albeit on an arm's length basis. We think that any complaints service must be independent of the regulator.

11.30 In establishing a more widespread power to fund a consumer complaints service, we consider that there need to be additional safeguards. The establishment of such a service could impact on businesses and the NHS, who would need to divert resources to engage with it. It is also clear that funding a consumer complaints service would not be appropriate for those regulators who work predominantly with public sector workers where there is already an extensive network of consumer and other complaints services. We have considered whether the Government should be given a regulation-making power in this area, but felt this would be too cumbersome for what only amounts to a power to fund an external service. We think that a better approach would be to provide that the power can only be used with the approval of the Professional Standards Authority. The statute would require the Authority to confirm that funding such a service is in accordance with the main duty to protect and promote the health, safety and well-being of the public and maintain public confidence in the profession, and is proportionate to the risks identified in the previous paragraph.

[14] Consultation Analysis, paras 11.43 to 11.55.

Recommendation 100: The regulators should have power to finance an independent consumer complaints service. The approval of the Professional Standards Authority should be required in order to exercise this power.

This recommendation is given effect by clause 27 of the draft Bill.

EXTENDING BUSINESS OR PREMISES REGULATION

11.31 The consultation paper discussed the possibility of extending systems of business or premises regulation to the other regulators. Although any extension of such regulation could have significant resource implications, we argued there may be benefits, such as allowing a holistic approach to regulation and addressing issues that put the public at risk but which are not the direct responsibility of an individual registrant. We therefore proposed that the Government should have regulation-making powers to extend any of the powers of the General Pharmaceutical Council or the General Optical Council to another regulator.[15]

Consultation responses

11.32 A majority agreed with this proposal. Some pointed to events at the Mid Staffordshire NHS Foundation Trust which they felt indicated the need for broader and more proactive systems of regulation which can address issues such as cost-cutting, targets, staff shortages and bullying. The General Dental Council felt that the regulation of individual registrants was appropriate for the model of sole practitioners or small partnerships but that in today's more complex environment patient safety would be better served by a more wide-ranging approach. The Care Quality Commission agreed with the proposal since it would mean that issues could be considered on the basis of the risk presented and then the regulatory body best placed to address the risk would take action. The Department of Health noted that there are similar "extant powers" in respect of Dental Corporations which are regulated by the General Dental Council. However, it stated that "the Government has no immediate plans to extend business regulation" and would have concerns about "the potential to cause confusion and overlap with the role of systems regulators". The Scottish Government expressed similar concerns.[16]

[15] Joint CP, paras 11.33 to 11.39.

[16] Consultation Analysis, paras 11.56 to 11.66.

Discussion

11.33 Any extension of business or premises regulation could, depending on how it was effected, have significant resource implications not only for the regulators themselves (and thus their registrants), but also for businesses in the form of information and inspection requirements. Businesses are, of course, subject to many other rules including legislation on the supply of goods and services. Moreover, businesses require certainty on matters such as regulation. We can see that some flexibility in the legal framework would be desirable. There may be benefits in allowing a small number of the regulators to develop new systems of business or premises regulation, including the introduction of new registers of bodies corporate. In our view, this is a matter that should rest with the Government.

Recommendation 101: The Government's regulation-making powers should include the ability to introduce new systems of business and premises regulation for any regulator.

This recommendation is given effect by clauses 33 and 34 of the draft Bill.

PART 12
THE PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

12.1 The Professional Standards Authority oversees the work of the nine UK health and social care regulators.[1] This Part considers the following areas:

(1) general functions and other powers;

(2) governance;

(3) complaints; and

(4) references to the higher courts.

GENERAL FUNCTIONS AND OTHER POWERS

12.2 The Professional Standards Authority has been described as a "meta-regulator".[2] It is responsible for supervising and scrutinising the work of the regulators, sharing good practice and knowledge with the regulators, and advising the four UK governments' health departments on issues relating to professionals regulation. The Authority does not view itself as being a regulator, but rather an oversight and audit body with the aim of improving professionals regulation. Its role is therefore not to manage the regulators, but to review and comment on what they are doing in order to raise standards.

12.3 The Authority's legal framework is contained in the National Health Service Reform and Health Care Professions Act 2002. Its general functions are to promote the interests of patients, promote best practice in the performance of the regulators' functions, formulate principles relating to good self-regulation and promote co-operation between the regulators and between them and other bodies. This may include investigating and reporting on how each regulator is performing its functions, and recommending changes. The Authority also has power to accredit voluntary registers (see Part 5) and provides advice to the Privy Council on whether the process adopted by each regulator for appointments to their General Council has been open, fair and transparent (see Part 4). Under the

[1] The Professional Standards Authority was previously called the Council for Healthcare Regulatory Excellence. Its name was changed by the Health and Social Care Act 2012.

[2] J Black, "Tension in the Regulatory State" (2007) *Public Law* 58, 63.

2002 Act, the Authority also has a power to direct the regulators to make rules where it is desirable to do so for the protection of the public. However, the procedure for issuing directions has not been brought into force by the Government and this power therefore remains dormant. [3]

12.4 Under the reforms introduced by the Health and Social Care Act 2012 the Authority will be financed through a levy on the regulatory bodies that it oversees. It will also be able to generate income from other activities, such as the accreditation of voluntary registers.[4] The Authority will no longer come under the aegis of the Department of Health or any other department, and hence will no longer be a non-departmental body or arms-length body.

12.5 The consultation paper asked for views on how effective the Authority is in undertaking its role. We proposed that the current role and powers of the Authority should be maintained as far as possible in the new legal framework. We also asked for views on whether the power to issue directions is still necessary.[5]

Consultation responses

12.6 A slim majority felt that the Professional Standards Authority was effective. Many felt that the Authority has contributed positively to professionals regulation and the effectiveness of the regulators, and that its approach to scrutiny has been constructive and positive. Most of the regulators were positive in this regard. Some also felt that the annual performance review process was onerous and overly-bureaucratic and that the Authority's scrutiny of the regulators could be more targeted or thematic. It was argued that the Authority's reports were comprehensive but were at times ignored. Several consultees felt that the Authority had failed to be alert to, or respond to, the crisis at the Nursing and Midwifery Council. Some argued that the Authority lacks the resources to take on and challenge the larger regulators. It was also suggested that the Authority's independence might be compromised when it becomes financed through a levy on the regulators.

12.7 The vast majority agreed that the Authority's current powers and role should be maintained. It was also suggested that the Authority's statutory role is "confusing" and "nebulous" due to its wide range of functions. The economic and business performance of the regulators was seen as an area which could be picked up by

3 NHS Reform and Health Care Professions Act 2002, ss 25 to 27.

4 Health and Social Care Act 2012, s 224.

5 Joint CP, paras 10.3 to 10.10.

the Authority. It was suggested that the Authority's remit should be extended to also cover the regulation of social workers by the Care Councils in Scotland, Wales and Northern Ireland. Some felt that the Authority needs additional enforcement powers in order to have an impact when regulators are failing. The Professional Standards Authority itself argued that "with stronger powers" it could be "more effective in overseeing the regulators".

12.8 A large majority agreed that the Professional Standards Authority's power to give directions is still necessary. It was suggested that once the regulators have greater freedom to determine their processes and rules, there could be a future need for this power. Some suggested that the power is not required because the necessary changes to the regulators' rules could be achieved through consent and the Government would retain a power to intervene.[6]

Discussion

12.9 At consultation there was some support for enhancing the Professional Standards Authority's role and powers so that it would become the regulator of the regulators and hold the regulators to account (for example, by approving all rules made by the regulators). We have a good deal of sympathy with these arguments. However, such reforms would represent a radical reconfiguration of the Authority's role and identity, and we are not confident that there is currently a sufficient level of political support for such change to justify designing the new legal framework on this basis. Furthermore, any enhanced role might require the creation of a whole new public sector apparatus to monitor the work of the Authority itself and we did not consult on any such arrangements. We have, therefore, discounted altering the role of the Authority in this way.

12.10 Notwithstanding the concerns raised at consultation about the Authority's effectiveness, we maintain that it performs a valuable oversight role. This is particularly important given the public interest in securing an effective system of professionals regulation. The Authority is ideally placed to identify key systemic issues that impact on the regulators and to ensure that the experience of one regulator may provide learning points for the others. Its separation from Government may put the Authority in a more authoritative position to challenge the regulators, free from direct political influence.

12.11 We think, therefore, that the role of the Authority should be maintained but also adjusted in the light of some of the aforementioned concerns. First, we think that the Authority should be tasked with overseeing the economic and business

performance of the regulators, to help improve efficiency and value for money. The Authority already has some experience in this area; in 2012 the Authority was asked by the Department of Health to advise it on the cost efficiency and effectiveness of the health care professionals regulators. We think this is a key area where the Authority should develop its own expertise through an ongoing role. Second, we have identified throughout this report several specific new roles that should be given to the Authority which we think will underline its importance in the new regulatory framework. These tasks include reviewing the use of the regulators' new rule-making powers (see Part 2), confirming when the duty to consult can be dispensed with (see Part 13) and monitoring each regulator's progress in working towards a more independent adjudication system (see Part 9).

12.12 We do not agree that it necessarily follows that the Authority's ability to hold the regulators to account is compromised because it is paid for by the regulators. The Authority would continue to be required by the draft Bill to focus on public protection, and in this respect its position is analogous to that of the regulators who also regulate those who finance their operation.

12.13 Some suggested that the Authority's reports were being ignored by the regulators and that the Authority as a body lacked teeth. We consider that this general criticism could be addressed by the bringing into force of the Authority's direction-making power. We agree that this power should be distinguished from the Government's direction-making power in circumstances of regulator default. The Authority's power is not intended to be a matter of last resort when a regulator is or is at risk of failing in its statutory responsibilities. In the vast majority of cases, there is no doubt that compliance can be secured through co-operation. However, we agree that the power will be important in the new legal framework where the regulators will have greater independence in certain areas.

12.14 We also think that the Authority should be able to require co-operation from the regulators when it is undertaking any of its functions, including its performance reviews. If a regulator refused to comply with a specific request, it would be required to give written reasons. This is set out in Part 10.

12.15 Currently, the Authority is required to provide advice, investigate or report on matters relevant to its functions when requested to do so by the Secretary of

[6] Consultation Analysis, paras 10.1 to 10.22 and 10.30 to 10.45.

State or devolved administrations.[7] We think this power should be retained. In addition, the Authority should be given a power to compel the provision of information when undertaking an investigation. At present the power to request advice in relation to social care is restricted in its application to England only. In our view there are potential benefits to be gained from enabling the devolved administrations to draw upon the knowledge and expertise of the Authority on social care matters should they wish to do so. In addition, we can see merit in extending the Authority's remit to include the Care Councils in Scotland, Wales and Northern Ireland. The Authority is ideally placed to ensure greater UK-wide consistency and that best practice is shared. We therefore think that the Government regulation-making powers should include the ability to extend the competence of the Authority on these matters, subject to the affirmative approval of the relevant devolved assembly.

12.16 As we indicated in Parts 4 and 5, the Authority should retain its role in providing advice on whether the process for appointments to the General Council adopted by each regulator has been open, fair and transparent. The Authority's ability to accredit voluntary registers will also be retained.

12.17 It is important to recognise that the reforms of the Authority's role that we have recommended will have resource implications. Our recommendations have been made in the light of a careful analysis of the estimated costs, which are set out in our impact assessment which accompanies this report. We consider that such is the importance of the Authority's role in the new legal framework, that the Government must ensure that sufficient resources are available to fund the Authority's expanded role.

[7] NHS Reform and Health Care Professions Act 2002, s 26A.

Recommendation 102: The Professional Standards Authority's general functions should be extended to include promoting economic efficiency and cost effectiveness by the regulators.

This recommendation is given effect by clauses 219 and 222 of the draft Bill.

Recommendation 103: The draft Bill should consolidate and implement the Professional Standards Authority's power to direct a regulator to make rules to achieve an effect specified in the direction.

This recommendation is given effect by clause 238 of the draft Bill.

Recommendation 104: The Professional Standards Authority should be required to provide advice or undertake an investigation on any matters relevant to its functions when requested to by the Government and devolved administrations. When undertaking an investigation the Authority should have a power to require information.

This recommendation is given effect by clauses 227 to 230 of the draft Bill.

Recommendation 105: The Government regulation-making powers should include the ability to extend the remit of the Professional Standards Authority to include giving advice on social care matters to the devolved administrations and overseeing the Care Councils in Scotland, Wales and Northern Ireland. This would be subject the approval of the relevant devolved administrations.

This recommendation is given effect by clause 229 of the draft Bill.

Recommendation 106: The Government must ensure that sufficient resources are available to fund the Professional Standards Authority's new role.

GOVERNANCE

12.18 The legislation provides that the Professional Standards Authority's board has nine members: a chair and three non-executive members appointed by the Privy Council; three non-executive members from Scotland, Wales and Northern Ireland appointed by the devolved administrations; and an executive member. The consultation paper proposed that appointments should be made by the Government and by the devolved administrations in accordance with the Authority's standards for appointments to the regulators.[8]

[8] Joint CP, paras 10.11 to 10.20.

Consultation responses

12.19 A large majority agreed with our proposal. However, some argued for additional parliamentary oversight of appointments. This was supported by the Professional Standards Authority which suggested that the appointment of its chair should be subject to a hearing by the Health Committee. Some expressed concern that the proposal would have implications for the Authority's perceived independence.[9]

Discussion

12.20 We think that appointments to the Professional Standards Authority's board should be in line with the approach set out in Part 4. In effect, the Government would have the formal responsibility for approving board appointments – including the chair. We would expect that the administration of this task would be undertaken by the Authority itself and must follow the guidance and standards it has issued. But it would be possible for the Government to make arrangements for any other person to assist. This would allow, for example, the devolved administrations to appoint board members. The Government's default powers would allow the removal of board members if this is necessary to prevent, or as a result of, the Authority failing to fulfil its statutory functions. The issue of Parliamentary oversight over appointments is considered in Part 4.

12.21 Some elements of the Authority's constitution would continue to be provided for on the face of the legislation (see schedule 8 to the draft Bill). The Government's would have regulation-making powers to provide for other elements of the board's constitution.

Recommendation 107: The Government should have powers to make appointments to the Professional Standards Authority's board. The administration of appointments would be undertaken by the Professional Standards Authority in accordance with its guidelines and standards.

This recommendation is given effect by clause 233 of, and schedule 8, paragraph 2, to, the draft Bill.

COMPLAINTS

12.22 Section 28 of the National Health Service Reform and Health Care Professions Act 2002 gives the Secretary of State the power to make regulations enabling the Professional Standards Authority to investigate complaints it receives about the way in which a regulator has exercised its functions. The regulations can include

[9] Consultation Analysis, paras 10.23 to 10.29.

matters such as empowering the Authority to require individuals to give evidence to it, attend before it or produce documents. However, the Government has not exercised its power to make regulations and therefore the Authority's formal complaints mechanism remains unimplemented.

12.23 In 2011, the Department of Health indicated that it intends to make the necessary regulations, but the scope of this function will be limited initially to administrative and policy issues.[10] The Department intends to consult on draft regulations in due course. The consultation paper proposed that section 28, and any future regulations made under it, should be retained in the new legal framework.[11]

Consultation responses

12.24 An overwhelming majority agreed with this proposal. Some felt that the Professional Standards Authority's remit should remain limited and argued that the Authority should not be seen as another source of redress for aggrieved individuals except where a regulator has failed to perform its functions adequately. The Professional Standards Authority expressed concern about the current wording of this power but nevertheless felt there was "value in a limited power to investigate matters of maladministration".[12]

Discussion

12.25 We remain of the view that the Government power to authorise the Professional Standards Authority to consider complaints should be retained in the draft Bill. The implementation of this power could provide an important mechanism through which the regulators can be held to account. We do not think that the draft Bill itself should limit any further the scope of the regulations that can be made under section 28. We believe that it is appropriate that this decision continues to rest with Government.

[10] Enabling Excellence: Autonomy and Accountability for Health and Social Care Staff (2011) Cm 8008, para 3.11.

[11] Joint CP, paras 10.33 to 10.39.

[12] Consultation Analysis, paras 10.46 to 10.53.

Recommendation 108: The Government should have the power to make regulations to enable the Professional Standards Authority to investigate complaints about the ways in which a regulator has exercised its functions.

This recommendation is given effect by clause 234 of the draft Bill.

REFERENCES TO THE HIGHER COURTS

12.26 The Professional Standards Authority has a power to refer decisions of fitness to practise panels to the higher courts. This power can be used where the Authority considers that a sanction is "unduly lenient" or, in relation to a decision not to take any disciplinary action or restore a person to the register, that the decision "should not have been made". In addition, a referral must be desirable for the protection of the public.[13]

12.27 As noted in Part 9, the General Medical Council established the Medical Practitioners Tribunal Service in 2012, to assume responsibility for the adjudication of fitness to practise and interim order cases. The Council is seeking powers to refer decisions of panels to the higher courts on a similar basis to the Authority's section 29 power.[14]

12.28 The consultation paper asked for views on whether, and if so how, the section 29 power and the proposed General Medical Council power could co-exist in the new legal framework. We put forward three options for reform:

(1) retain section 29 alongside the General Medical Council's power to refer cases;

(2) remove section 29 in cases where any regulator is given a power to refer cases; or

(3) give the regulators a power to formally request the Authority to exercise its section 29 power.[15]

Consultation responses

12.29 This question divided opinion at consultation. However, most consultees favoured options 1 and 3. Those who supported option 1 argued that the regulators should

[13] NHS Reform and Health Care Professions Act 2002, s 29.

[14] General Medical Council, *The Future of Adjudication and the Establishment of the Medical Practitioners Tribunal Service* (2011).

[15] Joint CP, paras 10.40 to 10.52.

have rights to appeal the decisions of their panels in order to reinforce standards and underline the separation of functions. However, others felt that it was unnecessary and costly to provide two routes of appeal. It was argued that it was unfair to expose registrants to further jeopardy in circumstances where both parties would in effect be seeking the court's view on the same matter and on the same facts. Those who favoured option 3 suggested that the Professional Standards Authority is best placed to appeal decisions rather than a regulator which is a party to the proceedings. Some suggested that the right to refer cases should include those where the sanction was too severe

12.30 The General Medical Council supported option 1 on the basis that the two rights of appeal need not be seen as mutually exclusive. The Professional Standards Authority agreed that it should retain the right of appeal alongside the General Medical Council, but expressed several concerns, for example that two levels of appeal will be more complicated and increase costs. The Department of Health stated that it was attracted by option 1 but the Authority's power should only be exercised if the regulator has decided not to launch an appeal. However, if the regulator does bring an appeal, the Authority should still be able to intervene. The Department stated that it was still exploring this issue and had not yet reached a final view, but that it may legislate before the introduction of any legislation resulting from our review. The Scottish Government also favoured option 1.[16]

Discussion

12.31 There are legitimate reasons for giving both the Professional Standards Authority and the General Medical Council the right to appeal. The Authority's section 29 power has been an important tool for the purposes of public protection, and provides a hard-edged check on whether fitness to practise decisions have been made in a way that protects and promotes the health and well-being of the public. The General Medical Council's proposed right of appeal is both a consequence of, and reinforces, the independence of the new Medical Practitioners Tribunal Service.

12.32 We have therefore concluded that the Authority's right to appeal should be retained alongside the General Medical Council's power to refer cases (or any equivalent power of other regulators that developed a similar adjudication system). In our view, pragmatic solutions could be found to the practical problems raised by the coterminous exercise of two separate processes. We are particularly attracted by the Department of Health's suggestion that the

[16] Consultation Analysis, paras 10.54 to 10.68.

Authority's power should only be exercised if the regulator has decided not to refer. In effect, the Authority's power could provide an additional layer of protection as a last resort for cases that have been missed by the regulator.

12.33 We have also reconsidered the test that should be applied to referral decisions. We have removed the criteria that the decision "should not have been made" or amounted to undue leniency. In part this is a response to judicial criticism of these criteria, and in particular their lack of clarity.[17] We have also concluded that the test of undue leniency is less apt for certain decisions such as those to grant voluntary removal or restore a person to the register. Instead the draft Bill will allow appeals to be taken where the outcome is insufficient in terms of public protection. We think it is more easily capable of applying to all the kinds of referrable decisions than is currently the case. It is also clearer and easier to understand and interpret, and reflects the main objective of professionals regulation set out in clause 3 (and applied to the Authority in clause 220).

Recommendation 109: The Professional Standards Authority should have a power to refer to the higher courts certain fitness to practise decisions which fail to achieve sufficient protection of the public. This power should be exercised alongside a regulator's power to refer cases (in cases when the regulator has been granted such a right by virtue of establishing a sufficiently independent adjudication procedure). The Authority would be able to refer the case if the regulator decides not to.

This recommendation is given effect by clause 167 of the draft Bill.

[17] *Council for the Regulation of Health Care Professionals v Ruscillo* [2004] EWCA Civ 1356; [2005] 1 WLR 717 at [67] to [68].

PART 13
OTHER ISSUES

13.1 This Part considers the remaining areas discussed in the consultation paper, as well as other issues that emerged during consultation. It covers:

(1) public consultation;

(2) general functions and powers;

(3) status of the regulators;

(4) statutory committees;

(5) protected titles and functions;

(6) powers to reconsider decisions;

(7) interim orders;

(8) regulating the British Islands;

(9) distance service provision; and

(10) midwifery.

PUBLIC CONSULTATION

13.2 Consultation can be an important procedure through which the regulators are held to account by the public and key stakeholders. The regulators are already required by their governing Acts and Orders to consult extensively when considering certain changes, for example to rules and guidance. The consultation paper proposed that the new statute should impose a core central duty of regulators to consult before issuing or varying that which is binding (such as fitness to practise rules and fees), that which sets a benchmark or standard without being binding as such (for example a Code of Conduct) and a competency (such as standards of proficiency). We also proposed that the statute should require the regulators to consult such persons as it considers appropriate, including:

(1) members of the public;

(2) patients and other users of the services of registrants;

(3) registrants (including business registrants);

(4) employers of registrants;

(5) any other health and social care regulators;

(6) the Department of Health and devolved administrations;

(7) organisations representing registrants; and

(8) commissioners of health and social care.[18]

Consultation responses

13.3 An overwhelming majority supported the proposal. However, there was some concern about how the proposed duty had been formulated. Some found it overly prescriptive and inflexible, requiring consultation on anything, even if there was no genuine opportunity for respondents to affect the outcome (such as changes necessary to secure compliance with EU law). It was argued that requiring consultation on every rule change would not be practicable or proportionate, and could undermine the regulators' ability to respond quickly where there was a need for urgency.

13.4 Many felt that the duty needed to be strengthened in order to prevent the regulators only paying lip service to this requirement. Some responses provided specific examples of where a regulator had, in the respondent's view, consulted inadequately or ignored the views expressed at consultation. A number of consultees contended that the statute should not be overly prescriptive about which organisations or individuals are consulted. However, others disagreed and suggested that the list needed to be expanded to ensure it is sufficiently comprehensive. We received many suggestions of amendments and additions to this list.[19]

Discussion

13.5 Under the new legal framework, with greater autonomy for the regulators, the importance of consultation as a means of making the regulators accountable is heightened. It is therefore important that the duty to consult is demanding and robust. Nevertheless, we are persuaded that, in a small number of cases, a full public consultation will not be appropriate and the regulators should be able to dispense with the duty. Examples might include an amendment to rules to reflect a change in EU law or where the change relates to providing clarification, correcting a mistake or bringing a document in line with other legislation. Since such cases will vary according to a range of circumstances, we do not find it possible or appropriate for the draft Bill to set out precise categories. However, even in these cases, it may still be possible to consult on issues surrounding the main reform, such as how it should be implemented – if there is flexibility on this matter – or how a rule change can be successfully publicised or explained in guidance. We therefore think that there should be an additional safeguard before

[18] Joint CP, paras 2.37 to 2.51.

a regulator can dispense with the duty to consult, namely the approval of the Professional Standards Authority. The Authority would be required to publish its criteria for giving this approval.

13.6 We are persuaded that some of the wording of our proposed duty could be simplified to make it clear what needs to be consulted on. A more straightforward approach would be to require consultation before making and amending rules, setting or amending standards and producing or amending guidance. We have reviewed the suggestions for strengthening the duty to consult. It would not be appropriate – and could be confusing – for the draft Bill simply to repeat other legal provisions, such as standards imposed by the *Coughlan* judgment or the Equality Act 2010.[20] However, we think that the Professional Standards Authority should consider issuing guidance aimed at encouraging best practice on consultation. This would include, for example, the need to provide clear reasons for a decision reached following consultation and to produce documents in a variety of different accessible formats.

13.7 Some criticised our proposal for being overly prescriptive about which organisations or individuals should be consulted. We accept the general point regarding flexibility, but we also consider that there are certain bodies that must always be consulted. These are the other regulatory bodies (and the Pharmaceutical Society of Northern Ireland if affected by the proposed changes), NHS England, Monitor, the health and social care inspectorates and safeguarding authorities, clinical commissioning groups and the Professional Standards Authority. A more generally expressed duty to consult would have the consequence that the regulators would be under a general obligation to make sure that key groups are aware of the consultation such as patients and service users, registrants, employers, service providers and education providers. This could be onerous. We do not think this provision needs to go further than we have suggested in specifying particular groups that must be consulted. In our view this approach would give the regulators an appropriate amount of flexibility, while also ensuring they engage with key stakeholders. We do not agree that the duty should apply to UK bodies only. There may be circumstances where it is appropriate to consult overseas organisations, and the statute should not hinder the sharing of experience from outside the UK.

[19] Consultation Analysis, paras 2.50 to 2.63.

[20] *R v North and East Devon Health Authority ex parte Coughlan* [1999] EWCA (Civ) 1871.

Recommendation 110: The regulators should be required to carry out a public consultation before they make or issue rules, standards or guidance.

This recommendation is given effect by clause 249 of the draft Bill.

Recommendation 111: A regulator may dispense with the duty to consult in a particular case if it considers that it would be inappropriate or disproportionate to consult, and approval has been given by the Professional Standards Authority.

This recommendation is given effect by clause 249(6) of the draft Bill.

GENERAL FUNCTIONS AND POWERS

13.8 The relevant Acts and Orders often contain a declaratory statement of the regulators' general or principal functions, normally at the beginning of the legislation following (but sometimes before) the main duty. The general function often relates to the regulator's role in relation to education and professional conduct, while some of the governing legislation lists several general or principal functions for the regulator in question. The consultation paper argued that the introduction of a single overarching duty would mean that any need for general or principal functions disappears in our proposed scheme. We asked whether the statute should include guiding principles applicable to all decisions by the regulators, and whether the statute should give regulators' a general power to do anything which facilitates the proper discharge of their functions.[21]

Consultation responses

13.9 A majority agreed that the statute should not include a statement setting out the general or principal functions of the regulators. However, some disagreed and felt it was important to include such a statement in order to set parameters within which the regulators are to operate and to manage public expectation. A majority felt that the statute should include guiding principles. However, some argued that such principles easily slip into vacuous statements of the obvious, and are unnecessary since the regulators are already subject to the Equality Act 2010 and Human Rights Act 1998. A majority agreed that the statute should provide a general power for the regulators to do anything which facilitates the proper discharge of their functions. However, many were concerned about the breadth of such a power.[22]

[21] Joint CP, paras 3.28 to 3.40.

[22] Consultation Analysis, paras 3.36 to 3.50.

Discussion

13.10 We remain unconvinced of the utility of a statutory statement of the regulators' general or principal functions. In our view, the parameters of the regulators' powers should be defined by reference to the powers and duties in the draft Bill, and by reference to the general objectives. We also do not wish to take forward the idea of guiding statutory principles. It is accepted that professionals regulation is already awash with statements of principle, and that the introduction of statutory principles would be unnecessary and potentially confusing. However, we do agree that the inclusion of a general power would help to eliminate uncertainty about regulators' scope of action in performing their functions.

Recommendation 112: The regulators should have a power to do anything which is calculated to facilitate, or which is conductive or incidental to, the exercise of their functions.

This recommendation is given effect by clause 9 of the draft Bill.

STATUS OF THE REGULATORS

13.11 As set out in the consultation paper, all of the regulators are bodies corporate established by statute.[23] The General Medical Council and Nursing and Midwifery Council are also charities registered with the Charity Commission. This brings certain tax advantages and means that the body is additionally subject to the regulatory framework of the Charity Commission. We provisionally proposed that the existing status of the regulators as bodies corporate should be continued in the new legal framework. Furthermore, the regulators would continue to be able to apply to become registered with the Charity Commission if they wish to do so.[24]

Consultation responses

13.12 The vast majority agreed with this proposal. A number of responses pointed out that the legislation also needed to cover registration with the Office of the Scottish Charity Regulator and the Charity Commission for Northern Ireland.[25]

[23] Joint CP, paras 4.20 to 4.23.

[24] Joint CP, paras 4.20 to 4.23.

[25] Consultation Analysis, paras 4.17 to 4.23.

Discussion

13.13 Consultation has confirmed our view that the existing status of the regulators as bodies corporate should be continued in the new legal framework. Also, the regulators should continue to be able to apply to become registered UK charities.

Recommendation 113: The status of the regulators as bodies corporate should be continued in the new legal framework.

Recommendation 114: The regulators should be able to apply to become registered with the Charity Commission, the Office of the Scottish Charity Regulator and the Charity Commission for Northern Ireland.

STATUTORY COMMITTEES

13.14 The consultation paper set out how each regulator is required to have a number of committees, sometimes referred to in the legislation as "statutory committees". These committees are assigned operational functions such as undertaking investigations, setting standards and requirements for education and training, and adjudicating fitness to practise cases. In addition, some regulators have set up reference groups or panels in order to assist the regulators in undertaking their functions. We proposed that the regulators should be given broad rule-making powers to determine their own governance arrangements, including the ability to establish committees if they wish to do so, and that this should replace any statutory requirement to have particular committees.[26]

Consultation responses

13.15 An overwhelming majority supported this proposal. Many argued that the decision whether to have committees and how they should be comprised are matters for the regulator. It was pointed out that the regulators would still need to establish fitness to practise and appointment committees under our scheme. Some felt that governance arrangements for committees did not need to be in rules but in standing orders. Some consultees representing midwives expressed concern that the proposal could lead to the abolition of the Midwifery Committee by the Nursing and Midwifery Council. A small number supported a uniform system of statutory committees across all the regulators.[27]

[26] Joint CP, paras 4.55 to 4.69.

[27] Consultation Analysis, paras 4.93 to 4.99.

Discussion

13.16 We continue to be of the view that statutory committees should be abolished. The main dissent to this approach was in relation to the Midwifery Committee of the Nursing and Midwifery Council. In our view, the important underlying issue is not whether or not a specific committee is retained, but that the draft Bill provides for a robust regulatory framework for midwives. This issue is discussed below. We accept the argument that governance arrangements for committees and other forums do not need to be in rules but could be achieved through standing orders.

13.17 It was suggested that the draft Bill would need to maintain fitness to practise and appointment committees across the regulators. We agree to the extent that what is being referred to here are panels considering individual cases, as opposed to larger committees which are responsible for wider matters such as setting policy and from which panels are sometimes drawn. In our view, such panels are necessary in order to ensure the appropriate level of adjudication standards (see Part 9), while larger committees are an internal governance matter which should be left to the discretion of each regulator.

Recommendation 115: The regulators should not be required to establish formal committees.

PROTECTED TITLES AND FUNCTIONS OF REGISTRANTS

13.18 The relevant Acts and Orders list the various titles and activities that only registered professionals (or a particular kind of registered professional) can use or undertake, and create criminal offences relating to false representation. Although the regulators are not given express statutory powers to prosecute, some have adopted a policy of bringing private prosecutions in certain cases as part of their public protection duty. The consultation paper proposed that all the existing protected titles and functions should be retained in the new legal framework. In addition, the Government would be given regulation-making powers to add to or remove any such titles or functions. We also asked for further views on the appropriateness of the existing protected titles and functions. Finally, we proposed that the regulators should have powers to bring prosecutions and be required to set out their policy on bringing prosecutions in a publicly available document (except in Scotland).[28]

[28] Joint CP, paras 5.115 to 5.128.

Consultation responses

13.19 An overwhelming majority agreed that all existing protected titles and functions should be retained, alongside a Government regulation-making power. Some, however, felt that any use of this power by the Government should be rare and subject to additional scrutiny. The vast majority agreed that the regulators should have express powers to bring prosecutions, and be required to specify their prosecutions policy. However, some questioned whether the prosecution of illicit practitioners is an activity that should be financed by registrants and suggested that prosecutions should be publicly funded and undertaken by the police and Crown Prosecution Service. Several consultees argued that the current levels of fines are out of date, insufficient and do not provide an effective deterrent.

13.20 A majority felt that the existing titles and functions were appropriate. However, many suggestions were put forward for extending the range of protected titles to include, for example, "doctor", “nurse” and “consultant”. Others suggested that certain titles should no longer be protected including “specialist community public health nurse”. Several comments were also received on protected functions for optometrists and dispensing opticians.[29]

Discussion

13.21 The current system of protected titles and functions, and misrepresentation offences by registrants and non-registrants, is an important aspect of the regulatory system. We initially approached this area with the intention that all of the existing protected titles and functions and relevant offences that are set out in the governing legislation should be retained on the face of in the draft Bill to ensure sufficient legal certainty and clarity. However, this has proved to be challenging.

13.22 There is no overall consistent or coherent approach to the titles that are protected. Sometimes the formulation of “registered [professional title]” is protected, whereas in other cases only the professional title itself is protected, without the inclusion of “registered” in the title. In other cases both versions are protected. Some of the protected titles do not appear to be titles at all or are obviously out of date. Many of the current protected activities and offences are expressed in dated language and, in some cases, are very unclear or poorly drafted. The offences are also fairly random in terms of their structure, form and content.

[29] Consultation Analysis, paras 5.241 to 5.284.

13.23 It has therefore not proved possible to carry forward the existing provisions verbatim. Schedules 5 and 6 of the draft Bill contain our best attempt to set out the protected titles and functions and relevant offences in a reasonably coherent manner. We have modernised the language and corrected obvious mistakes where possible and where we concluded that this would not disturb their meaning. We have also streamlined the general offences that relate to the use of protected titles and false representations as to registration or being licensed to practise. But it is our view that there is a clear need for a root and branch review of these provisions. Amongst other matters this would require decisions to be taken by the Government on whether the policy behind the current offences is right and complete.

13.24 We continue to think that the Government should have regulation-making powers to add to or remove any of the protected titles and functions. This requires a political policy decision about public protection, the introduction of criminal offences and the allocation of public resources (such as court time and police support).

13.25 The argument that the regulators are not the appropriate bodies to undertake prosecutions is an interesting one, but we think it right to leave this decision with the individual regulators. Thus, the regulators should continue to have the ability to bring private prosecutions and it would be left to the regulators to decide whether or not to do so in any individual case (or whether to seek prosecutions by the Crown Prosecution Service). The regulators would be required to set out their policy on bringing prosecutions in a publicly available document, including any procedures and criteria that will apply. However, this would not apply in Scotland where all prosecutions proceed in the name of the Lord Advocate or, in the sheriff court, in the name of the Procurator Fiscal.

13.26 The Fraud Act 2006 would remain an alternative option for the regulators or public authorities, particularly where they seek more severe penalties. Civil proceedings would also be an option for the regulators.

13.27 Several comments were received about the level of fines in this area. These concerns will be addressed when section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is implemented, which removes the maximum limit on fines that can be imposed on summary conviction.

Recommendation 116: The protected titles and functions, and relevant offences, should be set out on the face of the draft Bill. The Government's regulation-making powers should include the ability to amend or remove any of these titles and functions.

This recommendation is given effect by clauses 210 to 212, and schedules 5 and 6 to, the draft Bill.

Recommendation 117: The Government should consider undertaking a full review of the existing protected titles and functions, and relevant offences.

Recommendation 118: The regulators should continue to have the ability to bring private prosecutions (except in Scotland) and should be required to set out their policy on bringing prosecutions in a publicly available document.

This recommendation is given effect by clause 22 of the draft Bill.

POWER TO RECONSIDER DECISIONS

13.28 The consultation paper asked for views on whether the regulators should be given an express power to quash or review a panel's decision where all the parties agree that the decision was unlawful. We also asked whether, if such a system of reconsideration were introduced, complainants and other interested parties should be able to prevent, or contribute to, any decision to use this power.[30]

Consultation responses

13.29 A small majority felt that the regulators should be given an express power to set aside or review decisions that all parties agreed were unlawful. Many argued that this power would save costs and lead to speedy justice. The Administrative Appeals Chamber of the Upper Tribunal noted that section 9 of the Tribunals, Courts and Enforcement Act 2007 enables the First-tier Tribunal to review its decisions on the ground of error of law. A slim majority felt that complainants and other interested parties should be able to seek a reconsideration of a decision. However, others disagreed on the ground that complainants and others with an interest are not parties to the proceedings. Many opposed a power to quash or review decisions on the basis that it would undermine confidence in the independence and integrity of the fitness to practise process. Some felt that the use of such a power could become a mechanism to challenge and overturn legitimate decisions without recourse to a formal appeal.[31]

[30] Joint CP, paras 9.124 to 9.128.

[31] Consultation Analysis, paras 9.309 to 9.327.

Discussion

13.30 The existing common law power for a regulator to reopen a case applies only in exceptional cases, such as where a registrant has been removed from the register on the basis of a conviction which is later overturned.[32] We do not want to disturb this position. However, we are attracted by the possibility of codifying this power in primary legislation. We think that, provided that the power is tightly drawn in a similar way to the Tribunals, Courts and Enforcement Act 2007, the concerns about its misuse by the regulators or the costs involved are less valid. Nevertheless, we are persuaded that the existing legal position is understood by the regulators and there is no need to replicate this on the face of the draft Bill and risk altering its meaning inadvertently. We have also concluded that the draft Bill does not need to go further than the common law position and enable a regulator to set aside a decision it considers to be unlawful. Registrants should continue to challenge such decisions through the courts. No recommendation is therefore made on this issue.

INTERIM ORDERS

13.31 Interim orders enable temporary measures to be imposed on a practitioner while the regulator investigates the allegation made against the registrant or when a hearing is adjourned, even though no case has yet been proved. There are two types of interim orders: an order for interim conditional registration which allows the registrant to continue practising but in a limited capacity and an interim suspension order which prevents the registrant from practising at all until there is a final determination of their case.

13.32 At most of the regulators, interim orders take effect immediately, can be imposed for up to 18 months, and must be reviewed every 6 months or where new evidence comes to light. In addition, some regulators allow for early reviews to take place at the practitioner's request. If the regulator wishes to extend an order beyond the period initially set, then it must apply to the court.[33]

13.33 A fitness to practise panel or an interim orders panel can both impose interim orders but the vast majority are issued by interim orders panels. As noted in Part 9, hearings are usually in private but they can be held in public in certain circumstances. Many regulators' rules provide that no person may give oral

[32] *R (Jenkinson) v Nursing and Midwifery Council* [2009] EWHC 1111 (Admin).

[33] See, for example, Medical Act 1983, s 41A(6).

evidence unless the panel thinks that such evidence is desirable.[34] This is on the basis that the panels do not make findings, or resolve disputes, of fact. A panel will normally hear evidence from the registrant but is less likely to hear evidence from a witness.[35]

13.34 The panel imposing or reviewing an interim order is not charged with determining whether the allegations are true.[36] In most cases, the test is whether an order is necessary for the protection of the public. Some of the regulators can also impose or maintain an interim order if it is otherwise in the public interest, or in the interests of the registrant or the person concerned. The wider public interest ground was introduced following the *Shipman Inquiry*. The regulators' guidance advises that interim orders should only be used in extreme cases and rarely on the grounds of public interest alone.[37]

13.35 The consultation paper proposed that the statute should require the regulators to establish a system for imposing and reviewing interim orders. Each regulator would be required to establish panels of at least three members (including a lay member). In addition, panels must be appointed by a body which is separate from the General Council, and Council members and investigators would be prohibited from sitting on such panels. We asked for views on whether the statute should prohibit interim order panellists sitting on a fitness to practise panel either in relation to the same case or more generally.

13.36 We also proposed that the test for imposing an interim order should be that it is necessary to protect, promote and maintain the health, safety and well-being of the public (and maintain confidence in the profession). The regulators would have broad rule-making powers on all procedural matters. However, we also asked for views on whether the statute should guarantee the right of registrants to give evidence at such hearings. Finally, we proposed that the higher courts should continue to have powers to extend interim orders.[38]

[34] See, for example, General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004 No 2608, r 27(2).

[35] General Medical Council, *Imposing Interim Orders: Guidance for the Interim Orders Panel and the Fitness to Practise Panel* (2009) para 17.

[36] *R (Ali) v General Medical Council* [2008] EWHC 1630 (Admin).

[37] General Medical Council, *Interim Orders Committee: Referral Guidance* (2009). See also *R (Shiekh) v General Dental Council* [2007] EWHC 2972 (Admin) and *R (Sosanya) v General Medical Council* [2009] EWHC 2814 (Admin).

[38] Joint CP, paras 9.74 to 9.88.

Consultation responses

13.37 An overwhelming majority agreed that the statute should require the regulators to establish a system for imposing and reviewing interim orders. Some argued that the registrar should have power to carry out the review in uncontested cases. Several consultees argued that fitness to practise panels should continue to have powers to issue interim orders.

13.38 The vast majority agreed that panels must consist of at least three members (including a lay member) appointed by a body separate from the General Council, and that General Council members and investigators should be prohibited from sitting on panels. An overwhelming majority believed that the statute should prohibit interim order panellists sitting on a fitness to practise panel in relation to the same case. Some felt that the prohibition should extend to any linked case. A small majority felt that the statute should prohibit interim order panellists sitting on any fitness to practise panel. It was argued that panellists are not in the same position as professional judges who are trained to disregard knowledge obtained in previous proceedings where that knowledge is considered prejudicial. Others felt there was benefit in having panellists sitting across all types of cases.

13.39 A large majority agreed with our proposed test for imposing an interim order. Some suggested additional criteria such as whether an order was "in the interests of the registrant" in adverse health cases and in the "public interest". A number of consultees argued that the test should only be whether the registrant poses a risk to the public, and that maintenance of confidence in the profession should not be considered at this stage, but only at the substantive hearing when considering impairment.

13.40 An overwhelming majority agreed that the regulators should have broad rule-making powers on procedural matters in relation to interim order hearings. Some argued that the statute should clarify various aspects of the procedure and many argued that greater consistency should be imposed. An overwhelming majority agreed that the statute should guarantee the right of registrants to give evidence at interim order hearings. It was argued that this would ensure fairness and provide the registrant with a proper opportunity of dealing with the allegations made against them. Others felt there should be flexibility to allow hearings to go ahead if, for example, the registrant fails to appear or if delay would prejudice patient safety. However, others argued it would be inappropriate to introduce a guaranteed right of registrants to give evidence where the function of the panel is not to make findings of fact.

13.41 An overwhelming majority agreed that the right of appeal against an interim order should continue to be to the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.[39]

Discussion

13.42 Consultation has confirmed our view that – in order to be seen as fair and impartial – interim orders panels should be appointed and constituted in the same way as fitness to practise panels (see Part 9). Thus, appointments and some aspects of the operational management of the interim order process (such as appraisals and continued professional development) will be the responsibility of the body or person that also oversees these functions for fitness to practise panels. The requirements for the composition of panels should also be the same as those governing fitness to practise panels, namely that the panels must always have at least one lay member and that members of the regulatory bodies (including members of other regulators) and investigators would be excluded. Other than on these matters, the regulators would have broad powers to make rules governing the constitution of their interim order panels.

13.43 Consultation has also persuaded us that there is a strong case for prohibiting interim orders panel members from sitting on a fitness to practise panel in relation to the same case. This would include any reviews of final, as opposed to interim, suspension or conditions of practice orders. A number of allegations may be considered at an interim order hearing and a panellist would be in a difficult position where evidence of discontinued charges is not put before the subsequent fitness to practise panel.

13.44 We do not think that the draft Bill should extend the prohibition to include any linked case, due to the likely uncertainty about what this means and the likelihood of protracted legal arguments as a result. However, the appointing body or person would have to consider the need for actual and perceived independence when establishing fitness to practise panels and the registrant could make submissions if there are concerns in relation to an individual case. It is not intended that interim orders panellists should be excluded from future reviews of any interim orders. We also note that the draft Bill continues to allow fitness to practise panels to issue interim orders.

13.45 We are also persuaded that it is not necessary to introduce a more general prohibition on interim order panellists sitting on any fitness to practise panel. Indeed, it is clear that there are benefits in allowing interim order panellists to

[39] Consultation Analysis, paras 9.185 to 9.227.

gain experience of a wide range of cases, and some of the smaller regulators would find a general prohibition difficult to administer.

13.46 We continue to be of the view that the test for imposing an interim order should be consistent across the regulators. It is accepted that our proposed test was too broad for the purpose of interim orders, which are intended to be used only in the most serious of cases where there are clear risks to the public. We also agree that "maintaining confidence in the profession" is not an appropriate reason on its own for imposing an interim order. However, there are circumstances where it might be appropriate for the use of such an order in the registrant's own interests, particularly where impairment is alleged on health grounds. We therefore think that the test for an interim order should be that it is necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registrant.

13.47 We do not agree that the draft Bill should allow for reviews of interim orders to be carried out by the registrar in uncontested cases. While we can see the need for efficient procedures, we do not think that such arrangements would ensure a proper separation between investigation and adjudication. However, it would be open to the regulators to establish alternative procedures in order to realise greater efficiencies, such as for reviews in certain circumstances to be carried out on the papers by a panel member or Chair sitting alone (see Part 9), by the Head of the Tribunal Service or by a legal chair/member of the panel.

13.48 We also intend to apply – as far as possible – the same approach to the procedure for panel hearings that we recommended for fitness to practise panels. The draft Bill therefore imposes consistency on certain matters concerning due process and the powers of panels. On matters concerning the procedure of a hearing, the draft Bill enables the Government to make "model rules".

13.49 The consultation paper suggested that regulators could be given broad rule-making powers to determine time periods and rights to review. We are persuaded that the draft Bill should impose greater consistency on such matters. The draft Bill will specify time periods and when review hearings must take place. In effect, panels will be able to suspend registration or impose conditions for up to 18 months, and orders must be reviewed within six months followed by further reviews at least every six months (or sooner if the professional requests a review within three months or if new evidence becomes available). Under some of the existing legislation, practitioners can apply to the higher courts to overturn an order. We think that this is an important right that should be retained. Regulators will be required to apply to the higher courts to extend an order beyond the period initially set by the panel. The courts will also have powers to terminate or vary the order.

Recommendation 119: Interim orders should be made or reviewed by an interim orders or fitness to practise panel. Interim orders panels should consist of at least three members (including at least one lay member). Panellists should be appointed by the same body or person that is responsible for fitness to practise panel appointments. Members of an interim order panel should be prohibited from sitting on a fitness to practise panel in relation to the same case.

This recommendation is given effect by clauses 140 to 141 and 151 of the draft Bill.

Recommendation 120: The test for an interim order should be that it is necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registrant.

This recommendation is given effect by clause 152(5) of the draft Bill.

Recommendation 121: Interim orders should be imposed for up to 18 months and must be reviewed every six months (or sooner if the person makes a request in the first three months or if new evidence becomes available which justifies an earlier hearing).

This recommendation is given effect by clauses 152(6) and 154 of the draft Bill.

Recommendation 122: Applications to extend interim orders should continue to be decided by the higher courts.

This recommendation is given effect by clause 156 of the draft Bill.

Recommendation 123: Registrants should have a right of appeal against decisions of interim orders panels.

This recommendation is given effect by clause 153 of the draft Bill.

REGULATING THE BRITISH ISLANDS

13.50 The UK legislative framework for professionals regulation does not extend to the Channel Islands and the Isle of Man. However, the legal frameworks in the Islands require most professionals to be registered with a UK regulator in order to gain employment. Professionals regulation in the Islands is outside the remit of our review. However, the consultation paper pointed to concerns that some professions are left unregulated in these jurisdictions and that the fitness to practise regimes are insufficiently comprehensive and robust to protect the public in the Islands, who in most cases will be British citizens. We therefore asked whether there would be benefits in the same regulatory arrangements applying in the Channel Islands and the Isle of Man as in the UK and, if so, whether the best way to achieve this would be parallel legislation or a single statute. We also asked how the statute could address the interface between the regulatory systems in the UK and the Channel Islands and the Isle of Man.[40]

Consultation responses

13.51 A large majority felt there would be benefits in the same regulatory arrangements applying in the Channel Islands and the Isle of Man as in the UK. These benefits

were said to include assisting the mobility of the professions, avoiding duplication and providing a simpler framework. The General Dental Council noted that certain dental professions have been left unregulated in Jersey and the Isle of Man. A majority argued that the best way to address this would be through a single statute covering the UK and the British Islands. A large majority felt that the statute should address the interface through joint working arrangements. However, some felt that existing arrangements were sufficient since most professionals in the Channel Islands and the Isle of Man must be registered with a UK regulator and the regulators can bring fitness to practise proceedings against registrants regardless of where the alleged incident has taken place.

13.52 The Health and Social Services Department of Guernsey stated that it wished to continue the current arrangements which apply in Guernsey and Alderney (Sark has its own arrangements). However, it expressed interest in extending some of its regulations, mainly in relation to premises regulation, and developing a memorandum of understanding with the Professional Standards Authority to ensure close working relations.[41]

Discussion

13.53 As noted previously, the legislative framework for health and social care professionals regulation in the Channel Islands and the Isle of Man is outside the remit of our review. Accordingly, we make no specific recommendations. However, consultation has suggested that a number of difficulties arise because of gaps and inconsistencies between the regulatory framework that applies in the UK and that which applies to the Islands.

13.54 We have provided the relevant Island departments with a full analysis of the consultation responses on these issues. Any further work on the matters raised would be a matter for the Island Governments. In our view, there are many advantages in the same regulatory arrangements applying across the British Isles. We also think this is an area where the Professional Standards Authority could play an important role by, for example, developing memoranda of understanding between itself and the Island Governments and encouraging joint working arrangements between the regulators and the Island Departments. However, we do not think this is a matter that needs to be addressed expressly in the draft Bill.

[40] Joint CP, paras 13.22 to 13.29.

[41] Consultation Analysis, paras 13.26 to 13.37.

Recommendation 124: The UK Government and the governments in the Channel Islands and the Isle of Man should consider reviewing whether the new legal framework should be extended to the British Islands as a whole.

DISTANCE SERVICE PROVISION

13.55 The consultation paper noted the increasing trend towards the remote provision of certain health care services, including the sale of medicines over the internet, telehealth and telecare. We asked for views on how our statute could enable the regulators to manage the regulatory challenges that are raised by these developments, or whether they are issues for the regulators at all. [42]

Consultation responses

13.56 A range of views was expressed in response to this question. Some suggested that joint working arrangements should be developed with international regulators and other bodies such as the Medicines and Healthcare Products Regulatory Agency. Some consultees felt that the regulators should seek to impose regulatory standards on those providing services from overseas, and that UK providers should be only be able to contract with overseas providers which achieve the standards of the UK regulatory system. It was also argued that this issue is beyond the remit of our statute.[43]

Discussion

13.57 Distance provision of services can undoubtedly bring benefits to those who may not be able to access easily the services they need, such as some disabled people. However, the use of the internet or remote devices raises regulatory concerns because of the way in which those services may be delivered. In our view, domestic law is limited in its ability to address an issue which arises at the international level. Furthermore, agencies other than the regulators may be better placed to address this issue, such as the Medicines and Healthcare Products Regulatory Agency and commissioning bodies. However, we acknowledge that the professionals regulators are legitimately concerned where individual practitioners are providing potentially harmful services or products. Such issues are already addressed in, for example, the guidance and standards issued by the regulators. We do not think that it would be appropriate or possible for the draft Bill to go further in this respect. Therefore, we make no specific recommendations.

[42] Joint CP, paras 13.35 to 13.43.

[43] Consultation Analysis, paras 13.58 to 13.72.

MIDWIFERY

13.58 Midwifery is subject to specific and distinctive regulatory provisions under the Nursing and Midwifery Order 2001. Part 8 of the Order provides for a statutory Midwifery Committee, rules to regulate the practice of midwifery and the establishment of local supervising authorities to monitor and support all midwives. The relevant rules must be approved by order of the Privy Council.[44] The consultation paper made no specific proposals regarding midwifery, but a number of responses commented on this aspect of the legal framework.

Consultation responses

13.59 The Royal College of Midwives warned that, without statutory protections, midwifery professionals would have a constant fight with the regulator to ensure profession-specific regulation that recognises the role of the midwife. The Nursing and Midwifery Council argued that these statutory provisions were designed to ensure that the Council is adequately informed on all matters relating to the practice of midwifery and is underpinned by the rationale of public protection. However, not all consultees agreed. For example, Independent Midwives UK felt that the additional layer of statutory regulation for midwifery should be removed to bring midwifery regulation in line with the other professions. An individual consultee felt that there needs to be a clear evidence base to justify the case for additional supervision for midwives.[45]

Discussion

13.60 We intend to establish a flexible legal structure that would allow for the continuation of the existing system for the general supervision of midwives, and for its future reform if this was thought appropriate. We therefore think that the Government should be given regulation-making powers to make provision for the general supervision of midwives. The Government could use this power to establish a reformed system or give the Nursing and Midwifery Council the ability to reform the system. Having considered the existing statutory provisions in the Nursing and Midwifery Order, and the midwifery rules that have been implemented under these provisions, we have expanded on the detail that is set out on the face of the draft Bill. Finally, in accordance with recommendation #, the statutory Midwifery Committee would be abolished under our scheme but the

[44] The current rules are the Nursing and Midwifery Council (Midwives) Rules 2012, SI 2012 No 3025.

[45] Consultation Analysis, paras 14.14 to 14.18.

Nursing and Midwifery Council would retain powers to continue with such a committee.

Recommendation 120: The Government should be given regulation-making powers to make provision for the general supervision of midwives by the Nursing and Midwifery Council, and determine the functions and powers of local supervising authorities.

This recommendation is given effect by clauses 213 to 214 of the draft Bill.

(Signed)

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20 March 2014

APPENDIX A
DRAFT REGULATION OF HEALTH AND SOCIAL CARE PROFESSIONS ETC. BILL

Regulation of Health and Social Care Professions Etc. Bill

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Make provision about the regulation of health and social care professions and related businesses and premises; to introduce a system enabling individuals to be prohibited from carrying on certain activities connected with the provision of health care or with social care work in England; to make provision about the Professional Standards Authority for Health and Social Care; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

THE REGULATORY BODIES FOR HEALTH AND SOCIAL CARE PROFESSIONS

The regulatory bodies and the regulated professions

1 The regulatory bodies and the regulated professions

(1) For the purposes of this Act the following bodies are the regulatory bodies in the United Kingdom for regulated health and social care professions—

the General Chiropractic Council
the General Dental Council
the General Medical Council
the General Optical Council
the General Osteopathic Council
the General Pharmaceutical Council
the Health and Care Professions Council
the Nursing and Midwifery Council.

(2) Schedule 1 sets out the health and social care professions regulated by each regulatory body.

(3) In this Act—

(a) "regulated health and social care profession" means a profession listed in column 2 of Schedule 1;

(b) any reference (however expressed) to a profession regulated by a particular regulatory body is a reference to a profession listed against that body in column 2 of Schedule 1; and

(c) "regulatory body" means a body listed in subsection (1).

(4) In any context where this Act provides for the term "regulatory body" to include the Pharmaceutical Society of Northern Ireland, subsection (3) applies as if—

(a) that Society were listed in column 1 of Schedule 1; and

(b) pharmacists in Northern Ireland and pharmacy technicians in Northern Ireland were the professions listed against it in column 2.

2 Power to amend section 1(1) and Schedule 1

(1) The Secretary of State may by regulations—

(a) amend section 1(1) by adding, omitting or varying any entry in the list of regulatory bodies;

(b) amend Schedule 1 by—

(i) omitting any entry for a regulatory body in column 1 and the entries in column 2 relating to that body;

(ii) adding an entry for a new regulatory body in column 1 with one or more entries in column 2 relating to that body;

(iii) varying any entry for a regulatory body in column 1 (to reflect a change in the name of that body); or

(iv) adding, omitting or varying any entry in column 2 relating to a regulatory body listed in column 1.

(2) The power of the Secretary of State under this section to amend Schedule 1 so as to introduce the regulation of a health and social care profession may be exercised only in relation to—

(a) a health profession that appears to the Secretary of State to require regulation as a regulated health and social care profession under this Act;

(b) a social care profession in England that appears to the Secretary of State to require such regulation,

not being a profession already listed (or comprised within a profession already listed) in column 2 of that Schedule.

(3) In subsection (2)—

(a) "health profession" means a profession appearing to the Secretary of State to be concerned (wholly or partly) with the physical or mental health of individuals (and not to be a social care profession in England); and

(b) "social care profession in England" means a profession appearing to the Secretary of State to consist of individuals engaged in social care work in England.

(4) For the purposes of subsection (3) the Secretary of State may treat a group of workers as a health profession or as a social care profession in England (as the case may be) if the Secretary of State considers that they are capable of being regulated under this Act as a health and social care profession, whether or not

at the time in question that group of workers is generally regarded as a profession.

(5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

3 General objectives of the regulatory bodies

(1) The main objective of each regulatory body in carrying out its functions is to protect, promote and maintain the health, safety and well-being of the public.

(2) Each regulatory body also has the following general objectives in carrying out its functions in relation to each health and social care profession it regulates—

(a) to promote and maintain public confidence in that profession; and

(b) to promote and maintain proper professional standards and conduct for individuals registered in the professionals register for that profession.

(3) The following provisions are repealed or revoked—

(a) section 1(1A) of the Medical Act 1983;

(b) section 1(2)(b) of the Dentists Act 1984;

(c) section 1(2A) of the Opticians Act 1989;

(d) in article 3 of the Nursing and Midwifery Order 2001 (S.I. 2002/253), in paragraph (2) the words "and to ensure the maintenance of those standards" and paragraph (4);

(e) in article 3 of the Health and Social Work Professions Order 2001 (S.I. 2002/254), in paragraph (2) the words "and to ensure the maintenance of those standards" and paragraph (4);

(f) article 6(1) of the Pharmacy Order 2010 (S.I. 2010/231).

Constitution of the regulatory bodies

4 Constitution of the regulatory bodies: general

(1) Each existing regulatory body is constituted in accordance with any relevant provisions which relate to that body and are contained—

(a) in this Part of this Act or in regulations made under this Act;

(b) in an Order in Council made under section 60 of the Health Act 1999 or an order of the Privy Council made under such an Order; or

(c) in an Act passed before this Act or any subordinate legislation made under such an Act.

(2) A regulatory body has the functions conferred on it by or under this or any other Act.

(3) Each existing regulatory body continues to exist as a body corporate despite any repeal or revocation in consequence of this Act of any legislation relating to the establishment or status of the body.

(4) In this Act "existing regulatory body" means any of the regulatory bodies existing at the passing of this Act.

5 Power to provide for the constitution of a regulatory body

(1) The Secretary of State may by regulations make provision for and in connection with the constitution of—

(a) an existing regulatory body;

(b) a body which became a regulatory body by an amendment to section 1(1) made after the passing of this Act;

(c) a body which is intended to become a regulatory body for the purposes of this Act, or

(d) any other body established by regulations under this Act with functions relating to the regulation of individuals, businesses or premises.

(2) Without prejudice to powers conferred by any other provision of this Act, regulations under subsection (1) may modify provisions relating to an existing regulatory body that are contained in—

(a) an Order in Council under section 60 of the Health Act 1999 or an order of the Privy Council made under such an Order;

(b) an Act passed before this Act or any subordinate legislation made under such an Act.

(3) In this section "modify" includes amend, repeal or revoke.

(4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

6 Membership of a regulatory body

(1) The provisions constituting a regulatory body must, in addition to specifying the number of members of the body—

(a) require each member to be appointed as a registrant member or as a lay member; and

(b) specify the number of registrant members and the number of lay members.

(2) The specified number of registrant members of the regulatory body must not exceed the specified number of lay members.

(3) The provisions constituting a regulatory body may (among other things) make provision with a view to—

(a) minimising any risk that the number of lay members does not fall below the number of registrant members;

(b) securing that if that happens the situation is remedied as soon as is practicable;

(c) securing that a person appointed as a lay member who becomes a registrant after appointment ceases to hold office as a member.

(4) The provisions constituting a regulatory body may—

(a) require one or more members, lay members or registrant members to live or work in each of England, Wales, Scotland and Northern Ireland;

(b) require one or more members, lay members or registrant members to be appointed by the Scottish Ministers, the Welsh Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland.

(5) Subsections (3) and (4) are without prejudice to the generality of what may be included in the provisions constituting a regulatory body under any other powers.

(6) The provisions constituting a regulatory body must provide that a person may not be appointed as a member of the body if that person is a member of, or a member of staff of, another regulatory body, the Pharmaceutical Society of Northern Ireland or the Professional Standards Authority.

(7) The provisions constituting a regulatory body must provide that a person in respect of whom a prohibition order or an interim prohibition order is in effect may not be appointed as a member of the body.

(8) The Secretary of State must, as soon as practicable after the coming into force of this section—

(a) review the provisions constituting the regulatory bodies and determine whether they conform to the requirements of this section; and

(b) lay before Parliament for approval a draft statutory instrument containing regulations under section 5 (or any other power available to the Secretary of State) that would make any changes necessary to bring those provisions into conformity with those requirements.

(9) In this section—

"appointed" includes re-appointed;

"registrant member" means a member who is a registrant when appointed; and

"lay member" means a member who is not a registrant when appointed.

7 Section 6: meaning of "registrant"

(1) For the purposes of section 6, a "registrant" is a person who—

(a) is or has been registered on a professionals register kept by any regulatory body;

(b) is or has been registered on a students register kept by any regulatory body in accordance with regulations under paragraph 5 of Schedule 3;

(c) is or has been registered on a supplementary register kept by any regulatory body in accordance with regulations under paragraph 7 of Schedule 3;

(d) is or has been registered on any register required to be kept by the Pharmaceutical Society of Northern Ireland;

(e) has been registered on any register of individuals previously required to be kept by any regulatory body, by any former regulatory body or by the Society;

(f) is appropriately qualified to be registered on a register mentioned in paragraph (a) or (d) (but is not or has not been so registered); or

(g) carries out an activity designated under regulations made under section 197.

(2) For the purposes of subsection (1)(e) the former regulatory bodies are—

(a) the Council for Professions Supplementary to Medicine;

(b) the General Social Care Council;

(c) the Royal Pharmaceutical Society of Great Britain;

(d) the United Kingdom Central Council for Nursing, Midwifery and Health Visiting.

(3) In paragraph (f) of subsection (1) the reference to a person being appropriately qualified to be registered on a register mentioned in paragraph (a) of that subsection is to be read in accordance with section 38.

8 Assistance with appointments

(1) In this section "the appointment functions" means the functions of the Secretary of State relating to the appointment of members of a regulatory body, including functions connected with or incidental to their appointment (such as determining the term of an appointment or the other terms on which a person is appointed as a member).

(2) The Secretary of State and a regulatory body may make arrangements for the regulatory body to assist the Secretary of State in connection with the exercise of any of the appointment functions relating to that body.

(3) The Secretary of State and the Professional Standards Authority may make arrangements for the Authority to assist the Secretary of State in connection with the exercise of any of the appointment functions relating to any regulatory body.

(4) The Secretary of State and any other person may make arrangements for the other person to assist the Secretary of State in connection with the exercise of any of the appointment functions relating to any regulatory body.

(5) A reference to assisting in connection with the exercise of a function does not include a reference to exercising that function.

9 General supplementary power for the regulatory bodies

(1) A regulatory body has power to do anything which is calculated to facilitate, or which is conducive or incidental to, the exercise of its functions.

(2) That includes power to make charges for facilities or services provided by it at the request of any person (but not for services the body is under a duty to provide).

Internal organisation

10 Organisational structure of a regulatory body

(1) A regulatory body must, in deciding how best to structure its organisation and allocate work and responsibilities with a view to carrying out its functions effectively, have regard to the desirability of ensuring that, so far as possible—

(a) the members (when acting together) concentrate on strategic or policy matters rather than operational delivery; and

(b) decisions are taken and work is done at an appropriate level within the organisation.

(2) For the purposes of this section "organisation" includes the members of the regulatory body (whether acting together or otherwise), its staff and any committees or sub-committees of the body.

(3) In subsection (1)(a) "strategic or policy matters" include, among other things—

(a) providing strategic direction;

(b) the structure of the organisation and allocation of work and responsibilities;
(c) the body's financial position at any time (including the adequacy of the financial resources available or likely to be available to it at the time);
(d) establishing policies and objectives for, or giving guidance about, the exercise of any functions of the regulatory body otherwise than by the members acting together;
(e) ensuring that the work of the body is carried out effectively and that proper decisions are taken.

(4) Subsection (1)(b) does not apply to decisions taken or work done outside the organisation.

(5) A regulatory body must prepare and publish a document (the "organisational statement") which—
(a) describes its organisational structure; and
(b) sets out the main responsibilities of the different parts of the organisation.

(6) A regulatory body may—
(a) revise its organisational statement and publish the revised document, or
(b) publish a new organisational statement,
and any revised or new organisational statement supersedes the statement current immediately before the revised or new statement takes effect.

(7) An organisational statement may include information about any permanent delegated authority given under section 11(1) or (2).

11 Powers to delegate functions

(1) A regulatory body may delegate any of its functions (including the power conferred by this subsection but not a power or duty to make rules) to any of the following persons—
(a) a committee or sub-committee of the regulatory body,
(b) a member of the regulatory body, or
(c) a member of staff of the regulatory body.

(2) A regulatory body may delegate any of its functions (not including the power conferred by this subsection or the power to make rules) to any of the following persons in pursuance of arrangements agreed with the person concerned—
(a) another regulatory body,
(b) a committee or sub-committee of another regulatory body,
(c) a member of staff of another regulatory body, or
(d) any other person.

(3) A regulatory body may only enter into arrangements under subsection (2) if it considers that they are likely to lead to an improvement in the way in which its functions are exercised.

(4) The terms of any arrangements agreed under subsection (2) may include terms requiring payment by the regulatory body whose functions are being delegated.

(5) The exercise of a function may be delegated under this section—

(a) either wholly or to the extent specified in the arrangements for delegation,
(b) either generally or in cases or circumstances so specified,
(c) either unconditionally or subject to conditions so specified.

(6) A delegation under this section—
(a) is for the period specified in the arrangements for delegation (unless revoked in pursuance of paragraph (b)),
(b) may be revoked by the regulatory body,
(c) does not prevent the regulatory body (or the person making the delegation, if different) from exercising the function or making other arrangements for its exercise.

(7) A delegation under this section does not affect any liability or responsibility of the regulatory body for the exercise of its functions.

Co-operation etc between the regulatory bodies and other persons

12 Joint exercise of functions

(1) Any two or more regulatory bodies may arrange for any of their respective functions (other than a power or duty to make rules) to be exercised jointly.

(2) The arrangements may include the establishment of a joint committee (or sub-committee) to exercise the relevant joint functions on behalf of the regulatory bodies concerned.

(3) A regulatory body may only enter into arrangements under this section if it considers that they are likely to lead to an improvement in the way in which its functions are exercised.

(4) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the parties to the arrangements.

13 Duties to co-operate

(1) The regulatory bodies must co-operate, in the exercise of their functions, with each other and with the Professional Standards Authority.

(2) A regulatory body must co-operate, in the exercise of its functions, with each appropriate relevant authority, and each appropriate relevant authority must co-operate with the regulatory body, in the exercise of functions of the relevant authority falling within subsection (3).

(3) The functions are those relating (directly or indirectly) to the regulation of a regulated health and social care profession.

(4) A relevant authority is an appropriate relevant authority for the purposes of subsection (2) if the regulatory body considers it would be appropriate to co-operate with the authority.

(5) A regulatory body must co-operate, in the exercise of its functions, with such other persons as it considers appropriate who exercise functions, or are engaged in activities, relating (directly or indirectly) to the regulation of a regulated health and social care profession.

14 Co-operating in specific cases

(1) Where a regulatory body requests the co-operation of a relevant authority, in connection with the exercise by the body of a function falling within subsection (2), the relevant authority must comply with the request unless it considers that doing so—

(a) would be incompatible with its own duties, or

(b) would otherwise have an adverse effect on the exercise of its functions.

(2) The following functions fall within this subsection—

(a) any function under this Act exercisable in relation to a registered professional,

(b) any function under this Act exercisable in relation to a relevant education and training provider, and

(c) any function under this Act exercisable in relation to persons operating a business or premises which is registered in any register kept by a regulatory body.

(3) Where a relevant authority requests the co-operation of a regulatory body, in connection with the exercise by the authority of a regulatory function falling within subsection (4), the regulatory body must comply with the request unless it considers that doing so—

(a) would be incompatible with its own duties, or

(b) would otherwise have an adverse effect on the exercise of its functions.

(4) Regulatory functions fall within this subsection if they are exercisable—

(a) in relation to a registered professional,

(b) in relation to a relevant education and training provider, or

(c) under this Act in relation to persons operating a business or premises which is registered in any register kept by a regulatory body.

(5) For the purposes of subsection (4) a function is a regulatory function if it relates (directly or indirectly) to a regulated health and social care profession.

(6) A person who decides not to comply with a request under subsection (1) or (3) must give the person who made the request written reasons for the decision.

(7) In this section "relevant education and training provider" has the same meaning as in Part 5.

15 "Relevant authorities"

(1) The following are relevant authorities for the purposes of sections 13 and 14—

(a) an NHS body,

(b) the Care Quality Commission,

(c) Social Care and Social Work Improvement Scotland,

(d) Healthcare Improvement Scotland,

(e) the Health and Social Care Regulation and Quality Improvement Authority in Northern Ireland,

(f) the Welsh Ministers exercising functions under the Children and Families (Wales) Measure 2010, the Health and Social Care (Community Care and Standards) Act 2003, the Adoption and Children Act 2002, the Care Standards Act 2000 and the Children Act 1989,

(g) the Disclosure and Barring Service,

(h) the Scottish Ministers exercising functions under the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14),
(i) a chief officer of police of a police force in England and Wales,
(j) the chief constable of the Police Service of Scotland,
(k) the Chief Constable of the Police Service of Northern Ireland, and
(l) such other persons as the Secretary of State may prescribe by regulations.

(2) In subsection (1)(a) "NHS body" means—
(a) the National Health Service Commissioning Board;
(b) a clinical commissioning group;
(c) an NHS trust or NHS foundation trust.

(3) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Functions relating to information

16 Provision of information to the public

Each regulatory body must from time to time publish, or provide in such manner as it thinks fit, information to the general public about—
(a) the regulatory body, and
(b) the exercise of its functions.

17 Provision of information to registered persons

(1) Each regulatory body must from time to time publish, or provide in such manner as it thinks fit, information for registered persons about the regulatory body and the exercise of its functions.

(2) For the purposes of subsection (1) "registered persons" are—
(a) registered professionals;
(b) bodies corporate or other persons registered on a register of any description of health and social care businesses which is kept by the regulatory body by virtue of regulations under section 33;
(c) in the case of the General Optical Council, bodies corporate carrying on business as an optometrist or as a dispensing optician (or both) registered on the register kept by that Council under section 9 of the Opticians Act 1989;
(d) persons carrying on a health and social care business or related activities within subsection (2) of section 34 at premises registered on a register kept by the regulatory body by virtue of regulations under that section; and
(e) in the case of the General Pharmaceutical Council, persons carrying on a retail pharmacy business at premises registered on Part 3 of the register kept under article 19 of the Pharmacy Order 2010 (S.I. 2010/231).

18 Strategic plan

(1) Each regulatory body must prepare and publish a strategic plan in respect of each successive relevant period for that body.

(2) The "strategic plan" is a plan setting out—
  (a) the regulatory body's strategy for achieving its main objective under section 3(1), and
  (b) the steps that the regulatory body plans to take in order to implement that strategy.

(3) The regulatory body must determine the number of years which is to constitute a relevant period for that body (and the first such period must start with the year following the year in which this section comes into force).

(4) The regulatory body—
  (a) must publish a strategic plan required by this section before (or as soon as practicable after the beginning of) the relevant period to which the plan relates;
  (b) may revise its strategic plan during the relevant period to which it relates, and
  (c) must publish any revised plan as soon as practicable after revising its strategic plan.

19 Annual and other reports

(1) As soon as reasonably practicable after the end of each reporting period, a regulatory body must prepare and publish a report (the "annual report") on the exercise of its functions during the reporting period.

(2) The report must include or be accompanied by—
  (a) a statement describing the arrangements of the regulatory body to adhere to good practice in relation to equality and diversity (and for these purposes "equality" and "diversity" have the meanings given by section 8(2) of the Equality Act 2006),
  (b) a statistical report that indicates the efficiency and effectiveness of, and that includes a description of, the arrangements that the regulatory body has put in place to protect members of the public from registered professionals whose fitness to practise is impaired, and
  (c) a statement of the regulatory body's observations on that statistical report.

(3) In subsection (1) "reporting period" means—
  (a) the period (not exceeding 12 months) beginning with the day on which this section comes into force and ending on such date as the regulatory body may determine, and
  (b) each successive period of 12 months.

(4) A regulatory body may prepare and publish other reports on matters relating to its functions.

20 Accounts

(1) A regulatory body must keep proper accounts and proper records in relation to the accounts.

(2) A regulatory body must prepare annual accounts in respect of each financial year.

(3) A regulatory body must arrange for the annual accounts to be audited by a qualified auditor.

(4) For the purposes of subsection (3) a "qualified auditor" is—
  (a) a person who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, or
  (b) in the case of a regulatory body that is a charity, a person who is eligible for appointment as an auditor under section 144 of the Charities Act 2011 or section 44 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

(5) The regulatory body must publish the audited annual accounts.

(6) In this section "financial year" means a period of 12 months ending with 31 March.

21 Laying of reports, strategic plans and accounts

(1) This section applies to—
  (a) a strategic plan, and each revision of it, prepared under section 18,
  (b) the annual report, and any accompanying statement or report under section 19,
  (c) annual accounts prepared under section 20, and
  (d) any report on the annual accounts prepared by the auditor appointed under section 20.

(2) The regulatory body must send the document to—
  (a) the Secretary of State,
  (b) the Scottish Ministers,
  (c) the Welsh Ministers, and
  (d) subject to subsection (4), the Department of Health, Social Services and Public Safety in Northern Ireland.

(3) A copy of each document received under subsection (2) must be laid—
  (a) by the Secretary of State before Parliament,
  (b) by the Scottish Ministers before the Scottish Parliament,
  (c) by the Welsh Ministers before the National Assembly for Wales, and
  (d) subject to subsection (4), by the Department of Health, Social Services and Public Safety before the Northern Ireland Assembly.

(4) The requirements in subsection (2)(d) and (3)(d) do not apply to any document prepared by—
  (a) the General Pharmaceutical Council, or
  (b) by the auditor appointed to report on the annual accounts of that Council.

22 Statement of policy with respect to instituting criminal proceedings

(1) Each regulatory body must prepare and publish a statement of its policy with respect to the institution by the body of criminal proceedings in England and Wales and Northern Ireland.

(2) A regulatory body may—

(a) revise its statement of policy and publish the revised statement of policy, or

(b) publish a new statement of policy,

and any revised or new statement of policy supersedes the statement of policy current immediately before the revised or new statement takes effect.

(3) A regulatory body must have regard to its current statement of policy when exercising its functions.

(4) In this section "statement of policy" means a statement of policy under subsection (1).

Rules

23 Rules made by regulatory bodies: general

(1) A regulatory body may make rules for any purpose for which a provision of this Act, or of regulations under this Act, requires or authorises such rules to be made.

(2) The power of a regulatory body to make rules is exercisable by an instrument in writing.

(3) Rules may—

(a) make different provision for different purposes (including different cases or classes of case);

(b) contain incidental, supplemental, consequential and transitional provision.

(4) An instrument by which rules are made must specify the provision under which the rules are made.

(5) To the extent to which a rule-making instrument does not comply with subsection (4) it is void.

(6) A regulatory body must, before making any rules, comply with section 249.

(7) A rule-making instrument must be published by the regulatory body concerned (whether by including it on an internet website or otherwise) in the way appearing to the body to be best calculated to bring it to the attention of—

(a) any registered professionals or other persons affected by the rules, and

(b) the public,

and the regulatory body must ensure that the instrument remains publicly available until such time as it ceases to have effect.

(8) A person is not to be taken to have contravened, or otherwise to be bound by, any rules if the person shows that at the material time the regulatory body was not complying with subsection (7).

(9) A regulatory body may charge a reasonable fee for providing a person with a printed copy of a rule-making instrument.

(10) If a regulatory body makes any rules it must give a copy to the Professional Standards Authority without delay.

24 Verification of rules and evidence

(1) A copy of a rule-making instrument purporting to contain rules as made by a regulatory body—

(a) on which is endorsed a certificate signed by a member of the body's staff authorised by the body for that purpose, and

(b) which contains the required statements,

is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.

(2) The required statements are—

(a) that the instrument was made by the regulatory body;

(b) that the copy is a true copy of the instrument; and

(c) that on a specified date the instrument was published in accordance with section 23(7).

(3) A certificate purporting to be signed as mentioned in subsection (1) is to be taken to have been properly signed unless the contrary is shown.

(4) A person who wishes in any legal proceedings to rely on a rule-making instrument may require the regulatory body to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (1).

Funding

25 Funding of the regulatory bodies

(1) The expenditure of a regulatory body is to be met out of its fee income (unless met from money received under subsection (2)).

(2) A national authority may make payments or loans to a regulatory body of such amounts, at such times and on such conditions (including conditions as to repayment and interest, in the case of a loan) as the authority may determine.

(3) Subsection (2) does not affect any other borrowing powers a regulatory body may have.

(4) A national authority may give a direction to a regulatory body as to the application of any payment or loan received by it from that authority.

(5) The regulatory body must comply with the direction.

(6) In this section—

"fee income", in relation to a regulatory body, means the sums it receives by way of—

(a) fees or charges imposed by a regulatory body by virtue of any provision of, or of regulations under, this Act or of rules made by the body concerned; or

(b) commercial income; and

"national authority" means the Secretary of State, the Welsh Ministers, the Scottish Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland.

(7) Any payment or loan made under this section by the Secretary of State is to be made out of money provided by Parliament.

26 Fees etc to be charged by regulatory bodies

(1) A regulatory body may make rules with respect to the charging of fees in connection with—

(a) applications for the making, alteration, removal, renewal or restoration of an entry on any register kept by the body;

(b) the making, alteration, removal, renewal or restoration of an entry on any such register;

(c) the retention in a register of an entry (or of any information recorded in an entry) on any such register.

(2) The rules may provide—

(a) for different fees to be charged in different cases or circumstances; and

(b) for fees not to be charged in cases or circumstances prescribed by the rules;

(c) for the registrar to have power to waive a fee (in whole or part) in cases or circumstances prescribed by the rules (which may include cases or circumstances defined by reference to the discretion of the registrar).

(3) Rules under this section may make provision authorising the registrar—

(a) to refuse to consider an application, or to refuse to make, alter, remove, renew or restore an entry in a register, until a fee prescribed under subsection (1)(a) or (b) has been paid;

(b) to remove an entry (or information recorded in an entry) from a register if, after such notices and warnings as may be prescribed by the rules have been given, a fee prescribed under subsection (1)(c) has not been paid.

(4) An entry removed from a register, or information removed from an entry, in accordance with rules under subsection (3)(b) must be restored if—

(a) such sum (if any) as the rules may prescribe for the purposes of this subsection; and

(b) the fee (if any) which, if the entry or information had not been removed, would have been due in respect of the current year,

is paid at any time within the period of 12 months from the day on which it was removed or altered.

(5) In this section "fee" includes a fee determined by reference to any expenditure of the regulatory body.

(6) The power of a regulatory body to make rules under this section (and any rules made under it) have effect subject to any provision of, or of regulations made under, this Act relating to the charging of fees by that body and the consequences of non-payment.

Complaints schemes

27 Funding of consumer complaints schemes

(1) A regulatory body may fund some or all of the costs (including start-up costs) of a consumer complaints scheme which is approved by the Professional Standards Authority in relation to that body for the purposes of this section.

(2) In this section "consumer complaints scheme" means a scheme for the investigation and resolution of complaints from consumers about the supply

of goods and services by registered professionals regulated by the regulatory body (whether or not the scheme also applies to complaints against other persons).

(3) The Professional Standards Authority must publish guidance as to the criteria to be applied by it in considering whether to give approval to a consumer complaints scheme in relation to a regulatory body for the purposes of this section.

(4) The criteria to be applied must include a requirement that the Authority is satisfied that the scheme was set up, and is to be operated, independently of the regulatory body.

Creation of appointments or adjudication bodies etc

28 Appointments to panels

(1) A regulatory body must by rules appoint a person or establish a body to carry out functions conferred by rules under sections 75, 139 and 142 relating to appointments to the following panels—
(a) registration appeals panels;
(b) fitness to practise panels;
(c) interim orders panels.

(2) The following persons may not be appointed by a regulatory body under subsection (1), or be a member of a body established by a regulatory body under subsection (1)—
(a) a member of a regulatory body;
(b) a member of the Pharmaceutical Society of Northern Ireland;
(c) a member of the Professional Standards Authority;
(d) a person appointed for the time being as an adviser or assessor to a panel mentioned in subsection (1);
(e) a person involved for the time being in an investigation under section 128;
(f) a person who would be prevented from being a member of the regulatory body by—
(i) the provisions referred to in section 4(1), or
(ii) regulations under section 5.

29 Power to create a separate adjudication body etc

(1) The Secretary of State may by regulations provide in the case of one or more regulatory bodies—
(a) for sections 28, 75, 139 and 142 not to apply, but for a person appointed by the regulations to have the functions that sections 75, 139 and 142 require to be given to a person appointed or body established under section 28, and
(b) for a person appointed by the regulations to be responsible for the administration of hearings and adjudication by any registration appeals panel, fitness to practise panel or interim orders panel established by a regulatory body to which the regulations apply.

(2) The regulations may in particular establish a committee to be the appointed person.

(3) If the regulations provide for an appointed person to be responsible for the administration of hearings and adjudication by a registration appeals panel established by a regulatory body to which the regulations apply, the regulations may provide for any function exercisable by the regulatory body in connection with registration appeals hearings under Part 3 to be exercisable instead by the appointed person.

(4) If the regulations provide for an appointed person to be responsible for the administration of hearings and adjudication by a fitness to practise panel or interim orders panel established by a regulatory body to which the regulations apply, the regulations may provide for any function exercisable by the regulatory body under Part 6 to be exercisable instead by the appointed person.

(5) Regulations which are made under this section must provide for section 194 not to apply, but for the appointed person to publish guidance for registration appeals panels, fitness to practise panels and interim orders panels.

(6) Regulations which are made under this section must also provide for the appointed person to report annually to Parliament.

(7) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

PART 2

REGISTERS ETC

Registers to be kept by a regulatory body

30 Registers: general

(1) A regulatory body must not—
(a) keep any register, or
(b) divide any register kept by it into parts,
unless it is required or authorised to do so by, or by regulations made under, this Act.

(2) The entries in a register kept by a regulatory body (or a part of a register divided into parts) must only contain information required or authorised to be included in it by a provision of, or of regulations under, this Act or by rules made by the body.

(3) An individual may be registered in two or more of the registers kept by the regulatory bodies (and in two or more parts of a register divided into parts) unless any provision of, or of regulations under, this Act provides otherwise.

(4) In this section "register" means any register, list or other record (however described) of information relating to individuals or other persons, businesses or premises (whether or not it includes other information) but does not include a record kept for internal purposes.

(5) A record is "kept for internal purposes" if—

(a) it is used by the regulatory body or its registrar for purposes connected with their respective functions;
(b) inclusion (or non-inclusion) in the record of any information about a person, a business or premises has no legal consequences for any person by virtue of any enactment; and
(c) the record and the entries in it are not made available to the public or published.

(6) In subsection (5) "enactment" means an enactment (whenever passed or made) contained in, or in an instrument made under—
(a) an Act of Parliament;
(b) an Act of the Scottish Parliament;
(c) an Act or Measure of the Welsh Assembly;
(d) Northern Ireland legislation.

31 Registers of regulated professionals

(1) In this Act "professionals register" means a register of members of a regulated health and social care profession; and for this purpose "member" means an individual who—
(a) has satisfied the registration conditions under section 37, 41, 51 or 52 in respect of that profession; or
(b) the registrar has decided should be—
(i) conditionally registered under regulations under section 42;
(ii) provisionally registered under regulations under section 43; or
(iii) registered in an emergency under section 49.

(2) A regulatory body must keep one or more registers of professionals as required by this section or by any applicable provision of Schedule 2.

(3) A professionals register must be kept by a regulatory body for each profession it regulates (unless a provision of Schedule 2 provides otherwise).

(4) A professionals register kept by a regulatory body for a particular profession is to be divided into two or more parts if any provision of Schedule 2 so requires.

(5) Schedule 2 makes provision as to professionals registers kept by particular regulatory bodies.

32 Other registers

Schedule 3 makes provision about registers other than professionals registers, including provision—
(a) continuing or abolishing certain registers existing at the passing of this Act;
(b) enabling a regulatory body to be required to keep a students register;
(c) enabling a regulatory body to be required to keep a supplementary register of persons not registered on its professionals register.

33 Registration of health and social care businesses

(1) The Secretary of State may by regulations require a regulatory body to keep a register of bodies corporate or other prescribed persons carrying on a prescribed health and social care business.

(2) In this section "health and social care business" means a business involving—
  (a) the carrying out, by any individuals involved in the business, of restricted professional activities or other activities in the course of practising a regulated health and social care profession; or
  (b) the use of a protected title by individuals involved in the business.

(3) Regulations under this section may prescribe a description of health and social care business by reference to any characteristics, including —
  (a) the carrying out of particular activities by any individuals involved in the business;
  (b) the use of a particular title by the business or by any individual involved in the business.

(4) For the purposes of subsections (2) and (3) an individual involved in the business includes an individual providing services to the person carrying on the business.

(5) Regulations under this section may make provision as to—
  (a) the conditions for registration and renewal of registration;
  (b) the circumstances in which an entry relating to a person may be removed from the register (which may include where a person's fitness to carry on a health and social care business is found to be impaired);
  (c) the circumstances in which an entry may subsequently be restored to the register;
  (d) the procedure for making an application for registration, renewal of registration, removal of an entry and restoration of an entry;
  (e) the content of the register;
  (f) the publication of the register, or of specified information from the register.

(6) Regulations under this section may—
  (a) prescribe the circumstances in which a registered person's fitness to carry on a health and social care business is to be regarded as impaired;
  (b) require or authorise a regulatory body to publish standards of conduct and performance for registered persons;
  (c) require or authorise a regulatory body to provide guidance on the fitness of registered persons to carry on a health and social care business;
  (d) make provision about the procedure for investigating and adjudicating allegations of impairment;
  (e) make provision as to the consequences of a finding that a registered person's fitness to carry on a health and social care business is impaired.

(7) Regulations under this section may—
  (a) create summary offences relating to the carrying on of a prescribed health and social care business by an unregistered person, and
  (b) make provision in connection with such offences.

(8) Regulations creating an offence may not provide for the offence to be punishable otherwise than by a fine (whether an unlimited fine or a fine not exceeding a specified level on the standard scale).

(9) Regulations under this section may make provision by applying provisions of this Act with such modifications as the Secretary of State thinks fit.

(10) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(11) In this section "prescribed" means prescribed, or of a description prescribed, in regulations made by the Secretary of State.

34 Registration of premises

(1) The Secretary of State may by regulations require a regulatory body to keep a register of premises of a prescribed description.

(2) The premises prescribed by the regulations must be premises at or from which—

(a) a registered professional carries out activities in the course of practising a regulated health and social care profession,

(b) any person carries on a health and social care business, or

(c) any person carries on activities related to the activities of a person mentioned in paragraph (a) or (b).

(3) In this section "health and social care business" has the same meaning as in section 33(2).

(4) The regulations may prescribe a description of premises by reference to any characteristics of the premises, the activities carried on there or the persons carrying them on.

(5) Regulations under this section may make provision as to—

(a) the conditions for registration and renewal of registration;

(b) the circumstances in which an entry relating to any premises may be removed from the register;

(c) the circumstances in which an entry may subsequently be restored to the register;

(d) the procedure for making an application for registration, renewal of registration, removal of an entry and restoration of an entry;

(e) the content of the register;

(f) the publication of the register, or of specified information from the register.

(6) Regulations under this section may create summary offences and make provision in connection with such offences.

(7) Regulations creating an offence may not provide for the offence to be punishable otherwise than by a fine (whether an unlimited fine or a fine not exceeding a specified level on the standard scale).

(8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

35 Repeal of provisions enabling regulatory bodies to establish and maintain voluntary registers

(1) The following provisions (which relate to the power of the regulatory bodies and the Pharmaceutical Society of Northern Ireland to establish voluntary registers) are repealed—

(a) in Part 2 of the National Health Service Reform and Health Care Professions Act 2002—

section 25D;

section 25E(1) and (5) to (11);

section 25F;

(b) section 228 of the Health and Social Care Act 2012;

(c) in section 25G(1) of the National Health Service Reform and Health Care Professions Act 2002 (accreditation of voluntary registers), the words "regulatory body or other".

(2) The powers of the Secretary of State to make regulations under this Act do not include power to require or authorise any regulatory body to keep a voluntary register (within the meaning of section 25E of the National Health Service Reform and Health Care Professions Act 2002).

The registrar of a regulatory body

36 Appointment of a registrar

(1) Each regulatory body must appoint a registrar.

(2) A registrar is to hold office for the period and on the terms and conditions (including terms and conditions as to remuneration) determined by the regulatory body.

(3) A regulatory body may pay to or in respect of a registrar such sums in respect of pensions, allowances or gratuities as it may determine.

PART 3

REGISTRATION IN A PROFESSIONALS REGISTER

Registration

37 Full registration

(1) The registrar must register in a professionals register a person who—

(a) has made an application for registration in the form and manner specified in rules made by the regulatory body,

(b) has paid the fee specified in rules made by the regulatory body (subject to subsection (5)), and

(c) in the opinion of the registrar, satisfies the registration conditions.

(2) The registration conditions are—

(a) that the person is appropriately qualified to practise the profession to which the register relates,

(b) that the person's fitness to practise the profession is not impaired on any of the grounds listed in section 120(1),

(c) that the person intends to practise the profession within the period specified in rules made by the regulatory body, and

(d) subject to the exceptions in subsection (4), that the person is properly indemnified or insured against liabilities that may be incurred in the course of practising the profession.

(3) A regulatory body may by rules specify for the purposes of subsection (2)(c)—

(a) the activities that are to be regarded as practising the profession, and

(b) the criteria for determining whether a person intends to practise the profession.

(4) Subsection (2)(d) does not apply where the application is in respect of —

(a) the register of social workers in England kept by the Health and Care Professions Council;

(b) a register, or part of a register, of a description prescribed for the purposes of this subsection by regulations made by the Secretary of State.

(5) A regulatory body may by rules make provision authorising the registrar in specified circumstances to reduce or waive the fee.

38 "Appropriately qualified"

(1) Each regulatory body must by rules make provision as to the manner of, and criteria for, determining whether a person is appropriately qualified for the purpose of section 37(2)(a).

(2) Rules under subsection (1) may, in particular—

(a) provide that a person who holds a specified qualification is appropriately qualified for the purposes of section 37(2)(a);

(b) specify the documents that may be accepted by the registrar as evidence of a specified qualification;

(c) provide that a qualification awarded before a specified date or before the beginning of a specified period is to be disregarded for the purpose of determining whether a person is appropriately qualified;

(d) specify requirements as to the knowledge, skills and experience that must be met in order for an individual to be appropriately qualified for the purposes of section 37(2)(a) (whether or not those requirements are in addition to a requirement to hold a specified qualification);

(e) require a person to demonstrate proficiency in the knowledge and use of the English language that is sufficient for the safe and competent practice of the regulated health and social care profession.

(3) Subsection (2)(e) is subject to regulations under section 46 in the case of a person who is an exempt applicant (as defined in section 95).

39 Fitness to practise

(1) Each regulatory body must by rules make provision for the manner of, and criteria for, determining whether the registration condition in section 37(2)(b) is met.

(2) The rules may, in particular—

(a) require a person applying for registration to provide information for the purposes of determining whether the condition is met;

(b) provide that the information is to be provided by means of a written declaration by the person applying for registration.

(3) The information that may be required by a registrar under rules made under this section does not include information about the person's health, unless the information relates to a health condition that, in the opinion of the registrar, may call into question the person's fitness to practise the regulated health and social care profession.

40 Indemnity and insurance

(1) Each regulatory body must by rules make provision for the manner of, and criteria for, determining whether a person is properly indemnified or insured for the purpose of section 37(2)(d).

(2) Rules under subsection (1) may, in particular—

(a) specify the information to be provided by the person for the purpose of determining whether the person is properly indemnified or insured,

(b) provide that the information is to be provided by means of a written declaration by the person applying for registration, and

(c) require the person to give notice to the registrar of specified changes to the person's indemnity or insurance arrangements.

41 Temporary registration: EEA nationals and persons with an enforceable EU right

(1) A regulatory body must by rules make provision about the circumstances in which, and the period for which, an exempt person who satisfies the registration conditions in subsection (2)—

(a) may be registered temporarily on a professionals register kept by that body;

(b) must be treated as being registered temporarily on a professionals register.

(2) The registration conditions are that the person—

(a) is qualified in a profession regulated by the regulatory body (referred to in this section as the "regulated profession") in a relevant European State other than the United Kingdom,

(b) meets the requirements as to training specified in rules made by the regulatory body, and

(c) intends to practise the regulated profession in the United Kingdom on a temporary and occasional basis.

(3) The rules may, in particular, require a person applying for registration under this section—

(a) to make a written declaration as to the person's intention to practise the regulated profession on a temporary and occasional basis;

(b) to provide evidence of the professional qualifications and training referred to in subsection (2)(a) and (b);

(c) to provide a certificate issued by a specified authority in the relevant European State of which the person is a national confirming that—

(i) the person is lawfully established in the regulated profession, and

(ii) the person is not prohibited from practising the profession in that relevant European State;

(d) to provide evidence of an indemnity or insurance arrangement that satisfies the requirements of section 37(2)(d);

(e) if the person is a national of a relevant European State, to provide proof of the person's nationality;

(f) if the person is not a national of a relevant European State, to provide proof of the EU right by virtue of which the person is an exempt person.

(4) The rules may provide that the regulatory body—

(a) may request information about the person from a specified authority in a relevant European State of which the person is a national, and

(b) must provide specified information to a specified authority in a relevant European State in respect of—

(i) a person whose application for registration under this section is refused, or

(ii) a person who is registered under this section and subsequently removed from the register under any provision of this Act.

(5) A regulatory body may treat as deficient professional performance for the purposes of section 120 (impairment of fitness to practise) an act or omission by a person who is temporarily registered under this section that—

(a) is a breach of a condition imposed by a specified authority in the person's home State in relation to the person's practise of a regulated health and social care profession, or

(b) would be a breach of the condition if the condition applied in relation to the person's practise of the profession outside of the person's home State.

(6) In this section—

(a) "home State" means the relevant European State of which the person is a national;

(b) "specified" means specified in rules made by the regulatory body.

42 Conditional registration

(1) The Secretary of State may by regulations permit a registrar to conditionally register a person in a professionals register.

(2) Regulations under subsection (1) may, in particular—

(a) specify the criteria for conditional registration;

(b) specify the circumstances in which a conditional registration may be converted into a full registration;

(c) specify the duration of a conditional registration and the circumstances in which it will cease to have effect;

(d) make provision for a temporary system of conditional registration in respect of a health and social care profession that is added to the list in the second column of Schedule 1.

43 Provisional registration

(1) The Secretary of State may by regulations permit a registrar to provisionally register a person in a professionals register.

(2) Regulations under this section may, in particular—
  (a) specify the criteria for provisional registration;
  (b) provide that a person who is provisionally registered under this section must meet specified requirements as to education and training;
  (c) specify conditions to which provisional registration is subject;
  (d) specify requirements as to the professional supervision of a person who is provisionally registered;
  (e) specify the circumstances in which a provisional registration may be converted into a full registration.

44 Renewal

(1) A regulatory body may by rules—
  (a) provide that an entry in a professionals register, or an entry of a specified kind in a professionals register, has effect only for a period specified in the rules, and
  (b) make provision for the renewal of an entry in a professionals register.

(2) An entry in respect of a person registered in a professionals register may be renewed if—
  (a) the person has made an application for renewal in the form and manner specified in rules made by the regulatory body,
  (b) the person has paid the fee specified in rules made by the regulatory body (subject to subsection (6)), and
  (c) in the opinion of the registrar, the person satisfies the renewal conditions.

(3) The renewal conditions are that—
  (a) the person has met the standards of continuing professional development determined by the regulatory body under section 107,
  (b) the person's fitness to practise is not impaired on any of the grounds listed in section 120,
  (c) the person is practising, or intends to practise, the profession within the period specified in rules made by the regulatory body, and
  (d) subject to the exceptions in subsection (5), the person is properly indemnified or insured against liabilities that may be incurred in the course of practising the profession.

(4) The reference in subsection (3)(c) to practising, or intending to practise, the profession is to be read in accordance with rules made under section 37(3).

(5) Subsection (3)(d) does not apply where—
  (a) the application is in respect of the register of social workers in England kept by the Health and Care Professions Council;
  (b) the application is in respect of a register, or part of a register, prescribed by regulations made by the Secretary of State.

(6) A regulatory body may by rules make provision authorising the registrar in specified circumstances to reduce or waive the fee.

(7) Sections 39 and 40 apply in relation to this section as they apply in relation to section 37.

45 Lapse of registration

(1) A person's registration in a professionals register (or in the case of a register divided into parts, a part of the register) kept by a regulatory body lapses at the end of the period specified by that body in rules under section 44(1)(a) if the person has not renewed his or her registration in accordance with rules made by that body under section 44(1)(b).

(2) But a person's registration in a professionals register, or part of a register, does not lapse under subsection (1) if this subsection applies to the person.

(3) Subsection (2) applies to a person—

(a) who is the subject of any proceedings under Part 6, including preliminary consideration or investigation under Chapter 2 of that Part, which relate to the person's fitness to practise the regulated health and social care profession to which that register, or that part of the register, relates ("the relevant profession"),

(b) in respect of whom a decision has been made relating to the relevant profession which may be appealed against under section 166 (appeals against decisions of a fitness to practise panel),

(c) in respect of whom a referrable decision has been made relating to the relevant profession under section 167(3), (5) or (7) (referral of fitness to practise decisions by the Professional Standards Authority),

(d) in respect of whom a decision has been made relating to the relevant profession which may be referred under regulations under section 168 (referral of fitness to practise decisions by a regulatory body),

(e) in respect of whom a conditional registration order relating to the relevant profession has effect under section 146(5), 159(8)(c), 160(6) or (7), 161(8)(c) or 162(10)(c),

(f) in respect of whom a suspension order relating to the relevant profession has effect under section 146(6), 159(8)(d), 160(9)(c), 161(6), (7) or (10) or 162(9), or

(g) in respect of whom an interim order relating to the relevant profession has effect under section 152 or 155.

(4) Subsection (2) ceases to apply to a person described in subsection (3)(b)—

(a) at the end of the period specified in section 166(3) during which an appeal may be made, or

(b) where an appeal is made, at the determination of the appeal.

(5) Subsection (2) ceases to apply to a person described in subsection (3)(c)—

(a) at the end of the period specified in section 167(9) or (10) during which a referral may be made, or

(b) where a referral is made, at the determination of the proceedings.

(6) Subsection (2) ceases to apply to a person described in subsection (3)(d)—

(a) at the end of the period specified in regulations under section 168 during which a referral may be made, or

(b) where a referral is made, at the determination of the proceedings.

(7) A person whose registration in a professionals register, or part of a register, would have lapsed under subsection (1) but for subsection (2) is to be treated as not being registered in that register, or that part of the register, for all purposes other than those mentioned in subsection (8), despite the fact that the person's name continues to appear in it.

(8) The person is to be treated as registered for the purposes of any proceedings under Part 6 (including preliminary consideration or investigation under Chapter 2 of that Part) which relate to the person's fitness to practise the relevant profession.

46 Proficiency in English: exempt applicants

(1) The Secretary of State may make provision in regulations for and in connection with the treatment of exempt applicants for registration in a professionals register (or a particular part of a professionals register) in relation to proficiency in English.

(2) Regulations under this section may in particular make provision for—
- (a) circumstances in which exempt applicants are to be presumed by the registrar (in the absence of evidence to the contrary) to have sufficient proficiency in English;
- (b) circumstances in which exempt applicants are or are not to be subjected to any requirement to demonstrate their level of proficiency in English (whether by virtue of rules under section 38(2) or otherwise) before a decision on their application is made;
- (c) circumstances in which the registrar must determine whether an exempt applicant is a qualifying exempt applicant (see subsection (5));
- (d) special registration arrangements for qualifying exempt applicants;
- (e) a procedure for qualifying exempt applicants to become registered on the professionals register (without being or continuing to be subject to special registration arrangements).

(3) Subject to any provision made under subsection (2)(e), rules under section 38 may make provision in relation to the proficiency in English of qualifying exempt applicants.

(4) In this section "sufficient proficiency in English", in relation to an exempt applicant, means proficiency in the knowledge and use of English (both written and spoken) sufficient for the safe and competent practice of the health and social care profession to which the application relates.

(5) For the purposes of this section an exempt applicant is a "qualifying exempt applicant" if the registrar—
- (a) has evidence of the applicant's proficiency in English;
- (b) believes on the basis of that evidence that the applicant does not have sufficient proficiency in English; and
- (c) determines that the application would have been successful but for that belief.

(6) In subsection (2)(b) a requirement to demonstrate the applicant's level of proficiency in English includes any requirement for an applicant—
- (a) to demonstrate sufficient proficiency in English;
- (b) to hold a qualification relating to proficiency in English; or
- (c) to undergo any test of proficiency in English;

but does not include any requirement specified in rules made by the regulatory body concerned under subsection (3).

(7) In subsection (2)(d) and (e) "special registration arrangements" may include registration in—
- (a) a separate part of the professionals register for such applicants, or

(b) a supplementary register relating to the health and social care profession to which the application relates.

47 Procedure for dealing with applications for registration or renewal

(1) A regulatory body must by rules make provision about the procedure to be followed by the registrar in dealing with—
(a) applications for registration, and
(b) where rules under section 44 provide for the renewal of an entry, applications for renewal.

(2) The rules must require the registrar to deal expeditiously with an application for registration or renewal.

(3) The rules may, in particular, make provision about—
(a) the period within which an application for registration, or renewal of registration, must be acknowledged;
(b) the information that must be provided by the registrar in response to an application;
(c) the period within which the registrar must give notice to the applicant whether or not the application has been successful;
(d) the information in support of an application that may be required by a registrar and the procedure to be followed by a registrar in requesting that information;
(e) circumstances in which the registrar may determine that an application has not been successful on the grounds that the applicant has failed to provide information required by the registrar within the period specified by the registrar;
(f) circumstances in which a fee for registration is not to be charged or may be reduced or waived.

48 Notice of decision to refuse registration or renewal

Where a registrar refuses an application for registration or renewal of registration, the registrar must give notice to the applicant of—
(a) the decision to refuse the application,
(b) the reasons for the decision, and
(c) the right of appeal under section 76.

Registration in an emergency

49 Emergency registration

(1) This section applies if the Secretary of State advises a registrar—
(a) that an emergency has occurred, is occurring or is about to occur, and
(b) that action should be considered under this section.

(2) The registrar may enter on the professionals register—
(a) a person whom the registrar considers is fit, proper and suitably experienced to be entered on the register with regard to the emergency,
(b) the persons comprising a specified group of persons if the registrar considers that the group is comprised of persons who are fit, proper

and suitably experienced to be entered on the register with regard to the emergency.

(3) The registrar may register under subsection (2) all of the persons comprising a specified group of persons without first identifying each person in the group.

(4) The registration of a person under this section is subject to such conditions as the registrar may specify, and the registrar may at any time vary the conditions (including by adding to the conditions or revoking any condition).

(5) The registration of a person registered under subsection (2) as one of a specified group may be subject to the same conditions as the registration of other members of the group, or it may be subject to different conditions.

(6) A person's registration under this section is to cease to have effect if revoked by the registrar.

(7) The registrar—

(a) must revoke a registration under this section if the Secretary of State advises the registrar that the circumstances that led the Secretary of State to advise the registrar as mentioned in subsection (1) no longer exist;

(b) may revoke a registration under this section at any time—

(i) where the registrar has grounds for suspecting that the registered person's fitness to practise may be impaired, or

(ii) for any other reason.

(8) The registration of a person under subsection (2)(b) may be revoked by the registrar—

(a) with or without revoking the registration of any other member of the group, or

(b) by virtue of a decision to revoke the registration of all members of the group.

(9) Part 6 of this Act (fitness to practise) does not apply to persons registered under this section.

(10) If a person breaches any condition to which the person's registration under this section is subject, anything done by the person in breach of that condition is to be treated as not being done by a registered professional.

(11) In this section and section 50 "emergency" means an emergency of the type described in section 19(1)(a) of the Civil Contingencies Act 2004, read with subsection (2)(a) and (b) of that section.

50 Temporary annotations in response to an emergency

(1) This section applies if the Secretary of State advises a registrar—

(a) that an emergency has occurred, is occurring or is about to occur, and

(b) that action should be considered under this section.

(2) The registrar may annotate the professionals register—

(a) to indicate that a registered professional is, in the opinion of the registrar, a fit, proper and suitably experienced person to order specified drugs, medicines or appliances in a specified capacity with regard to the emergency;

(b) to indicate that the persons comprising a specified group of registered professionals are persons who, in the opinion of the registrar, may reasonably be considered fit, proper and suitably experienced to order specified drugs, medicines or appliances in a specified capacity with regard to the emergency.

(3) Annotations made under this section—

(a) must be removed by the registrar if the Secretary of State advises the registrar that the circumstances that led the Secretary of State to advise the registrar as mentioned in subsection (1) no longer exist;

(b) may be removed by the registrar at any time—

(i) where the registrar has grounds for suspecting that the registered professional's fitness to order drugs, medicines or appliances may be impaired, or

(ii) for any other reason.

(4) An annotation made under subsection (2)(b)—

(a) may be removed by the registrar without removing the equivalent annotations of the other members of the group, or

(b) may be removed by virtue of a decision to remove the annotations made under subsection (2)(b) of all the members of the group.

Registration of visiting professionals

51 Temporary registration: visiting specialists

(1) In this section, a reference to a visiting specialist is a reference to a person who—

(a) is an eminent specialist in a particular branch of a regulated health and social care profession, and

(b) is or intends to be in the United Kingdom temporarily for the purpose of providing services within that branch of the profession.

(2) An authorised regulatory body may direct the registrar to temporarily register a visiting specialist on the professionals register if—

(a) the visiting specialist has made an application for registration in the form and manner specified by rules made by the regulatory body,

(b) the visiting specialist has paid the fee (if any) specified by rules made by the regulatory body, and

(c) the registrar is satisfied that the visiting specialist meets the registration conditions.

(3) The registration conditions are—

(a) that the visiting specialist holds, or has passed all the qualifying examinations necessary for obtaining, an acceptable overseas qualification,

(b) that the visiting specialist is entitled to practise the regulated health and social care profession in the State where he or she is ordinarily resident,

(c) that the visiting specialist is or will be employed or engaged within the United Kingdom to provide services in a particular branch of the profession,

(d) that the visiting specialist is an eminent specialist in that branch of the profession, and

(e) that the visiting specialist's fitness to practise the profession is not impaired on any of the grounds listed in section 120.

(4) In subsection (3)(a) "acceptable overseas qualification" means a qualification specified in rules made under section 38(2)(a) ("appropriately qualified").

(5) A visiting specialist may be registered under this section for such period not exceeding 26 weeks as the regulatory body may specify in a direction under subsection (2).

(6) A direction under subsection (2) may be subject to conditions.

(7) The authorised regulatory body—
(a) may vary the conditions specified in the direction, and
(b) subject to subsection (8), may direct the registrar to extend the period for which the visiting specialist is registered.

(8) A visiting specialist may not be registered under this section for more than 26 weeks in any period of five years.

(9) If a visiting specialist breaches any condition to which the registration under this section is subject, anything done by the person in breach of that condition—
(a) is to be treated (for purposes other than those of paragraph (b)) as not being done by a registered professional; and
(b) may be treated as deficient professional performance for the purposes of section 120, and the registrar may refer the matter for preliminary consideration under section 122.

(10) In this section "authorised regulatory body" means—
(a) the General Medical Council, or
(b) a regulatory body prescribed by regulations made by the Secretary of State.

(11) Regulations under subsection (10)(b) may provide that references in this section to the United Kingdom are to be read as references to the part or parts of the United Kingdom in respect of which the prescribed regulatory body exercises its functions.

52 Temporary special purpose registration

(1) In this section, a reference to a visiting professional is a reference to a person who is, or intends to be, in the United Kingdom temporarily for the purposes of providing particular health or social care services exclusively to persons who are not nationals of the United Kingdom.

(2) An authorised regulatory body may direct the registrar to temporarily register a visiting professional on the professionals register if—
(a) the visiting professional has made an application for registration in the form and manner specified by rules made by the regulatory body,
(b) the visiting professional has paid the fee (if any) specified by rules made by the regulatory body, and
(c) the registrar is satisfied that the visiting professional meets the registration conditions.

(3) The registration conditions are—

(a) that the visiting professional holds, or has passed all the qualifying examinations necessary for obtaining, an acceptable overseas qualification,

(b) that the visiting professional is entitled to practise the regulated health and social care profession in the State where he or she is ordinarily resident,

(c) that the visiting professional is or will be employed or engaged within the United Kingdom—

(i) at an establishment that provides health or social care services for persons who are not nationals of the United Kingdom, and

(ii) to provide particular health or social care services, but only for persons who are not nationals of the United Kingdom, and

(d) that the visiting professional's fitness to practise the profession is not impaired on any of the grounds listed in section 120.

(4) In subsection (3)(a) "acceptable overseas qualification" means a qualification specified in rules made under section 38(2)(a) (meaning of "appropriately qualified").

(5) The authorised regulatory body must specify in a direction given under subsection (2) the period for which a visiting professional is to be registered.

(6) A visiting professional registered under this section may not, except in an emergency—

(a) provide health and social care services in the United Kingdom to United Kingdom nationals, and

(b) provide within the United Kingdom health and social care services other than the particular services specified in the direction.

(7) A direction under subsection (2) may be subject to other conditions specified in the direction.

(8) The authorised regulatory body—

(a) may vary conditions specified in the direction, and

(b) may direct the registrar to extend the period for which the visiting professional is registered.

(9) If a visiting professional registered under this section breaches subsection (6), or any other condition to which his or her registration is subject, anything done in breach of that condition—

(a) is to be treated (for purposes other than those of paragraph (b)) as not having been done by a registered professional,

(b) may be treated as deficient professional performance for the purposes of section 120, and the registrar may refer the matter for preliminary consideration under section 122.

(10) In this section "authorised regulatory body" means—

(a) the General Medical Council, or

(b) a regulatory body prescribed by regulations made by the Secretary of State.

(11) Regulations under subsection (10)(b) may provide that references in this section to the United Kingdom are to be read as references to the part or parts of the United Kingdom in respect of which the prescribed regulatory body exercises its functions.

Content of the register

53 Content of the register

(1) A professionals register or, in the case of a register divided into parts, each part of the register, is to show in respect of each person registered on it—

(a) a reference number assigned to the person's entry on the register, or part of the register, by the registrar,

(b) whether the person is—

(i) registered under section 37,

(ii) temporarily registered under section 41, 51 or 52,

(iii) conditionally registered under regulations under section 42,

(iv) provisionally registered under regulations under section 43, or

(v) registered in an emergency under 49,

(c) the date on which the person was entered on the register or part of the register,

(d) the qualification (or qualifications) specified under section 38 held by the person, and

(e) where a relevant decision has been made in respect of the person's fitness to practise, the information specified in sections 54 to 59.

(2) In this section, "relevant decision" means—

(a) a determination by a fitness to practise panel under section 146 or any of sections 159 to 162 that a registered professional's fitness to practise is impaired (but see subsection (3)),

(b) a decision by a fitness to practise panel or an interim orders panel to make an interim order under section 152 or to confirm or vary an interim order under section 155,

(c) a decision by a fitness to practise panel to agree undertakings under section 144(4), 159(5) or (6), 160(4), 161(4) or 162(7) following an admission by a registered professional that his or her fitness to practise is impaired,

(d) a decision by a fitness to practise panel to give advice or a warning to a registered professional under section 145, 159(3), 160(3), 161(3) or 162(6) following a finding that his or her fitness to practise is not impaired,

(e) a decision by a regulatory body to issue a warning to a registered professional under section 129(3)(c),

(f) a decision by a regulatory body to agree undertakings with a registered professional under section 129(3)(d), and

(g) a decision by a fitness to practise panel to restore a person to a professionals register under section 164(1)(a) (restoration following fitness to practise proceedings).

(3) A determination by a fitness to practise panel that a registered professional's fitness to practise is impaired is not a relevant determination if the disposal made is—

(a) a removal order under section 146(7), 159(8)(e), 160(9)(d) or 161(8)(d), or

(b) a voluntary removal order under section 144(2), 159(2), 160(2), 161(2) or 162(5).

(4) A regulatory body may by rules require or authorise the registrar—

(a) to include in a professionals register information not specified in subsection (1),
(b) to remove from a register information of a kind specified in the rules.

(5) But the rules may not require or authorise the registrar to record on a register information relating to the physical or mental health of a registered professional.

(6) A regulatory body may by rules provide that a professionals register kept by it is to include information about professional qualifications or specialisms (in addition to the qualification recorded under subsection (1)(d)), and the rules may provide for the removal of any such information.

(7) A regulatory body may not make rules under subsection (6) unless it considers that—
(a) there may be a risk to the public if the professionals register is not annotated to include the proposed information about professional qualifications or specialisms, and
(b) the annotation of the register to show the information about professional qualifications or specialisms is a proportionate and cost-effective response to the risk.

(8) The Secretary of State may by regulations make provision requiring a regulatory body—
(a) to include a specified category of information in a professionals register kept by it;
(b) to remove a specified category of information from a professionals register kept by it.

54 Relevant information: impaired fitness to practise

(1) This section applies where a fitness to practise panel has made a relevant decision specified in section 53(2)(a).

(2) The entry in the professionals register (or, in the case of a register divided into parts, in each part of the register) in respect of the registered professional (the "relevant entry") must—
(a) state that the registered professional's fitness to practise has been found to be impaired, and
(b) specify the way in which the fitness to practise panel disposed of the matter under section 146 or any of sections 159 to 162.

(3) Where the fitness to practise panel has agreed undertakings with the registered professional, the relevant entry must specify the undertakings that have been agreed, except for any undertakings relating to the professional's physical or mental health.

(4) Where the fitness to practise panel has made a conditional registration order, the relevant entry must specify the conditions imposed on the professional's registration, except for any conditions relating to his or her physical or mental health.

(5) Where the fitness to practise panel made a decision to take no further action in respect of a registered professional, the registrar may remove the information specified in subsection (2) from the register after the expiry of the period of 5 years beginning with the date on which the panel made the decision.

(6) Where the fitness to practise panel gave a warning, the registrar may remove the information specified in subsection (2) in so far as it relates to the warning from the register after the expiry of the period of 5 years beginning with the date on which the warning was given.

(7) Where the fitness to practise panel agreed undertakings, the registrar may remove the information specified in subsection (2) in so far as it relates to the undertakings from the register when the undertakings cease to have effect.

(8) Where the fitness to practise panel made a conditional registration order which has ceased to have effect, the relevant entry must continue to indicate that the professional had been subject to such an order and the dates for which the order had effect, but the registrar may remove from the relevant entry details of the conditions imposed under the order.

(9) Where the fitness to practise panel made a suspension order which has ceased to have effect, the relevant entry must continue to indicate that the professional had been subject to such an order and the dates for which the order had effect.

55 Relevant information: interim orders

(1) This section applies where a fitness to practise panel or an interim orders panel has made a relevant decision specified in section 53(2)(b).

(2) The entry in the professionals register (or, in the case of a register divided into parts, in each part of the register) in respect of the registered professional must—

(a) state the type of interim order that has been made or confirmed, or (in the case of a variation of an interim order under section 155) the variation that has been made, and

(b) where the order is an interim conditional registration order, specify the conditions imposed on the professional's registration, except for any conditions relating to his or her physical or mental health.

(3) The registrar must remove from the entry the information specified in subsection (2) if the interim order is revoked under section 147 or otherwise ceases to have effect.

56 Relevant information: undertakings following admission of impairment

(1) This section applies where a fitness to practise panel has made a relevant decision specified in section 53(2)(c).

(2) The entry in the professionals register (or, in the case of a register divided into parts, in each part of the register) in respect of the registered professional must—

(a) state that the registered professional admits that his or her fitness to practise is impaired, and

(b) specify the undertakings that have been agreed, except for any undertakings relating to the professional's physical or mental health.

(3) The registrar may remove from the entry the information specified in subsection (2) when the undertakings cease to have effect.

57 Relevant information: finding of no impairment by a fitness to practise panel

(1) This section applies where a fitness to practise panel has made a relevant decision specified in section 53(2)(d).

(2) The entry in the professionals register (or, in the case of a register divided into parts, in each part of the register) in respect of the registered professional must state—

(a) that there has been a finding that the registered professional's fitness to practise is not impaired, and

(b) that the fitness to practise panel has given advice or a warning (as the case may be) to the registered professional.

(3) The registrar may remove from the entry the information specified in subsection (2) after the expiry of such period as the regulatory body may direct.

58 Relevant information: restoration

Where an entry in respect of a person has been restored to a professionals register under section 164(1)(a) (restoration following fitness to practise proceedings), the entry must state that the person had been removed from the register following a finding of impairment of fitness to practise.

59 Relevant information: decisions by regulatory body

(1) Where a regulatory body has issued a warning to a registered professional under section 129(3)(c), the entry in the professionals register (or, in the case of a register divided into parts, in each part of the register) in respect of the registered professional (the "relevant entry") must state—

(a) that the question of impairment of the registered professional's fitness to practise has not been determined, and

(b) that a warning has been issued by the regulatory body.

(2) Where a regulatory body has agreed undertakings with a registered professional under section 129(3)(d), the relevant entry must—

(a) state that the question of impairment of the registered professional's fitness to practise has not been determined, and

(b) specify the undertakings that have been agreed, except for any undertakings relating to the professional's physical or mental health.

(3) The registrar may remove from the relevant entry—

(a) the information specified in subsection (1) after the expiry of such period as the regulatory body may direct;

(b) the information specified in subsection (2) when the undertakings cease to have effect.

Removal of entries

60 Voluntary removal

(1) Each regulatory body must by rules make provision for the removal of an entry from the professionals register, or part of the professionals register, on the application of the person to whom the entry relates.

(2) Rules under this section must include provision about—

(a) the circumstances in which a person may make an application for an entry to be removed from the register;
(b) the manner in which an application may be made;
(c) the criteria by reference to which a decision to grant or refuse an application may be made;
(d) the procedure for giving notice of a decision in respect of an application.

(3) The rules may authorise or require a regulatory body to refer an application under this section to a fitness to practise panel for determination.

(4) The rules may include provision connected with the matters mentioned in subsections (1) to (3).

61 Death of a registered professional

(1) Where a registrar is satisfied that a person registered on the professionals register has died, the registrar must within the specified period remove from the register the entry relating to that person.

(2) In subsection (1) "specified" means specified by rules made by the regulatory body that is responsible for keeping the register.

62 Inadequate insurance or indemnity

(1) Where the registrar is satisfied that a person registered on the professionals register no longer meets the relevant indemnity and insurance requirement, the registrar must remove from the register (or the relevant part of the register) the entry relating to that person.

(2) In subsection (1) the reference to the relevant indemnity and insurance requirement is a reference to the requirement to be properly indemnified or insured for the purposes of—
(a) section 37(2)(d) (registration conditions), or
(b) rules under section 41(3)(d) (temporary registration: EEA nationals etc.).

63 Incorrect or fraudulently procured entries

(1) Where the registrar is satisfied that an entry in the professionals register, or an annotation to an entry, is incorrectly made, the registrar may remove the entry or annotation from the register.

(2) Where the registrar is satisfied that an entry in the professionals register, or an annotation to an entry, is fraudulently procured, the registrar may remove the entry or annotation from the register.

(3) Subsection (4) applies where, in the opinion of the registrar—
(a) an entry, or annotation to an entry, in the professionals register may have been fraudulently procured,
(b) the registered person's fitness to practise a regulated profession may be impaired, and
(c) an interim order may be necessary for the protection of the public.

(4) The registrar may refer the matter to an interim orders panel established under section 140.

64 Undisclosed impairment of fitness to practise

(1) The registrar may remove an entry in respect of a person from the professionals register if the registrar is satisfied that the person's fitness to practise the regulated profession to which the register relates was impaired at the time at which the person made an application for registration.

(2) A regulatory body may by rules—
  (a) require a person to provide information for the purposes of determining whether the registration condition in section 37(2)(b) (fitness to practise) was met by that person when the person made the application for registration;
  (b) provide that the registrar may remove from the register an entry in respect of a person who fails to comply with any such requirement.

65 Procedure: removal of a register entry under section 62, 63 or 64

(1) A regulatory body may by rules make provision about the matters to be taken into account in determining whether an entry should be removed from the register under section 62, 63 or 64.

(2) Where a registrar decides to remove an entry in respect of a person from the register under section 62, 63 or 64 the registrar must give notice to the person of—
  (a) the decision to remove the register entry,
  (b) the reasons for the decision, and
  (c) the right of appeal conferred by or under section 76.

(3) An entry may not be removed from the register under section 62, 63 or 64—
  (a) before the expiry of the period of 28 days beginning with the day on which notice is given under subsection (2), and
  (b) while an appeal against the decision to remove the entry is pending.

(4) A regulatory body may by rules make further provision about the procedure for removing an entry from the professionals register under section 62, 63 or 64.

66 Convictions for listed offences

(1) This section applies where a registered professional is convicted of a listed offence (see section 67).

(2) The registrar must remove the entry relating to that person from the register of professionals concerned.

(3) The registrar must within the specified period give notice to the relevant persons that the registrar proposes to remove the entry from the register.

(4) The registrar must provide a reasonable opportunity for the person to whom the entry relates to give notice to the registrar if the person considers that the proposal to remove the register entry is based on an error of fact.

(5) The notice must—
  (a) state the period within which the person to whom the entry relates may give notice to the registrar of an error of fact, and
  (b) contain particulars of the right of appeal conferred by section 68.

(6) The registrar must, within the specified period after the expiry of the period within which notification of an error may be given under subsection (4)—
  (a) remove the entry from the register, or
  (b) where the registrar considers that the proposal to remove the entry was based on an error of fact, determine that the entry is to remain on the register.

(7) The registrar must, within the specified period, give notice to the relevant persons of—
  (a) either—
    (i) the removal of the entry, or
    (ii) the determination that the entry is to remain under subsection (6)(b), and
  (b) where an entry is removed, the date of the removal.

(8) For the purposes of subsections (3) and (7) the "relevant persons" are—
  (a) the person to whom the entry relates,
  (b) the Secretary of State,
  (c) where the person to whom the entry relates practises the profession to which the entry relates in Scotland, the Scottish Ministers,
  (d) where the person to whom the entry relates practises that profession in Wales, the Welsh Ministers, and
  (e) where the person to whom the entry relates practises that profession in Northern Ireland, the Department of Health, Social Services and Public Safety in Northern Ireland.

(9) The registrar may give notice to any other person of the removal, or proposed removal, of an entry from the register where, in the opinion of the registrar, it is in the public interest to do so.

(10) A regulatory body may by rules make further provision about the procedure for removing an entry from a professionals register under this section.

(11) The reference in subsection (1) to a listed offence does not include a reference to a listed offence committed before the day on which this section comes into force.

(12) In this section a reference to an entry on a professionals register is, in the case of a register divided into parts, to be read as referring to the entries relating to the person concerned.

(13) In this section "specified period" means the period specified by rules made by the regulatory body.

67 "Listed offence"

(1) In section 66 "listed offence" means—
  (a) an offence listed in Part 1 of Schedule 4, or
  (b) an offence listed in Part 2 of Schedule 4 in respect of which a custodial sentence has been imposed.

(2) The Secretary of State may by regulations amend Schedule 4 for the purpose of—
  (a) adding an offence to the list in Part 1 or Part 2 of the Schedule,
  (b) amending the description of an offence in either list, or

(c) removing an offence from either list.

(3) In subsection (1)(b) "custodial sentence" has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000.

(4) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

68 Appeals against a decision to remove a register entry under section 66

(1) This section applies where the registrar determines that an entry in the professionals register is to be removed under section 66.

(2) The person to whom the entry relates may, within the period of 28 days beginning with the day on which the entry is removed from the register, appeal against the determination to the relevant court.

(3) An appeal under this section may be made on the grounds—
(a) that the determination was based on an error of fact;
(b) that the determination was wrong in law.

(4) On an appeal under this section, the relevant court may—
(a) confirm the determination,
(b) set aside the determination, or
(c) remit the case to the regulatory body to dispose of in accordance with the directions of the court.

(5) The court may make such orders as to costs as the court thinks fit.

(6) In this section "relevant court" means—
(a) in England and Wales, the High Court,
(b) in Scotland, the Court of Session, and
(c) in Northern Ireland, the High Court.

Restoring an entry to the register

69 Duty to restore a register entry

(1) Where a person removed from a professionals register under section 62 (inadequate insurance or indemnity) becomes once again eligible for inclusion on the register, the registrar must, on the application of that person, restore the entry in respect of that person to the register.

(2) If the registrar is satisfied that an entry, or an annotation to an entry, has been removed from the professionals register in error, the registrar must restore that entry or annotation to the register.

70 Power to restore a register entry

(1) This section applies where an entry is removed from a professionals register under—
(a) section 60 (voluntary removal),
(b) section 63 (incorrect or fraudulently procured entries),
(c) section 64 (undisclosed impairment of fitness to practise) or

(d) section 66 (convictions for listed offences).

(2) The registrar may, on the application of the person to whom the entry relates, restore the entry to the register.

71 Restoration following fitness to practise proceedings

(1) This section applies where a fitness to practise panel has made a removal order under—

(a) section 146(7) (disposal following a finding of impairment),

(b) section 159(8)(e) (decisions on review of undertakings),

(c) section 160(9)(d) (decisions on review of conditional registration orders), or

(d) section 161(8)(d) (decisions on review of suspension orders).

(2) The person to whom the order relates may make an application to the registrar for the entry in respect of the person to be restored to the professionals register.

(3) The person to whom the order relates may not—

(a) make an application for restoration before the expiry of the period of 5 years beginning with the date on which the removal order was made, or

(b) make more than one application for restoration to the register within a period of 12 months.

(4) The registrar must refer the application to a fitness to practise panel for determination.

(5) Where a fitness to practise panel has given a direction under section 164(4) (suspension of the right to apply for restoration)—

(a) the person in respect of whom the direction is given may make an application to the registrar for a review of the direction, and

(b) the registrar must refer the application to the fitness to practise panel for determination.

(6) A person may not make an application for review under subsection (5)(a)—

(a) before the expiry of the period of 3 years beginning with the date on which the direction is given, or

(b) within the period of 3 years beginning with the date of a previous application for review.

72 Power to make rules about applications for restoration

(1) A regulatory body must by rules make provision about the procedure in connection with an application for restoration.

(2) The rules may, in particular, make provision about—

(a) the form and manner in which an application must be made;

(b) the information to be provided in support of an application;

(c) the period within which an application may be made;

(d) the period within which the registrar must notify the applicant whether or not an application has been successful;

(e) make provision about circumstances in which an application may be referred to a fitness to practise panel for determination;

(f) the criteria by reference to which the registrar or the fitness to practise panel is to determine whether or not an entry is to be restored;
(g) the conditions as to training, education or experience that must be met in order for an entry to be restored;
(h) fees for making an application to restore an entry to the register.

Registration appeals panels

73 Registration appeals panels

(1) A regulatory body must by rules make provision for there to be registration appeals panels.

(2) A panel must have at least 3 members including a member appointed as the chair of the panel.

(3) The members must be individuals.

(4) The members must include at least one person who is not a registrant as defined in section 7.

(5) These may not be members of a registration appeals panel—
(a) the registrar;
(b) a member, or member of staff, of any regulatory body;
(c) a member, or member of staff, of the Pharmaceutical Society of Northern Ireland;
(d) a member, or member of staff, of the Professional Standards Authority;
(e) a person involved for the time being in an investigation under section 128.

74 Rules about the composition of registration appeals panels

(1) Rules under section 73 must include provision determining—
(a) who may be a member of a registration appeals panel;
(b) how many members may or must be appointed;
(c) how many of them (if any) may or must be registrants, as defined in section 7;
(d) the quorum for exercising any function of a panel;
(e) the maximum term of any appointment as a member or as the chair;
(f) the circumstances in which a person is disqualified for appointment as a member or as the chair;
(g) the grounds on which a member may be suspended or removed.

(2) A regulatory body must by rules make provision—
(a) for the declaration and registration of private interests of the members of registration appeals panels established by it;
(b) for the publication of entries recorded in the register of members' interests.

(3) A regulatory body may by rules make other provision about the constitution and operation of registration appeals panels (but such provision is subject to section 73).

(4) In particular, the rules may provide for—

(a) the appointment of legal or other advisers;
(b) the appointment of assessors or examiners;
(c) categories of person who may be appointed as chair;
(d) fees, expenses or other payments to be made by the regulatory body to any member.

75 Appointments to registration appeals panels

A regulatory body must by rules make provision for the person appointed or body established by it under section 28 to—

(a) select and appoint the chair and other members of registration appeals panels to be established by the regulatory body;
(b) select and appoint members to fill any vacancies to be filled under rules under section 74 in registration appeals panels established by the regulatory body;
(c) select and appoint any advisers, assessors or examiners to be appointed under rules under section 74;
(d) specify the term for which those appointments are made (subject to rules under section 74(1)(e));
(e) make appraisals of the performance of persons appointed;
(f) arrange continuing professional development for them;
(g) exercise the powers of suspension or removal of them.

Appeals to a registration appeals panel

76 Appeals against a decision of a registrar

(1) A person may appeal to a registration appeals panel against—
(a) a decision of a registrar not to register the person under—
(i) section 37 (full registration), or
(ii) section 41 (temporary registration);
(b) a decision of the registrar not to renew the person's registration under section 44;
(c) a decision of the registrar to remove an entry in respect of the person from the professionals register under section 62, 63 or 64;
(d) any other decision of the registrar under this Part of a kind specified in rules made by the regulatory body.

(2) But a person may not appeal against a decision of a registrar not to register the person or not to renew the person's registration if the decision was taken by reason only that the person failed to—
(a) pay the fee for registration or renewal,
(b) make an application for registration or renewal in accordance with this Act, or
(c) provide documents or information in support of the application for registration or renewal as required by the registrar in accordance with rules under this Act.

(3) Rules under subsection (1)(d) may require the registrar to give notice to persons of a specified description of the right of appeal under the rules.

77 Appeals to the registration appeals panel: procedure

(1) An appeal under section 76 must be made by giving notice of appeal to the registrar.

(2) The notice must be given before the end of the period of 28 days beginning with the relevant day.

(3) In subsection (2) "relevant day" means—
(a) in the case of a decision mentioned in section 76(1)(a) or (b), the day on which notice of the decision is given under section 48;
(b) in the case of a decision mentioned in section 76(1)(a), the day on which notice of the decision is given under section 65;
(c) in the case of a decision specified in rules under section 76(1)(d), the day specified in the rules.

78 Decisions on an appeal to the registration appeals panel

On an appeal under section 76 a registration appeals panel may—
(a) confirm the registrar's decision,
(b) set aside the decision,
(c) substitute for the decision appealed against another decision of a kind that the registrar could have made,
(d) remit the case to the registrar to dispose of in accordance with the directions of the panel,
(e) refer the case to a fitness to practise panel established by the regulatory body, or
(f) refer the case to an interim orders panel established by the regulatory body.

79 Appeals against a determination of a registration appeals panel

(1) This section applies where the registration appeals panel makes a determination in respect of an appeal against a decision of the registrar.

(2) The person who appealed against the registrar's decision may appeal against the determination to the relevant court.

(3) An appeal under this section must be brought within the period of 28 days beginning with the day on which the panel makes a determination under section 78.

(4) On an appeal under this section, the relevant court may—
(a) confirm the determination,
(b) set aside the determination,
(c) substitute for the determination appealed against another determination that the panel could have made, or
(d) remit the case to the regulatory body to dispose of in accordance with the directions of the court.

(5) The court may make such order as to costs as the court thinks fit.

(6) In this section "relevant court" means—
(a) in England and Wales, the High Court,
(b) in Scotland, the Court of Session, and

(c) in Northern Ireland, the High Court.

Registration appeals proceedings

80 General objectives of registration appeals panels and duties of parties in registration appeals proceedings

(1) The general objectives of a registration appeals panel in carrying out its functions in relation to registration appeals proceedings are—

(a) to protect, promote and maintain the health, safety and well-being of the public;

(b) to promote and maintain—

(i) public confidence in the regulated health and social care profession to which the case relates; and

(ii) proper professional standards and conduct for individuals registered on the professionals register for that profession; and

(c) to deal fairly and justly with the case.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the person who brought the registration appeal and the regulatory body;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the panel or regulatory body effectively;

(e) avoiding delay, so far as that is compatible with a proper consideration of the issues.

(3) It is the duty of the parties to—

(a) co-operate with the registration appeals panel, and

(b) assist it in achieving its objective under subsection (1)(c).

(4) If the registration appeals panel is satisfied that a person is in breach of the duty in subsection (3), it may draw any inference that it considers appropriate.

(5) In this section and sections 81 and 82 "the parties", in relation to a registration appeal, means the person who brought the registration appeal and the regulatory body (or their representatives).

81 Registration appeals proceedings: when a hearing is not necessary

(1) An appeal before a registration appeals panel may be determined without a hearing if—

(a) the parties agree in writing that the proceedings may be determined without a hearing, and

(b) the panel decides that it is not necessary to hold a hearing.

(2) Where in accordance with subsection (1) proceedings are to be determined without a hearing—

(a) the registration appeals panel's final decision may be made by the chair of the panel;
(b) at any stage during the proceedings the registration appeals panel or the chair of the panel may require a hearing to be held.

(3) A regulatory body may by rules prescribe steps which may or must be taken by the parties or the panel to enable the panel to reach a decision as to whether it is necessary to hold a hearing.

82 Case management in registration appeals proceedings

(1) A regulatory body may by rules make provision about preliminary case management.

(2) The rules may in particular make provision—
(a) for preliminary case management to be carried out by the registration appeals panel or by a person appointed under the rules;
(b) about qualifications for such an appointment;
(c) about case reviews;
(d) about directions that may be given;
(e) about records of directions;
(f) about consequences of a failure to comply with directions (which may include the power of a registration appeals panel to draw such inferences as it considers appropriate).

(3) Where the rules provide for preliminary case management to be carried out by a person other than the registration appeals panel, they must provide for that person—
(a) to act independently of the parties, and
(b) to exercise any power to give directions only for the purpose of securing the just, expeditious and effective running of the registration appeal.

(4) The general objective of a registration appeals panel under section 80(1)(c) (to deal fairly and justly with cases) also applies to such a person.

(5) Rules under this section may not provide for the award of costs.

83 Evidence in registration appeals proceedings

(1) A finding of fact by a registration appeals panel must be made on the balance of probabilities.

(2) In a registration appeal, evidence is not admissible unless—
(a) it would be admissible in civil proceedings in the relevant part of the United Kingdom, or
(b) the panel considers that the evidence is relevant, and that it is fair to admit it.

(3) For the purposes of subsection (2)(a) the "relevant part of the United Kingdom" means—
(a) in the case of any hearing before the registration appeals panel, the part of the United Kingdom in which the hearing takes place,
(b) in a case where there is no hearing, the part of the United Kingdom in which the head office of the regulatory body concerned is located.

(4) A certificate signed by a competent officer of a court of any jurisdiction that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, is conclusive evidence of the offence.

(5) A certificate that a person is included in a barred list (for the purposes of section 120(1)(c)), issued by the person responsible for maintaining the list, is conclusive evidence of that fact.

(6) A certificate issued by a relevant body (for the purposes of section 120(1)(d)) that it has determined that a person's fitness to practise is impaired is conclusive evidence of that determination.

84 Country in which registration appeals hearing is to be held

(1) An appropriate person may make a request (a "country of hearing request") that a hearing before a registration appeals panel should take place in the part of the United Kingdom in which—

(a) the person who has brought the appeal resides, or

(b) an event to which the matter being considered by the panel relates took place.

(2) A country of hearing request must be complied with unless the regulatory body concerned considers that there are reasons that justify refusing it.

(3) As soon as reasonably practicable after the notice of appeal is given under section 77, the regulatory body concerned must give notice to each appropriate person of the right to make a country of hearing request.

(4) "Appropriate person" means—

(a) the person who has brought the appeal, and

(b) anyone else who appears to the regulatory body to have a sufficient interest.

(5) A regulatory body may by rules make provision about—

(a) the time within which a country of hearing request may be made;

(b) the procedure for making a request;

(c) the procedure for giving notice under subsection (3).

85 Exclusion of the public from registration appeals hearings

(1) A hearing before a registration appeals panel must be held in public, with the following exceptions.

(2) The panel must exclude the public from any part of a hearing involving consideration of the physical or mental health of the person who has brought the appeal, unless—

(a) the person requests that part of the hearing to be held in public, and

(b) the panel considers that doing so would not be against the public interest.

(3) The panel may exclude the public from all or part of a hearing if it considers that the circumstances of the case outweigh the public interest in holding the hearing in public.

(4) The panel may exclude a person from a hearing if it considers that the person's conduct is likely to disrupt the hearing.

86 Registration appeals proceedings: witness summons

(1) For the purposes of registration appeals proceedings in England and Wales or Northern Ireland—

(a) a registration appeals panel may administer oaths,

(b) any party to the proceedings may issue a witness summons requiring a witness to attend a hearing to give evidence or to produce documents (and if necessary the party may issue a writ of subpoena ad testificandum or duces tecum).

(2) No person is to be compelled by a document issued under subsection (1)(b) to produce any document which that person could not be compelled to produce on the trial of an action.

(3) Section 36 of the Senior Courts Act 1981 or section 67 of the Judicature (Northern Ireland) Act 1978 (which provide a special procedure for documents to be issued so as to be in force throughout the United Kingdom) applies in relation to registration appeals proceedings in England and Wales or, as the case may be, in Northern Ireland as those provisions apply in relation to causes or matters in the High Court or actions or suits pending in the High Court of Justice in Northern Ireland.

(4) For the purposes of registration appeals proceedings in Scotland—

(a) a registration appeals panel may administer oaths; and

(b) the Court of Session is, on the application of any party to the proceedings, to have the power (as in any action in that court)—

(i) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the panel and for the apprehension and bringing to the proceedings of any witness or haver failing to appear after due citation;

(ii) to grant warrant for the discovery of documents;

(iii) to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.

87 Special measures for witnesses etc in registration appeals hearings

(1) A person giving evidence in a hearing before a registration appeals panel, including the person who brought the appeal, is entitled to special measures if—

(a) the person is under 18, or

(b) the panel considers that the quality of evidence given by the person is likely to be diminished by reason of—

(i) physical disability, learning disability, mental health problems, an illness or health condition or a dependency on drugs or alcohol, or

(ii) fear or distress in connection with giving evidence.

(2) In deciding whether the quality of evidence given by a person is likely to be diminished by reason of a matter specified in subsection (1)(b), the registration appeals panel must take into account the views of the person concerned.

(3) A registration appeals panel may offer special measures to a person not entitled to them under subsection (1) if it thinks that this is in the public interest.

(4) "Special measures" means such measures as the registration appeals panel considers appropriate for the purpose of improving the quality of evidence given by a person at the hearing.

(5) In considering which particular special measures may be appropriate, the registration appeals panel must take into account the views of the person concerned.

(6) A person who is 18 or over and who has the capacity to do so may decline to accept special measures or any particular special measure.

(7) Whether a person has capacity for the purposes of subsection (6) is determined by the Mental Capacity Act 2005.

(8) A person who is under 18 (a "child") may decline to accept special measures or any particular special measure only if the registration appeals panel is satisfied that the quality of the child's evidence is not likely to be diminished by the absence of the measure or measures which the child wishes to decline.

(9) In reaching a view as required by subsection (8), the registration appeals panel must consider—

(a) the child's age and maturity,
(b) the child's ability to understand the consequences of giving evidence without the special measure or measures,
(c) the child's best interests,
(d) the views of the child's parents or any person with parental responsibility for the child,
(e) the relationship (if any) between the child and any party to the proceedings,
(f) the nature and alleged circumstances of the matter to which the proceedings relate, and
(g) any other factor that the panel thinks is relevant.

(10) A registration appeals panel must give a direction requiring the implementation or provision of any special measure which it has offered, except where the person concerned is entitled to decline the measure and has done so.

88 Registration appeals hearings: procedure

(1) This section is about procedure at a hearing before a registration appeals panel.

(2) The practitioner is entitled to be represented by—

(a) a solicitor or counsel,
(b) a representative from any professional organisation, or
(c) if the registration appeals panel agrees, any other person.

(3) The practitioner and the regulatory body are entitled to give evidence.

(4) A person representing or advising the practitioner may not give evidence.

(5) A registration appeals panel may, on its own initiative or on the application of any of the parties, postpone or adjourn the hearing until such date and time as it thinks fit.

(6) If the panel intends to postpone or adjourn the hearing—

(a) the parties must be given a reasonable opportunity to make representations, and

(b) the parties must be notified as soon as practicable of the date, time and place of the further hearing.

(7) The hearing may proceed even if the practitioner is not present and not represented, if the panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the practitioner.

(8) In this section—

"the parties" means the practitioner and the regulatory body (or their representatives),

"the practitioner" means the person who brought the registration appeal.

89 Registration appeals hearings rules

(1) Each regulatory body must make rules about the procedure to be followed in appeal hearings before a registration appeals panel ("registration appeals hearings rules").

(2) The Secretary of State—

(a) may give guidance to the regulatory bodies about the contents of registration appeals hearings rules, including guidance in the form of model rules, and

(b) must publish any guidance given under paragraph (a).

(3) A regulatory body must, when making registration appeals hearings rules, have regard to any guidance given to the regulatory bodies under subsection (2)(a).

(4) Where guidance has been given in the form of model rules a regulatory body must, after making any registration appeals hearings rules, publish a document explaining any significant departures from or additions to the model rules.

(5) The power of a regulatory body to make registration appeals hearings rules is subject to sections 83 to 88.

Miscellaneous

90 Verification and disclosure of information

(1) A regulatory body may by rules require any relevant registration information to be verified by the registrar in the specified manner.

(2) "Relevant registration information" means information that is provided for the purposes of this Part by—

(a) a person applying for registration on a professionals register,

(b) a person applying for an entry on a professionals register to be restored, or

(c) a person who is a registered professional, where the information is provided for a purpose connected with that person's registration on a professionals register.

(3) A person may disclose information that the registrar considers necessary for the purpose of verifying relevant registration information.

91 Publication

(1) A regulatory body must publish from time to time in such manner as it considers appropriate—

(a) the names of persons registered in a professionals register kept by it,

(b) the information listed in section 53(1) in respect of each of those persons, and

(c) such other information recorded in the professionals register as may be prescribed by regulations made by the Secretary of State.

(2) A regulatory body may by rules make provision about the publication of the professionals register including, in particular, rules about—

(a) the circumstances in which the registrar may provide a member of the public with a copy of, or extract from, the register (which may include provision as to a fee), and

(b) the circumstances in which the registrar may issue a certificate as to whether or not a person is, or has been, registered in the register.

(3) The Secretary of State may by regulations make provision removing any requirement under subsection (1) to publish information of a description prescribed in the regulations.

92 Duty to notify the registrar of changes to registration information

(1) Each regulatory body must by rules require a person registered in the professionals register to give notice to the registrar of changes to the information recorded in the register in respect of that person.

(2) Rules under subsection (1) may include provision about—

(a) the changes to be notified, and

(b) the manner in which and the time within which a notice must be given.

93 List of persons removed from the register

(1) A regulatory body must keep a list of persons whose entries in a professionals register kept by it have been removed in circumstances to which this section applies.

(2) This section applies where a person is subject to a removal order made by a fitness to practise panel under—

(a) section 146(7) (disposal following a finding of impairment of fitness to practise), or

(b) section 159(8)(e), 160(9)(d) or 161(8)(d) (disposal in a review case following a finding of impairment of fitness to practise).

(3) An entry may not be made in the list relating to a person subject to such a removal order until the decision has taken effect under section 149(5) or 163(6) (as the case may be).

(4) This section also applies where a person is subject to an order for voluntary removal made by a fitness to practise panel under—

(a) section 144 (consensual disposals by fitness to practise panel), or

(b) section 159(2), 160(2), 161(2) or 162(5) (disposal in a review case).

(5) Where a person is subject to such an order for voluntary removal the list must give details of the statement of facts agreed under section 144(2).

(6) This section also applies where a person's name has been removed from a professionals register under section 66(2) (person convicted of a listed offence).

(7) A regulatory body may include in the list persons whose entries in a professionals register kept by it have been removed under either of the following—

(a) section 62 (inadequate insurance or indemnity),

(b) section 63 (incorrect or fraudulently procured entries).

(8) The Secretary of State may by regulations make provision about—

(a) the form and content of the list, and

(b) the publication of the list or specified information from the list.

General

94 Regulations under Part 3: Parliamentary procedure

A statutory instrument containing regulations under this Part (other than regulations under section 67) is subject to annulment in pursuance of a resolution of either House of Parliament.

95 Meaning of "exempt applicant", "exempt person" and related expressions in Part 3

(1) The definitions in this section apply for the purposes of this Part.

(2) An "exempt applicant" is an applicant for registration on a professionals register (or part of a professionals register) who is an exempt person in relation to the health and social care profession to which the register relates.

(3) An individual is an "exempt person" in relation to a regulated health and social care profession if the individual is—

(a) a national of a relevant European State other than the United Kingdom;

(b) a national of the United Kingdom who is seeking access to or is pursuing the profession by virtue of an enforceable EU right; or

(c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable EU right, entitled to be treated, for the purposes of access to and pursuit of the profession, no less favourably than a national of a relevant European State.

(4) The relevant European States are the EEA States and Switzerland.

96 Interpretation of Part 3: general

In this Part—

(a) references to the regulatory body in relation to a registrar are references to the regulatory body that appointed the registrar,

(b) references to a professionals register in relation to a registrar are references to the professionals register kept by that regulatory body.

PART 4

LICENCES TO PRACTISE AND REVALIDATION

97 Regulations: licences to practise

(1) The Secretary of State may by regulations make provision for the introduction of, or in connection with, licences to practise for members of a regulated health and social care profession.

(2) Regulations under subsection (1) may require or authorise a regulatory body by rules to make provision in connection with licences to practise.

(3) The regulations may, in particular—

(a) amend Schedule 5 (restricted professional activities) to secure that an unlicensed person is prohibited from performing any restricted professional activities specified in that Schedule in respect of the relevant profession;

(b) amend section 211 (protected titles) to secure that an unlicensed person is prohibited from using, with intent to deceive, a title that is (or includes) a protected title for the relevant profession.

(4) In subsection (3)—

(a) "unlicensed person" means a person who is registered on the professionals register for a health and social care profession but does not hold a licence to practise that profession;

(b) references to the "relevant profession" in relation to an unlicensed person are references to the profession for which the person is registered on the professionals register but does not hold a licence to practise.

(5) Sections 98 to 103 and section 104(2) make further provision about regulations under this section.

(6) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

98 Regulations: revalidation

(1) Regulations under section 97 must provide, or authorise a regulatory body by rules to provide—

(a) for arrangements for the revalidation of a person of a prescribed description who is registered on a professionals register, and

(b) that revalidation in accordance in with the regulations or rules is a condition of—

(i) the person continuing to hold a licence to practise, or

(ii) the person's licence to practise being restored.

(2) In subsection (1) the reference to arrangements for revalidation is a reference to arrangements for evaluating whether a person registered on the professionals register for a regulated health and social care profession continues to be fit to practise that profession.

(3) The regulations may, in particular, include provision about—

(a) when revalidation must be carried out;

(b) the criteria by reference to which an evaluation of a person's fitness to practise is to be made;
(c) the procedure for carrying out revalidation;
(d) the information that must be provided by a registered professional for the purpose of revalidation;
(e) the charging of fees in connection with revalidation.

99 Responsible officers

(1) Regulations under section 97 may require a designated body to appoint persons ("responsible officers") to carry out prescribed functions relating to the revalidation of persons who have a prescribed connection with the designated body.

(2) A designated body is a prescribed body, or a body of a prescribed description, that—
(a) provides, or arranges the provision of —
(i) health care,
(ii) social care work in England,
(iii) social work in England, or
(b) employs or contracts with persons registered on a professionals register under this Act.

(3) The power to prescribe a connection for the purposes of subsection (1) includes, in particular, power to prescribe that a person is connected with a designated body if—
(a) the person is employed by the designated body;
(b) the person provides, or is employed by a person who provides, services to the designated body;
(c) the person provides services in the geographical area in relation to which the designated body exercises functions in relation to the provision of health care or social care work.

(4) The regulations may make provision connected with the appointment and functions of responsible officers.

(5) In subsection (2) "health care" has the meaning given by section 198(4).

100 Powers to grant, renew or withdraw a licence

(1) Regulations under section 97 may provide for a regulatory body to grant a licence to practise to a person—
(a) on first registration under section 37,
(b) on provisional registration under section 43, and
(c) in other specified cases or circumstances.

(2) The regulations may provide for a regulatory body to withdraw a licence to practise from a person—
(a) where the person has failed to comply with specified requirements (which may include requirements for or in connection with revalidation),
(b) where the licence to practise was incorrectly granted,
(c) where the licence to practise was fraudulently procured, and

(d) in other specified cases or circumstances.

(3) The regulations may make provision about the procedure for granting, renewing or withdrawing a licence to practise.

(4) The regulations may require a regulatory body to give notice to a person of a decision—

(a) to refuse to grant a licence to practise to the person, or

(b) to withdraw a licence to practise from the person.

(5) The regulations may make provision about the content of the notice.

(6) Regulations under section 97 may authorise a regulatory body by rules to make provision for any of the matters mentioned in subsections (1) to (5).

101 Restoration of a licence

(1) Regulations under section 97 must specify the circumstances in which a regulatory body may restore a licence to practise to a person registered on a professionals register.

(2) The regulations may make provision as to the procedure for restoring a licence to practise.

(3) The regulations may require a regulatory body to give notice to a person of a decision not to restore the person's licence to practise.

(4) The regulations may make provision about the content of the notice.

(5) Regulations under section 97 may authorise a regulatory body by rules to make provision for any of the matters mentioned in subsections (1) to (4).

102 Appeals

(1) Regulations under section 97 must provide for a right of appeal to a registration appeals panel established by rules under section 73 against a decision by a regulatory body—

(a) to refuse to grant a licence to practise,

(b) to withdraw a licence to practise, or

(c) to refuse to restore a licence to practise.

(2) Regulations may provide that a licence to practise may not be withdrawn—

(a) before the expiry of the period within which an appeal may be made, and

(b) while an appeal against the decision to withdraw the licence is pending.

103 Fees

Regulations under section 97 may provide, or authorise a regulatory body by rules to provide, for the charging of fees for or in connection with a licence to practise, including—

(a) an application for the grant or renewal of a licence to practise;

(b) an application for the restoration of a licence to practise.

104 Power to require information

(1) For the purpose of carrying out functions under regulations or rules made under this Part, a regulatory body may require—

(a) a person registered on a professionals register, or

(b) any other person,

who in the opinion of the regulatory body is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document.

(2) Regulations under section 97 may provide, or authorise a regulatory body by rules to provide, that a regulatory body may—

(a) refuse to grant or renew a licence to practise to a person,

(b) withdraw a person's licence to practise, or

(c) refuse to restore a person's licence to practise,

where the person fails to supply information or a document required under this section.

(3) Nothing in subsection (1) requires or permits any disclosure of information which is prohibited by or under any other enactment.

(4) But where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the regulatory body may require that the information be put into a form which is not capable of identifying that individual.

(5) In determining for the purposes of subsection (3) whether a disclosure is not prohibited, by reason of being a disclosure of personal data which is exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of section 35(1) of that Act, it shall be assumed that the disclosure is required by this section.

(6) This section does not apply in relation to the supply of information or the production of a document which a person could not be compelled to supply or produce in civil proceedings before the relevant court.

(7) For the purposes of this section, "the relevant court" means—

(a) in England and Wales, the High Court,

(b) in Scotland, the Court of Session

(c) in Northern Ireland, the High Court.

(8) In subsection (3) "enactment" means an enactment contained in, or in an instrument made under—

(a) an Act of Parliament;

(b) an Act of the Scottish Parliament;

(c) an Act or Measure of the Welsh Assembly;

(d) Northern Ireland legislation.

PART 5

STANDARDS, EDUCATION ETC

Standards

105 Professional standards

(1) A regulatory body must, in relation to each of the health and social care professions that it regulates, determine the professional standards expected of a person practising the profession.

(2) The reference in subsection (1) to professional standards includes, in particular, a reference to standards of—

(a) proficiency,

(b) professional performance, and

(c) conduct and ethics.

(3) A regulatory body may determine different standards for different categories of person within a profession.

(4) Where a registered professional is alleged to have failed to comply with the standards under this section, that failure—

(a) is not, of itself, to be taken to constitute deficient professional performance or disgraceful misconduct for the purposes of section 120 (impairment of fitness to practise), but

(b) may be taken into account in proceedings under Part 6 of this Act in respect of the person's fitness to practise.

106 Education, training and experience

(1) A regulatory body must, in relation to each of the health and social care professions that it regulates, determine—

(a) the education standards, and

(b) the entry level standards.

(2) The "education standards" are the standards of education, training and experience necessary to achieve the professional standards determined under section 105 in respect of the profession.

(3) The "entry level standards" are the standards of education, experience and qualifications to be met by persons entering such education or training.

107 Continuing professional development

(1) A regulatory body must, in relation to each of the health and social care professions that it regulates, determine the standards of continuing professional development that are necessary for a registered professional to continue to meet the professional standards determined under section 105.

(2) A regulatory body may, in particular, determine standards as to—

(a) the type of continuing professional development to be undertaken;

(b) the amount of continuing professional development to be undertaken;

(c) the information to be provided by a person registered in a professionals register about activities undertaken in the course of continuing professional development.

(3) A regulatory body may determine different standards for different categories of person within a profession including, in particular, standards for the continuing professional development to be undertaken by—

(a) persons who have not previously practised the health and social care profession in respect of which the person is registered;

(b) persons who have not practised the health and social care profession in respect of which the person is registered for a specified period of time;

(c) persons who are temporarily registered under section 41, 51 or 52;

(d) persons who are registered on a supplementary register kept in accordance with regulations under paragraph 7 of Schedule 3;

(e) persons who hold specified qualifications or in respect of whom a specified type of annotation is made in the register.

(4) A regulatory body may by rules make provision about—

(a) the circumstances in which a person is to be regarded as having failed to comply with the requirements as to continuing professional development;

(b) the consequences of failure to comply (which may include removal from the register).

108 Standards: supplementary provision

(1) This section applies to the standards determined by it under sections 105 to 107 (in this section referred to as "the standards").

(2) A regulatory body—

(a) must keep the standards under review, and

(b) may alter or replace the standards.

(3) A regulatory body must publish a statement of—

(a) the standards, and

(b) if the standards are altered or replaced under subsection (2)(b), the altered or replacement standards.

(4) A regulatory body may by rules make provision about the procedure to be followed in determining the standards.

(5) Rules under subsection (4) may, in particular—

(a) make provision about the criteria by reference to which the standards are to be determined;

(b) make provision about the arrangements for keeping the standards under review.

(6) A regulatory body may issue guidance about the standards.

Education, training and experience

109 Approval of education, training and experience

(1) A regulatory body must take appropriate steps to ensure that the standards determined by it under section 106 are met by institutions and other persons providing, or managing the provision of, education, training or professional experience for persons practising, or intending to practise, a regulated health and social care profession.

(2) The steps that may be taken by a regulatory body under subsection (1) include giving approvals in connection with the provision, or proposed provision, of education, training or professional experience (whether within or outside of the United Kingdom).

(3) A regulatory body may, in particular, approve—

(a) courses or programmes of education or training which the regulatory body is satisfied confer, or would confer, on persons completing them successfully a standard of proficiency determined under section 105;

(b) courses or programmes of education or training which lead, or would lead, on successful completion to an appropriate qualification for the purposes of section 37(2)(a);

(c) qualifications granted, or to be granted, following success in an examination or assessment taken during or upon completion of an approved course;

(d) institutions or other persons that provide, or propose to provide, education or training that meets the standards determined under section 106;

(e) premises that the regulatory body considers suitable for education or training that meets the standards determined under section 106;

(f) practice placements or training posts that provide, or would provide, experience that meets the standards determined under section 106.

(4) A regulatory body may attach conditions to an approval it gives or has given under this section.

(5) A regulatory body must from time to time publish a statement of the criteria by reference to which a decision as to whether or not to grant approval is to be made.

(6) A regulatory body—

(a) must by rules make provision about—

(i) the procedure for applying for approval, and

(ii) the period for which approvals may be given;

(b) may by rules make other provision about approval.

110 Reports on the provision of education etc

(1) A regulatory body may appoint a person to inspect a relevant education or training provider and report on—

(a) the nature, content and quality of the instruction or training given, or to be given, by the provider;

(b) the provider's facilities;

(c) such other matters (if any) connected with the provider or the provision of education or training by the provider as the regulatory body may require.

(2) Requirements of the kind mentioned in subsection (1)(c) may be imposed by the regulatory body—

(a) generally in relation to all reports on a specified type of relevant education or training provider or in respect of a specified type of course, or

(b) specifically in relation to a particular report.

(3) A regulatory body must on receipt of a report under this section—

(a) send a copy of it to the education or training provider that is the subject of the report, and

(b) give notice to the education or training provider of the period within which it may make observations on the report.

(4) A regulatory body must publish a report prepared under this section.

(5) A regulatory body must publish any observations made by an education or training provider in respect of whom the report was made if—

(a) the observations were made within the period specified under subsection (3)(b), and

(b) the provider consents to the publication of the observations.

(6) A regulatory body may not appoint a person to exercise the functions under this section in relation to an education or training provider with which that person has, in the opinion of the regulatory body, a significant connection.

(7) The regulatory body may by rules make provision about—

(a) the criteria by reference to which a person may be appointed under subsection (1);

(b) the terms and conditions of the appointment (including the payment of fees, allowances and expenses);

(c) payments to the employer of the appointed person.

111 Power to require information

(1) A regulatory body may require a relevant education or training provider to provide, within a specified period, information or assistance that the regulatory body reasonably requires for the purpose of exercising its functions under this Part.

(2) The matters with respect to which the regulatory body may require information include, in particular—

(a) the standards to be met by persons pursuing an approved course of education and training;

(b) the procedures for managing that education or training.

(3) If an institution or person fails to comply with a request under this section, the regulatory body may—

(a) refuse to grant an approval,

(b) grant an approval subject to conditions, or impose conditions in respect of an existing approval, or

(c) withdraw an approval,

in respect of the institution or person, or in respect of the education, training or experience provided, or proposed to be provided by, or under the direction or management of, the institution or person.

112 Failure to meet standards or comply with conditions

(1) This section applies where a regulatory body considers that, in respect of an approval given under section 109—
  (a) a standard determined under section 106 is not being met, or
  (b) a condition imposed under section 109(4) is not being met.

(2) A regulatory body must give notice to the appropriate person that the regulatory body considers that the standard or condition is not being met in respect of the approval.

(3) A regulatory body may—
  (a) impose conditions in respect of the approval;
  (b) suspend the approval.

(4) A notice under subsection (2) must specify—
  (a) steps that must be taken by the appropriate person in order to meet the standard or condition;
  (b) the period within which those steps must be taken;
  (c) the consequences of a failure to take those steps.

(5) A regulatory body may by rules make further provision about a notice under subsection (2).

(6) The rules may, in particular, specify the circumstances in which a notice, or a specified part of a notice, may be published.

(7) Where the appropriate person fails to take the steps specified in a notice under subsection (2) within the specified period the regulatory body may withdraw the approval (subject to the procedure under section 113).

(8) In this section and in section 113 "appropriate person", in relation to an approval, means the institution or other person who provides, or manages the provision of, the education, training or experience to which the approval relates.

113 Refusal, withdrawal and conditions: procedure

(1) In this section "relevant determination" means a determination by a regulatory body—
  (a) to refuse to grant approval,
  (b) to grant approval subject to conditions or to impose conditions in respect of an existing approval, or
  (c) to withdraw approval.

(2) Before making a relevant determination, the regulatory body must—
  (a) give written notice of the proposed determination, and the reasons for it, to the appropriate person, and
  (b) provide a reasonable opportunity for representations to be made to it by—
    (i) the person given notice under paragraph (a), and

(ii) any other person who, in the opinion of the regulatory body, has a substantial interest in the matter.

(3) A regulatory body must give written notice of a relevant determination to the institution or other person in respect of whom the determination is made.

(4) The notice must specify—

(a) the date from which the determination takes effect (which may be the date of the determination or a specified later date), and

(b) the reasons for making the determination.

(5) A regulatory body must by rules make provision about—

(a) the content of notices given under this section;

(b) the period within which an institution or other person may make representations in response to a notice.

114 Withdrawal of approval

(1) This section applies where a regulatory body withdraws an approval in respect of any provision of education, training or experience.

(2) The regulatory body may determine that the provision of education, training or experience is to continue to be treated as approved for the purposes of this Act in respect of a person who, at the time of the withdrawal, has completed so much of the education, training or experience in question as the regulatory body may determine.

(3) The regulatory body must take such steps as it considers reasonable to facilitate arrangements for any person (other than a person in respect of whom a determination under subsection (2) is made) who, at the time of the withdrawal, has completed part of the education, training or experience in question, to continue that education or training, or acquire that experience, on a course, programme or other provision that is approved under section 109.

(4) The withdrawal of an approval does not affect any qualification awarded before the date on which the withdrawal had effect.

115 List of approvals

(1) A regulatory body must maintain and publish a list of—

(a) approvals granted under section 109 that have not expired or been withdrawn, and

(b) approvals that have expired or been withdrawn.

(2) The list must specify in relation to each approval—

(a) the conditions (if any) attached to the approval, and

(b) the period in respect of which the approval was given.

116 Assessments

(1) A regulatory body may by rules provide for arrangements to be made for assessing whether—

(a) a person is appropriately qualified for the purposes of section 37(2)(a);

(b) a person registered in a professionals register meets the standards of continuing professional development under section 107;

(c) an institution or other person providing education, training or experience meet the standards necessary for approval under section 109.

(2) The rules may, in particular, include provision about—

(a) the appointment of examiners to carry out the assessments;

(b) payments to examiners in respect of remuneration, pensions, allowances and gratuities;

(c) arrangements for dealing with disciplinary matters in respect of candidates and prospective candidates.

117 Fees

(1) A regulatory body may make rules with respect to the charging of fees in connection with—

(a) approvals under section 109, including applications for approval;

(b) assessments under rules under section 116.

(2) The rules may make provision for—

(a) different fees to be charged in different cases or circumstances;

(b) the waiver of fees;

(c) the consequences of non-payment of fees.

118 Regulations authorising approval of education and training

(1) The Secretary of State may by regulations provide that a regulatory body may exercise the education and training approval function in respect of—

(a) approved mental health professionals,

(b) persons practising a prescribed profession which appears to the Secretary of State to be a health profession, other than a profession listed in Schedule 1, or

(c) persons carrying out a prescribed type of social care work in England.

(2) The education and training approval function is the function of approving courses which, in the opinion of the regulatory body, confer on persons completing them successfully the standard of proficiency that is appropriate for—

(a) approved mental health professionals;

(b) persons practising, or wishing to practise, the prescribed health profession;

(c) persons carrying out, or wishing to carry out, the prescribed type of social care work.

(3) Regulations under this section may make provision of a kind made (in respect of regulated health and social care professions) by, or permitted to be made under, any of sections 109 to 117.

(4) In this section "health profession" has the meaning given by section 244.

(5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

General

119 Interpretation of Part 5

In this Part "relevant education and training provider" means an institution or other person in the United Kingdom by which, or under whose direction or management, whether inside or outside the United Kingdom—

(a) an approved course or programme of education or training is, or is proposed to be, given,

(b) an examination or other assessment is, or is proposed to be, held in connection with an approved course, or

(c) a practice placement or training post is, or is proposed to be, established.

PART 6

FITNESS TO PRACTISE

CHAPTER 1

IMPAIRMENT OF FITNESS TO PRACTISE

120 Impairment of fitness to practise

(1) A person's fitness to practise a regulated profession may be regarded as impaired for the purposes of this Act by reason only of—

(a) deficient professional performance in the practice of that profession,

(b) disgraceful misconduct (whether in the person's practice of that profession or otherwise),

(c) the inclusion of the person in a barred list,

(d) a determination by a relevant body to the effect that the person's fitness to practise any health and social care profession or to carry out a particular kind of health and social care work is impaired,

(e) adverse physical or mental health,

(f) a level of proficiency in the knowledge and use of the English language that is insufficient for the safe and competent practice of the regulated profession,

(g) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence,

(h) the person having—

(i) been dismissed with an admonition under section 246(1) of the Criminal Procedure (Scotland) Act 1995,

(ii) been discharged under section 246(2) or (3) of that Act,

(iii) accepted a conditional offer under section 302 of that Act, or

(iv) accepted a compensation offer under section 302A of that Act,

(i) the person having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution), or

(j) the person having been bound over to keep the peace by a magistrates' court in England and Wales.

(2) For the purposes of subsection (1)(a) "deficient professional performance" may include—

(a) an instance of negligence,

(b) a breach of an undertaking agreed with a regulatory body under this Part, and

(c) a breach of an undertaking agreed with a fitness to practise panel under this Part.

(3) In subsection (1)(c) "barred list" means—

(a) a list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006,

(b) a list kept under section 1 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), and

(c) a list established and maintained under Article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (S.I. 2007/1351 (N.I. 11)).

(4) The following are relevant bodies for the purposes of subsection (1)(d)—

(a) a regulatory body,

(b) the Pharmaceutical Society of Northern Ireland,

(c) the Care Council for Wales,

(d) the Scottish Social Services Council,

(e) the Northern Ireland Social Care Council, and

(f) a body outside of the United Kingdom that is responsible for the regulation of a profession or activity of a kind that would, in the United Kingdom, be regulated by a body listed in paragraphs (a) to (c).

(5) A person's fitness to practise may be regarded as impaired by reason of matters arising or incidents occurring—

(a) whether inside or outside of the United Kingdom;

(b) whether or not the person was registered on a professionals register at the time;

(c) whether before or after this Act is passed.

CHAPTER 2

PRELIMINARY PROCEDURES

Preliminary consideration of allegations etc

121 Referral for preliminary consideration

(1) This section applies where—

(a) an allegation is made to a regulatory body that a registered professional's fitness to practise a regulated profession is impaired, or

(b) a regulatory body otherwise has reason to believe that a registered professional's fitness to practise a regulated profession may be impaired.

(2) The reference to an allegation in subsection (1)(a) includes an allegation made orally or in a form other than that specified by the regulatory body.

(3) The regulatory body—

(a) must refer for preliminary consideration the matter which is the subject of the allegation or the regulatory body's reason to believe that a registered professional's fitness to practise a regulated profession may be impaired, and

(b) may refer the matter to an interim orders panel established under section 140.

122 Preliminary consideration

(1) The person giving preliminary consideration to a matter must refer the matter for investigation under section 128 unless either—

(a) the person determines that the matter is not eligible for onward referral under section 123, or

(b) the person is required to refer the matter directly to a fitness to practise panel under section 124.

(2) The person giving preliminary consideration to a matter may, at any stage, refer the matter to an interim orders panel established under section 137 (in addition to making a referral or determination under subsection (1)).

(3) A regulatory body may by rules make provision about the procedure for preliminary consideration which may, in particular, provide for preliminary consideration to be carried out by—

(a) one or more persons appointed for that purpose, on such terms and conditions (including remuneration) as the regulatory body may determine,

(b) the registrar, or

(c) one or more members of staff of the regulatory body.

(4) Rules under this section may not provide for preliminary consideration to be carried out by—

(a) a member of the regulatory body,

(b) a member of a fitness to practise panel established under section 137, or

(c) a member of an interim orders panel established under section 140.

(5) The regulatory body must make such arrangements as it thinks appropriate to facilitate co-operation between—

(a) a person who has made an allegation that a registered professional's fitness to practise is impaired, and

(b) the person giving preliminary consideration to the allegation.

123 Eligibility for onward referral

(1) A matter is eligible for onward referral unless the person appointed to give it preliminary consideration considers—

(a) that—

(i) the matter relates to conduct or an incident that occurred 5 years or more before the relevant date, and

(ii) none of the exceptions in subsection (4) apply,

(b) that the allegation is vexatious, or

(c) where an allegation has been made anonymously, or by a person who fails to co-operate with the preliminary consideration procedure, that the allegation cannot be verified.

(2) In subsection (1) the reference to onward referral is a reference to—
  (a) referral to a fitness to practise panel under section 124, or
  (b) referral for investigation under section 128.

(3) In subsection (1), "relevant date" means—
  (a) the date of the allegation, or
  (b) the date on which the regulatory body is notified of the conduct or incident.

(4) For the purposes of subsection (1)(a) the exceptions are that—
  (a) the matter relates to a registered professional's conviction for a serious criminal offence;
  (b) the matter relates to the inclusion of a registered professional in a barred list (as defined in section 120(3));
  (c) the matter relates to a determination by a relevant body (as defined in section 120(4)) to the effect that a registered professional's fitness to practise is impaired;
  (d) the person giving the matter preliminary consideration considers that it is in the public interest for the matter to be referred for investigation.

(5) For the purposes of subsection (4)(a) and section 124, a serious criminal offence is—
  (a) an offence in respect of which a custodial sentence has been imposed by a court in British Islands, or
  (b) in the case of a conviction by a court elsewhere, an offence in respect of which, had the offence been committed in England and Wales a custodial sentence may have been imposed.

(6) In subsection (5) "custodial sentence" has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000.

124 Direct referral to a fitness to practise panel

A person giving preliminary consideration to a matter must refer it directly to a fitness to practise panel—
  (a) if the matter relates to the conviction of a registered professional for a serious criminal offence, unless the conviction would result in removal from the register under section 66, and
  (b) in such other circumstances as may be specified in rules made by the regulatory body.

125 Notice: ineligibility for onward referral

(1) This section applies where a person giving preliminary consideration to a matter determines that the matter is not eligible for onward referral under section 123(1).

(2) The regulatory body must give notice of the determination to the relevant persons, unless the regulatory body considers that it is not in the public interest to do so.

(3) For the purposes of subsection (2) the "relevant persons" are—
  (a) the registered professional to whom the matter relates, and

(b) where the matter was the subject of an allegation mentioned in section 121(1)(a) the person who made the allegation.

(4) The regulatory body may give notice to any other person that a matter is not eligible for onward referral where, in the opinion of the regulatory body, it is in the public interest to do so.

(5) A regulatory body may by rules make provision about—
(a) the content of a notice under this section, and
(b) the procedure for giving notice.

126 Notice: onward referral

(1) This section applies where, on conclusion of preliminary consideration under section 122, a matter is referred—
(a) to a fitness to practise panel under section 124, or
(b) for investigation under section 128.

(2) The regulatory body must give notice to—
(a) the registered professional to whom the matter relates,
(b) where the matter was the subject of an allegation mentioned in section 121(1)(a), the person who made the allegation,
(c) each person—
(i) by whom, to the knowledge of the regulatory body, the registered professional is employed to provide services in, or in relation to, the regulated profession;
(ii) with whom, to the knowledge of the regulatory body, the registered professional has an arrangement to provide such services,
(d) the Secretary of State,
(e) the Scottish Ministers,
(f) the Welsh Ministers,
(g) the Department of Health, Social Services and Public Safety in Northern Ireland, and
(h) such other persons as may be specified in rules made by the regulatory body.

(3) A regulatory body must by rules make provision about giving notice under subsection (2) which may, in particular, include provision about—
(a) the content of a notice;
(b) the information to be provided with the notice;
(c) the procedure for giving notice;
(d) the period within which notice must be given.

127 Notice: referral to an interim orders panel

Where a person refers a matter to an interim orders panel under section 121(3)(b) or 122(2) the person—
(a) must give notice of the referral to—
(i) the registered professional to whom the matter relates, and
(ii) where the matter was the subject of an allegation mentioned in section 121(1)(a), the person who made the allegation, and

(b) may give notice of the referral to any other person where, in the opinion of the person making the referral, it is in the public interest to do so.

Investigation

128 Duty to investigate

(1) A regulatory body must investigate, or make arrangements for the investigation of, a matter referred under section 122 in respect of a registered professional's fitness to practise a regulated profession.

(2) The person carrying out an investigation under this section may, at any stage during the investigation, refer the matter to a interim orders panel established under section 140.

(3) A regulatory body must by rules make provision about the arrangements for investigations under this section.

(4) Rules under this section may, in particular, make provision for—
(a) the registered professional to make representations to the person investigating the matter;
(b) investigations to be carried out by the registrar;
(c) investigations to be carried out by a member of staff of the regulatory body;
(d) the appointment of one or more individuals for the purposes of carrying out an investigation;
(e) the appointment of persons to assess or advise on professional performance;
(f) the appointment of persons to assess or advise on the health of a registered professional.

(5) Rules under this section may not provide for an investigation to be carried out by a member of the regulatory body.

129 Powers following an investigation

(1) This section applies where the investigation of a matter relating to a registered professional's fitness to practise has been concluded.

(2) The regulatory body must refer the matter to a fitness to practise panel if, in the opinion of the regulatory body—
(a) there is a realistic prospect that the panel will find that the registered professional's fitness to practise is impaired, and
(b) it is in the public interest to refer the matter.

(3) Where the matter is not referred to a fitness to practise panel, the regulatory body may—
(a) decide to take no further action in respect of the registered professional;
(b) give advice to the registered professional, or to any other person involved in the investigation, in respect of any matter related to the investigation;
(c) issue a warning to the registered professional in respect of future conduct or performance;

(d) agree with the registered professional that the registered professional will comply with such undertakings as the regulatory body considers appropriate;

(e) grant an application by the registered professional for the entry in respect of the person to be removed from the register.

130 Notice: referral or disposal

(1) The regulatory body must give notice to the persons listed in subsection (2) of—

(a) the referral of a matter to an interim orders panel under section 128(2);

(b) the referral of a matter to a fitness to practise panel under section 129(2);

(c) the way in which the matter has been disposed of under section 129(3).

(2) The persons are—

(a) the registered professional to whom the matter relates, and

(b) where the matter was the subject of an allegation mentioned in section 121(1)(a), the person who made the allegation.

(3) The regulatory body may give notice to any other person of the referral or disposal of a matter under section 129 where, in the opinion of the regulatory body, it is in the public interest to do so.

(4) A notice under this section must give details of the reasons for the referral.

131 Warnings

(1) Subsections (2) and (3) apply where a regulatory body proposes to issue a warning to a registered professional.

(2) A regulatory body must, at the request of the registered professional, hold an oral hearing to determine whether or not to give a warning.

(3) The regulatory body must give notice to the registered professional of—

(a) the proposed warning, and

(b) the right to request an oral hearing under subsection (2).

(4) A regulatory body may by rules make further provision about the procedure for giving a warning.

(5) Rules under this section may, in particular, make provision about—

(a) the content of the notice;

(b) the period within which a request for an oral hearing may be made;

(c) the arrangements and procedure for an oral hearing.

132 Undertakings

(1) A regulatory body must by rules make provision about the agreement of undertakings under section 129(3)(d).

(2) The rules may, in particular, make provision about—

(a) the procedure to be followed for the agreement of undertakings;

(b) the procedure to be followed in the event of a breach of an undertaking;

(c) the consequences of a breach of an undertaking;

(d) periodic review of a requirement to comply with undertakings.

133 Mediation

(1) The Secretary of State may by regulations provide, or authorise a specified regulatory body by rules to provide, for arrangements for mediation to be undertaken with any registered professional in respect of whom a matter is referred for investigation under section 128.

(2) Regulations under subsection (1) may make provision about, or authorise a regulatory body by rules to make provision about—
  (a) the circumstances in which mediation may be undertaken, and
  (b) the arrangements for undertaking mediation.

(3) A statutory instrument containing regulations under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Review

134 Review of decisions

(1) A regulatory body may review—
  (a) a decision not to refer a matter to a fitness to practise panel under section 124 or 129(2);
  (b) a decision not to refer a matter for investigation under section 128;
  (c) a decision to dispose of a case after investigation under section 129(3);
  (d) a decision to refer a case for mediation under regulations under section 133.

(2) A regulatory body may review a decision—
  (a) on its own initiative, or
  (b) on the application of—
    (i) the registered professional in respect of whom the decision was made,
    (ii) a person who made an allegation in respect of which the decision was made,
    (iii) the Professional Standards Authority, or
    (iv) any other person who, in the opinion of the regulatory body, has an interest in the decision.

(3) A regulatory body must review a decision if—
  (a) the regulatory body considers that the decision may be materially flawed, or
  (b) the regulatory body considers that a different decision may have been made on the basis of information that was not available when the decision was made.

(4) A regulatory body may not review a decision after the end of the period of 2 years beginning with the date on which the decision was made unless the regulatory body considers that it is in the public interest to do so.

(5) Where a regulatory body decides to review a decision, it must give notice to the interested parties of—
  (a) the decision to carry out a review, and
  (b) the reasons for carrying out a review.

(6) Where the review is carried out under subsection (3)(b), the regulatory body must—

(a) give notice to the interested parties that information is available to the regulatory body that was not available at the time that the decision was made, and

(b) where the regulatory body considers it appropriate to do so, provide the information to the interested parties.

(7) In this section "interested parties" means—

(a) the registered professional in respect of whom the decision under review was made,

(b) the person (if any) who made an allegation in respect of which the decision was made, and

(c) any other person who, in the opinion of the regulatory body, has an interest in the decision.

(8) On a review of a decision under this section, a regulatory body may—

(a) substitute the decision,

(b) refer the decision for investigation under section 128, or

(c) determine that the decision stands.

(9) The regulatory body must give notice to the following of the outcome of a review—

(a) the interested parties, and

(b) in a case concerning a decision to require a person to comply with undertakings under section 129(3)(d) or to agree to a request for voluntary removal under section 129(3)(e), the Professional Standards Authority.

(10) A regulatory body must by rules make provision about the arrangements for carrying out a review under this section.

(11) The rules may, in particular, make provision about—

(a) the procedure to be followed in carrying out a review (including provision for the interested parties to make representations to the regulatory body);

(b) the content and timing of notices to be given under this section.

135 Cancellation of referral to fitness to practise panel

(1) This section applies where a matter has been referred to a fitness to practise panel under section 124 or 129(2) or to an interim orders panel under section 121(3)(b), 122(2) or 128(2) and—

(a) the regulatory body no longer considers that there is a realistic prospect that the panel will find that the registered professional's fitness to practise is impaired, or

(b) the regulatory body otherwise considers that it is no longer appropriate for the registered professional to be subject to fitness to practise proceedings under this Part.

(2) The regulatory body may—

(a) determine that the fitness to practise panel or interim orders panel may not commence or continue proceedings in respect of the matter, or

(b) determine that the fitness to practise proceedings may only commence or continue in respect of such particulars of the matter as the regulatory body may specify.

(3) Where a regulatory body makes a determination under subsection (2) it may refer the matter, or specified particulars of the matter, for investigation under section 128.

(4) A regulatory body must give notice of a determination under subsection (2) to—

(a) the registered professional to whom the matter relates,

(b) where an allegation has been made, the person who made the allegation.

(5) The notice must include the reasons for the determination.

(6) A regulatory body must by rules make provision about the procedure for exercising its functions under this section, in particular, provision about—

(a) the procedure to be followed in making a determination under subsection (2), and

(b) the content and timing of a notice under subsection (4).

136 Referral by regulatory body for review proceedings

(1) This section applies where, in relation to a registered professional, any of the following have effect—

(a) undertakings agreed between the professional and a regulatory body under section 129(3)(d),

(b) undertakings agreed between the professional and a fitness to practise panel under section 144(4), 159(5) or (6), 160(4), 161(4) or 162(7),

(c) a conditional registration order made (or confirmed or varied) under section 146(5), 159(8)(c), 160(6) or (7), 161(8)(c) or 162(10)(c), or

(d) a suspension order made (or confirmed or varied) under section 146(6), 159(8)(d), 160(9)(c) or 161(6) or (7).

(2) If a regulatory body considers at any time that it is desirable that a fitness to practise panel should review a registered professional's fitness to practise, the body may refer the case to the panel to carry out a review.

(3) In particular, a referral under subsection (2) may be made where—

(a) a new allegation is made to a regulatory body that the professional's fitness to practise a regulated profession is impaired, or

(b) as a result of any other new evidence or information, a regulatory body has reason to believe that the professional's fitness to practise a regulated profession may be impaired.

(4) A regulatory body must refer a case to a fitness to practise panel to carry out a review of a registered professional's fitness to practise if the regulatory body has reason to believe that—

(a) a professional who agreed undertakings (as mentioned in subsection (1)(a) or (b)) has breached any undertaking, or

(b) a professional who is subject to a conditional registration order (as mentioned in subsection (1)(c)) has breached any condition of the order.

CHAPTER 3

FITNESS TO PRACTISE PANELS AND INTERIM ORDERS PANELS

Fitness to practise panels

137 Fitness to practise panels

(1) A regulatory body must by rules make provision for there to be fitness to practise panels.

(2) A panel must have at least 3 members including a member appointed as the chair of the panel.

(3) The members must be individuals.

(4) The members must include at least one person who is not a registrant as defined in section 7.

(5) These may not be members of a fitness to practise panel—
- (a) a member of any regulatory body;
- (b) a member of the Pharmaceutical Society of Northern Ireland;
- (c) a member of the Professional Standards Authority;
- (d) a person appointed for the time being as an adviser or assessor to the fitness to practise panel;
- (e) a person involved for the time being in an investigation under section 128.

(6) These may not be members of the fitness to practise panel to which a particular matter is referred—
- (a) a person who has at any time been appointed to give preliminary consideration under section 122 to the matter;
- (b) a member of an interim orders panel whose proceedings related to the matter.

138 Rules about the composition of fitness to practise panels

(1) Rules under section 137 must include provision determining—
- (a) who may be a member of a fitness to practise panel;
- (b) how many members may or must be appointed;
- (c) how many of them (if any) may or must be registrants, as defined in section 7;
- (d) the quorum for exercising any function of a panel;
- (e) the maximum term of any appointment as a member or as the chair;
- (f) the circumstances in which a person is disqualified for appointment as a member or as the chair;
- (g) the grounds on which a member may be suspended or removed.

(2) A regulatory body must by rules make provision—
- (a) for the declaration and registration of private interests of the members of fitness to practise panels established by it;
- (b) for the publication of entries recorded in the register of members' interests.

(3) A regulatory body may by rules make other provision about the constitution and operation of fitness to practise panels (but such provision is subject to section 137).

(4) In particular, the rules may provide for—
- (a) the appointment of legal or other advisers;
- (b) the appointment of assessors or examiners;
- (c) categories of person who may be appointed as chair;
- (d) fees, expenses or other payments to be made by the regulatory body to any member.

139 Appointments to fitness to practise panels

A regulatory body must by rules make provision for the person appointed or body established by it under section 28 to—
- (a) select and appoint the chair and other members of fitness to practise panels to be established by the regulatory body;
- (b) select and appoint members to fill any vacancies to be filled under rules under section 138 in fitness to practise panels established by the regulatory body;
- (c) select and appoint any advisers, assessors or examiners to be appointed under rules under section 138;
- (d) specify the term for which those appointments are made (subject to rules under section 138(1)(e));
- (e) make appraisals of the performance of persons appointed;
- (f) arrange continuing professional development for them;
- (g) exercise the powers of suspension or removal of them.

Interim orders panels

140 Interim orders panels

(1) A regulatory body must by rules make provision for there to be interim orders panels.

(2) A panel must have at least 3 members including a member appointed as the chair of the panel.

(3) The members must be individuals.

(4) The members must include at least one person who is not a registrant as defined in section 7.

(5) These may not be members of an interim orders panel—
- (a) a member of any regulatory body;
- (b) a member of the Pharmaceutical Society of Northern Ireland;
- (c) a member of the Professional Standards Authority;
- (d) a person appointed for the time being as an adviser or assessor to the interim orders panel;
- (e) a person involved for the time being in an investigation under section 128.

(6) A person who has at any time been appointed to give preliminary consideration under section 122 to a particular matter may not be a member of the interim orders panel to which the matter is referred.

141 Rules about the composition of interim orders panels

(1) Rules under section 140 must include provision determining—
- (a) who may be a member of an interim orders panel;
- (b) how many members may or must be appointed;
- (c) how many of them (if any) may or must be registrants, as defined in section 7;
- (d) the quorum for exercising any function of a panel;
- (e) the maximum term of any appointment as a member or as the chair;
- (f) the circumstances in which a person is disqualified for appointment as a member or as the chair;
- (g) the grounds on which a member may be suspended or removed.

(2) A regulatory body must by rules make provision—
- (a) for the declaration and registration of private interests of the members of interim orders panels established by it;
- (b) for the publication of entries recorded in the register of members' interests.

(3) A regulatory body may by rules make other provision about the constitution and operation of interim orders panels (but such provision is subject to section 140).

(4) In particular, the rules may provide for—
- (a) the appointment of legal or other advisers;
- (b) the appointment of assessors or examiners;
- (c) categories of person who may be appointed as chair;
- (d) fees, expenses or other payments to be made by the regulatory body to any member.

142 Appointments to interim orders panels

A regulatory body must by rules make provision for the person appointed or body established by it under section 28 to—
- (a) select and appoint the chair and other members of interim orders panels to be established by the regulatory body;
- (b) select and appoint members to fill any vacancies to be filled under rules under section 141 in interim orders panels established by the regulatory body;
- (c) select and appoint any advisers, assessors or examiners to be appointed under rules under section 141;
- (d) specify the term for which those appointments are made (subject to rules under section 141(1)(e));
- (e) make appraisals of the performance of persons appointed;
- (f) arrange continuing professional development for them;
- (g) exercise the powers of suspension or removal of them.

CHAPTER 4

DISPOSAL OF FITNESS TO PRACTISE CASES

143 Scope and interpretation of Chapter 4

(1) This Chapter applies in respect of a matter which has been referred to a fitness to practise panel.

(2) But it does not apply in respect of—
  (a) review proceedings under section 158, and
  (b) restoration proceedings under Chapter 7.

(3) Nor does it apply in respect of proceedings before a fitness to practise panel, or that part of proceedings before a fitness to practise panel, in which that panel is considering—
  (a) whether to make an interim order under section 152, or
  (b) the review of an interim order under section 154.

(4) In this Chapter a reference to a registered professional is to the registered professional in respect of whom the referral to the fitness to practise panel has been made.

144 Consensual disposals by fitness to practise panel

(1) Subsection (2) applies where—
  (a) a registered professional has applied under section 60 for the voluntary removal of the entry relating to the professional from a professionals register, and
  (b) that application has been referred to a fitness to practise panel under rules under section 60(3).

(2) The fitness to practise panel may make an order for the voluntary removal of the entry relating to the registered professional from the professionals register, if the professional has agreed to a statement of facts relating to the matter.

(3) If an order for voluntary removal is made, the regulatory body concerned—
  (a) may publish the statement of agreed facts in such manner as it thinks fit, and
  (b) may disclose the statement to any person if the regulatory body thinks it is in the public interest to do so.

(4) A fitness to practise panel may agree undertakings with the registered professional—
  (a) if the professional admits that his or her fitness to practise is impaired, or
  (b) if the panel determines that the professional's fitness to practise is impaired.

(5) The regulatory body concerned must disclose details of the undertakings to any person—
  (a) by whom the registered professional is employed to provide services in the course of practising the profession,
  (b) with whom the professional has an arrangement to do so, and

(c) from whom the professional is seeking such employment or such an arrangement.

(6) But the regulatory body may not disclose to any person details of any undertaking which relates solely to the registered professional's physical or mental health.

(7) A regulatory body may by rules make provision about undertakings agreed with a fitness to practise panel under this section, and the rules may, in particular, make provision about the matters specified in section 132(2).

(8) Rules under subsection (7) may include provision in respect of undertakings agreed, confirmed or varied on a review under section 159(5) or (6), 160(4), 161(4) or 162(7).

145 Disposals by fitness to practise panel following a finding of no impairment

(1) This section applies where a fitness to practise panel has determined that a registered professional's fitness to practise is not impaired.

(2) The fitness to practise panel may—
(a) decide to take no further action in respect of the registered professional, or
(b) dispose of the matter in either or both of the ways specified in subsections (3) and (4).

(3) The panel may give advice on any matter related to the allegation under section 121(1)(a) or the information which gave rise to the proceedings under section 121(1)(b) (as the case may be)—
(a) to the registered professional, and
(b) to any other person involved in the proceedings.

(4) The panel may give a warning to the registered professional in respect of future conduct or performance.

(5) A regulatory body may by rules make provision about the procedure for giving a warning under this section, and in particular the rules may include provision—
(a) requiring notice of a proposed warning to be given to the registered professional, and
(b) allowing the professional to make representations in respect of the proposed warning.

(6) Rules under subsection (5) may include provision in respect of a warning given on a review under section 159(3)(b)(ii), 160(3)(b)(ii), 161(3)(b)(ii) or 162(6)(b)(ii).

146 Disposals by fitness to practise panel following a finding of impairment

(1) This section applies where a fitness to practise panel has determined that a registered professional's fitness to practise is impaired.

(2) The fitness to practise panel must dispose of the matter—
(a) by making an order for voluntary removal under section 144(2),
(b) by agreeing undertakings with the registered professional under section 144(4)(b), or
(c) in one of the ways specified in subsections (3) to (7).

(3) The panel may decide to take no further action in respect of the registered professional.

(4) The panel may give a warning to the registered professional in respect of future conduct or performance.

(5) The panel may make a conditional registration order, which is an order imposing conditions on the registered professional's registration in a professionals register.

(6) The panel may make a suspension order, which is an order suspending the registered professional's registration in a professionals register.

(7) Subject to subsection (12), the panel may make a removal order, which is an order for the removal of the entry relating to the registered professional in a professionals register.

(8) A conditional registration order must specify—
  (a) details of the conditions with which the registered professional must comply, and
  (b) the period for which the order is to have effect, which must not be more than 3 years (but see section 160 regarding extensions of that period on review).

(9) A conditional registration order may specify that different conditions have effect for different periods, but no condition may have effect for more than 3 years.

(10) A suspension order must specify the period for which the order is to have effect, which must not exceed one year (but see section 161 regarding extensions of that period on review).

(11) A conditional registration order or a suspension order may specify that the order must be reviewed in accordance with arrangements specified in the order.

(12) The panel may not make a removal order in a case where the panel has determined that the registered professional's fitness to practise is impaired on the grounds of adverse physical or mental health, and on no other ground specified in section 120(1).

147 Revocation of interim orders

(1) This section applies where—
  (a) a fitness to practise panel disposes of a matter in respect of a registered professional in any of the ways set out in sections 144 to 146, and
  (b) at that time the professional is subject to an interim order (see section 152).

(2) The fitness to practise panel must, at the same time as it disposes of the matter, revoke the interim order.

(3) The revocation of the interim order takes effect on the date on which the panel disposes of the matter as described in subsection (1)(a).

(4) In this section a reference to an interim order includes a reference to the following (see sections 155 and 156)—
  (a) an interim order as extended or further extended by a court,

(b) an interim order as varied on a review,
(c) a replacement interim conditional registration order or interim suspension order made on a review.

148 Immediate orders for conditional registration or suspension

(1) This section applies where a fitness to practise panel has made a conditional registration order, a suspension order or a removal order in respect of a registered professional under section 146(5), (6) or (7) ("the decision").

(2) The fitness to practise panel may—
(a) in the case of a conditional registration order, make an order that the registered professional's registration in the professionals register should be subject to the conditions with immediate effect,
(b) in the case of a suspension order or a removal order, make an order that the professional's registration in the professionals register should be suspended with immediate effect.

(3) The panel may make an order under subsection (2) (an "immediate order") only if it is satisfied that the order—
(a) is necessary for the protection of the public,
(b) is otherwise in the public interest, or
(c) is in the interests of the registered professional.

(4) The regulatory body concerned must give notice to the registered professional and the Professional Standards Authority of the making of an immediate order.

(5) An immediate order has effect from the date on which the registered professional was notified of it until—
(a) the date on which the decision takes effect in accordance with section 149(5), or
(b) an appeal against the decision is upheld.

149 Fitness to practise decisions: notification and taking effect

(1) Where a fitness to practise panel disposes of a case in any of the ways specified in sections 144 to 146, the regulatory body concerned must give notice to the registered professional and the Professional Standards Authority of the decision as to the disposal of the case.

(2) In any case where the disposal follows a finding as to impairment of fitness to practise, the notice to the registered professional must include—
(a) a statement of facts found by the panel, and
(b) the panel's finding as to impairment of fitness to practise.

(3) A decision to dispose of a case in any of the ways specified in section 144 or 145 takes effect immediately.

(4) Where a fitness to practise panel disposes of a case in any of the ways specified in section 146(3) to (7), the regulatory body concerned must also give notice to the registered professional of the right of appeal against the decision under section 166.

(5) A decision to dispose of a case in any of the ways specified in section 146(3) to (7) does not take effect until—

(a) the end of the period of 28 days beginning with the day on which the registered professional was notified of the decision, or

(b) if an appeal is made, the appeal is withdrawn, discontinued or dismissed.

150 Regulations about disposals by fitness to practise panels

(1) The Secretary of State may by regulations amend sections 144 to 146 to revise the ways in which a fitness to practise panel may dispose of a fitness to practise matter.

(2) The regulations may, in particular—

(a) add a new disposal power to the powers mentioned in sections 144 to 146, and make supplementary provision in respect of such a power;

(b) amend or repeal a disposal power mentioned in those sections;

(c) amend or repeal provisions of those sections which make supplementary provision in respect of a disposal power mentioned in those sections.

(3) Regulations which make provision of the kind mentioned in subsection (2)(a) may make such provision in relation to one regulatory body or in relation to several or all regulatory bodies.

(4) The regulations may make consequential amendment of—

(a) any provision of this Chapter,

(b) section 166 (appeals against decisions of a fitness to practise panel),

(c) section 167 (referral of fitness to practise decisions by the Professional Standards Authority).

(5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

CHAPTER 5

INTERIM ORDERS AND REVIEW OF INTERIM ORDERS

151 Scope and interpretation of Chapter 5

(1) This Chapter applies where a matter has been referred to an interim orders panel.

(2) Where a matter has been referred to a fitness to practise panel, this Chapter also applies to the proceedings before the fitness to practise panel, or that part of those proceedings, in which the fitness to practise panel is considering—

(a) whether to make an interim order under section 152, or

(b) the review of an interim order under section 154.

(3) In this Chapter—

"interim order proceedings" means proceedings in respect of which this Chapter applies, and

"panel" means the interim orders panel or fitness to practise panel before which the proceedings are brought.

(4) In this Chapter a reference to a registered professional is to the registered professional in respect of whom the referral to the panel has been made.

152 Interim orders

(1) A panel may in interim order proceedings make an interim order in relation to a registered professional.

(2) An interim order may be made whether or not the matter has been referred to a fitness to practise panel.

(3) Where a matter has been referred to a fitness to practise panel, any interim order must be made before the matter is disposed of by the panel in accordance with any of sections 144 to 146.

(4) The two types of interim order are—
(a) an interim suspension order, which is an order suspending the registered professional's registration in a professionals register;
(b) an interim conditional registration order, which is an order imposing conditions on the professional's registration in a professionals register.

(5) A panel may make an interim order only if it is satisfied that the order—
(a) is necessary for the protection of the public,
(b) is otherwise in the public interest, or
(c) is in the interests of the registered professional.

(6) An interim order—
(a) takes effect immediately, and
(b) may not have effect for a period of more than 18 months (unless it is extended: see section 156).

(7) Where an interim order is made in respect of a registered professional, the regulatory body must give notice to the professional of—
(a) the decision, and
(b) the right of appeal against the decision.

153 Appeals against interim orders

(1) Where a panel has made an interim order under section 152 in respect of a registered professional, the professional may appeal against the order to the relevant court.

(2) An appeal must be brought within the period of 28 days beginning with the day on which notice of the decision is given under section 152(7).

(3) On an appeal under this section, the relevant court may—
(a) revoke the interim order,
(b) in the case of an interim conditional registration order, revoke or vary any condition,
(c) replace an interim suspension order with an interim conditional registration order,
(d) replace an interim conditional registration order with an interim suspension order,
(e) vary the period for which the interim order is to have effect,

(f) remit the case to the regulatory body to dispose of in accordance with the directions of the court,

(g) make no change to the interim order.

(4) The court may make such order as to costs (or, in Scotland, expenses) as the court thinks fit.

(5) In this section "relevant court" means—

(a) the Court of Session, if the registered professional's address in the professionals register is in Scotland,

(b) the High Court of Justice in Northern Ireland, if the registered professional's address in the professionals register is in Northern Ireland, and

(c) otherwise, the High Court of Justice in England.

154 Reviews of interim orders: timing

(1) A panel must first review an interim order made under section 152 within six months beginning with the date on which the order was made.

(2) Subsection (3) prescribes the timing of the first review of an interim order following its extension or further extension by a court (see section 156), and "the court's decision" means the decision to extend or further extend the order (as the case may be).

(3) A panel must review the interim order—

(a) if no review of the order had taken place before the court's decision, within six months beginning with the date of the court's decision, or

(b) if a review of the order had taken place before the court's decision, within three months beginning with that date.

(4) Subsection (5) prescribes the timing of the first review of a replacement interim conditional registration order or interim suspension order made on a review ("the replacement order") (see section 155(2)(c) and (d)).

(5) A panel must review the replacement order—

(a) if no review of the order which has been replaced had taken place before the replacement order was made, within six months beginning with the date on which the replacement order was made, or

(b) if a review of the order which has been replaced had taken place before the replacement order was made, within three months beginning with the date on which the replacement order was made.

(6) After the first review of an interim order under subsection (1), (3) or (5), a panel must review the order (for as long as it has effect)—

(a) within six months beginning with the date of the decision of the most recent review, or

(b) if after the end of the period of three months beginning with that date the registered professional requests an earlier review, as soon as practicable.

(7) A panel may review an interim order at any time if new evidence becomes available which is relevant to the case.

(8) In subsections (6) and (7) a reference to an interim order includes a reference to—

(a) an interim order as extended or further extended by a court,
(b) an interim order as varied on a review (see section 155(2)(b)),
(c) a replacement interim conditional registration order or interim suspension order made on a review.

155 Reviews of interim order: possible decisions

(1) Subsection (2) specifies the decisions that a panel may make on the completion of a review of an interim order.

(2) The panel may—
(a) revoke the interim order;
(b) in the case of an interim conditional registration order, revoke or vary any condition;
(c) replace an interim suspension order with an interim conditional registration order;
(d) replace an interim conditional registration order with an interim suspension order;
(e) make no changes to the interim order.

(3) A panel may make a decision specified in subsection (2)(b), (c), (d) or (e) only if the panel is satisfied that the decision—
(a) is necessary for the protection of the public,
(b) is otherwise in the public interest, or
(c) is in the interests of the registered professional.

(4) A replacement order made under subsection (2)(c) or (d) has effect for the remainder of the period for which the order which it replaces had effect (unless it is extended: see section 156).

(5) In this section—
(a) a reference to an interim order includes a reference to—
(i) an interim order as extended or further extended by a court,
(ii) an interim order as varied under subsection (2)(b),
(iii) a replacement interim conditional registration order or interim suspension order made under subsection (2)(c) or (d);
(b) a reference to an interim conditional registration order or an interim suspension order includes a reference to—
(i) an interim order of that kind as extended or further extended by a court,
(ii) (in the case of an interim conditional registration order) an interim order as varied under subsection (2)(b),
(iii) a replacement order of that kind made under subsection (2)(c) or (d).

156 Extension of interim orders by a court

(1) A regulatory body may apply to the relevant court for an interim order to be extended or further extended.

(2) The relevant court may—
(a) revoke the interim order;

(b) in the case of a conditional registration order, revoke or vary any condition;
(c) extend, or further extend, the order for up to 12 months;
(d) make no change to the order or to the period for which the order is to have effect.

(3) In this section "the relevant court" means—
(a) the Court of Session, if the registered professional's address in the professionals register is in Scotland,
(b) the High Court of Justice in Northern Ireland, if the registered professional's address in the professionals register is in Northern Ireland, and
(c) otherwise, the High Court of Justice in England and Wales.

(4) In this section, a reference to an interim order includes a reference to—
(a) an interim order as extended or further extended under this section,
(b) an interim order varied on a review (see section 155(2)(b)),
(c) a replacement interim conditional registration order or interim suspension order made on a review (see section 155(2)(c) or (d)).

CHAPTER 6

REVIEW PROCEEDINGS

157 Review proceedings: interpretation and general

(1) In this Chapter a reference to a registered professional is to the registered professional whose fitness to practise is the subject of a review under section 158.

(2) A fitness to practise panel may make an order for the voluntary removal of a registered professional's entry from a professionals register under section 159(2), 160(2), 161(2) or 162(5) only if the professional has agreed to a statement of facts relating to the matter.

(3) If an order for voluntary removal is made under any of those provisions, the regulatory body concerned—
(a) may publish the statement of agreed facts in such manner as it thinks fit, and
(b) may disclose the statement to any person if the regulatory body thinks it is in the public interest to do so.

(4) Where a fitness to practise panel agrees or confirms undertakings, or agrees any variation of undertakings, under section 159(5) or (6), 160(4), 161(4) or 162(7), the regulatory body concerned must disclose details of the undertakings to any person—
(a) by whom the registered professional is employed to provide services in the course of practising the profession,
(b) with whom the professional has an arrangement to do so, and
(c) from whom the professional is seeking such employment or such an arrangement.

(5) But the regulatory body may not disclose to any person details of any undertaking which relates solely to the registered professional's physical or mental health.

158 Review proceedings

(1) Subsection (2) applies where undertakings agreed between a fitness to practise panel and a registered professional under section 144(4), 159(5) or (6), 160(4), 161(4) or 162(7) have effect.

(2) A fitness to practise panel must carry out a review of the registered professional's fitness to practise in accordance with any requirements as to review contained in those undertakings.

(3) Subsection (4) applies where a conditional registration order made (or confirmed or varied) under section 146(5), 159(8)(c), 160(6) or (7), 161(8)(c) or 162(10)(c) has effect in relation to a registered professional.

(4) A fitness to practise panel must carry out a review of the registered professional's fitness to practise in accordance with any requirements as to review contained in the conditional registration order.

(5) Subsection (6) applies where a suspension order made (or confirmed or varied) under section 146(6), 159(8)(d), 160(9)(c) or 161(6) or (7) has effect in relation to a registered professional.

(6) A fitness to practise panel must carry out a review of the registered professional's fitness to practise in accordance with any requirements as to review contained in the suspension order.

(7) A fitness to practise panel must also carry out a review of a registered professional's fitness to practise in a case referred to it by a regulatory body under section 136.

159 Review of undertakings: disposals by fitness to practise panel

(1) This section specifies the possible disposals which may be made by a fitness to practise panel which has completed a review under section 158(2) or (7) of the fitness to practise of a registered professional who has agreed undertakings.

(2) If the registered professional has applied under section 60 for the voluntary removal of the entry relating to the professional from a professionals register, the panel may make an order for the voluntary removal of that entry.

(3) If the panel determines that the registered professional's fitness to practise is no longer impaired, the panel—

(a) must revoke the undertakings, and

(b) may do either or both of the following—

(i) give advice to the professional on any matter related to the case,

(ii) give the professional a warning in respect of future conduct or performance.

(4) If the registered professional admits that his or her fitness to practise is impaired, or if the panel determines that the professional's fitness to practise is impaired, the panel may make a disposal specified in subsection (5) or (6).

(5) The panel may agree with the registered professional that the undertakings remain in effect with no variations.

(6) The panel may agree with the registered professional that either or both of the following variations may be made to any undertaking—
  (a) a variation of its terms,
  (b) an extension or reduction of the period for which it is to have effect.

(7) Under subsection (6)(b) an extension of the period for which any undertaking is to have effect may not be for more than 3 years.

(8) If the panel determines that the registered professional's fitness to practise is impaired, the panel may revoke the undertakings and make a decision to—
  (a) take no further action in respect of the professional,
  (b) give a warning to the professional in respect of future conduct or performance,
  (c) make a conditional registration order,
  (d) make a suspension order, or
  (e) subject to subsection (9), make a removal order.

(9) The panel may not make a removal order in a case where the panel has determined that the registered professional's fitness to practise is impaired on the grounds of adverse physical or mental health, and on no other ground specified in section 120(1).

160 Review of conditional registration orders: disposals by fitness to practise panel

(1) This section specifies the possible disposals which may be made by a fitness to practise panel which has completed a review under section 158(4) or (7) of the fitness to practise of a registered professional who is subject to a conditional registration order.

(2) If the registered professional has applied under section 60 for the voluntary removal of the entry relating to the professional from a professionals register, the panel may make an order for the voluntary removal of that entry.

(3) If the panel determines that the registered professional's fitness to practise is no longer impaired, the panel—
  (a) must revoke the conditional registration order, and
  (b) may do either or both of the following—
    (i) give advice to the professional on any matter related to the case,
    (ii) give the professional a warning in respect of future conduct or performance.

(4) The panel may agree undertakings with the registered professional—
  (a) if the professional admits that his or her fitness to practise is impaired, or
  (b) if the panel determines that the professional's fitness to practise is impaired.

(5) If the panel determines that the registered professional's fitness to practise is impaired, the panel may dispose of the case as described in any of the following subsections.

(6) The panel may confirm the conditional registration order with no variations.

(7) The panel may do any or all of the following in respect of the conditional registration order—
  (a) revoke any condition,
  (b) vary any condition,
  (c) extend or reduce the period for which the order is to have effect.

(8) Under subsection (7)(c) an extension of the period for which the order is to have effect may not be for more than 3 years.

(9) The panel may revoke the conditional registration order and make a decision to—
  (a) take no further action in respect of the registered professional,
  (b) give a warning to the professional in respect of future conduct or performance,
  (c) make a suspension order, or
  (d) subject to subsection (10), make a removal order.

(10) The panel may not make a removal order in a case where the panel has determined that the registered professional's fitness to practise is impaired on the grounds of adverse physical or mental health, and on no other ground specified in section 120(1).

161 Review of suspension orders: disposals by fitness to practise panel

(1) This section specifies the possible disposals which may be made by a fitness to practise panel which has completed a review under section 158(6) or (7) of the fitness to practise of a registered professional who is subject to a suspension order.

(2) If the registered professional has applied under section 60 for the voluntary removal of the entry relating to the professional from a professionals register, the panel may make an order for the voluntary removal of that entry.

(3) If the panel determines that the registered professional's fitness to practise is no longer impaired, the panel—
  (a) must revoke the suspension order, and
  (b) may do either or both of the following—
    (i) give advice to the professional on any matter related to the case,
    (ii) give the professional a warning in respect of future conduct or performance.

(4) The panel may agree undertakings with the registered professional—
  (a) if the professional admits that his or her fitness to practise is impaired, or
  (b) if the panel determines that the professional's fitness to practise is impaired.

(5) If the panel determines that the registered professional's fitness to practise is impaired, the panel may dispose of the case as described in any of the following subsections.

(6) The panel may confirm the suspension order with no variations.

(7) The panel may—
  (a) extend the period for which the suspension order is to have effect for a period of no more than 12 months, or

(b) reduce the period for which the suspension order is to have effect.

(8) The panel may revoke the suspension order and make a decision to—
(a) take no further action in respect of the registered professional,
(b) give a warning to the professional in respect of future conduct or performance,
(c) make a conditional registration order, or
(d) subject to subsection (9), make a removal order.

(9) The panel may not make a removal order in a case where the panel has determined that the registered professional's fitness to practise is impaired on the grounds of adverse physical or mental health, and on no other ground specified in section 120(1).

(10) If the conditions in subsection (11) are met, the panel may make an indefinite suspension order, which is an order suspending the registered professional's registration in a professionals register for an indefinite period.

(11) The conditions are—
(a) the panel has determined that the registered professional's fitness to practise is impaired on the grounds of adverse physical or mental health, and on no other ground specified in section 120(1),
(b) at the date of the panel's decision, the professional has been suspended for at least 2 years, and
(c) the suspension order to which the professional is subject is due to expire within 2 months of the date of the panel's decision.

162 Review of indefinite suspension orders

(1) This section applies where a fitness to practise panel has made an indefinite suspension order in respect of a registered professional under section 161(10).

(2) A fitness to practise panel must review the indefinite suspension order on the application of the registered professional.

(3) The registered professional may not make an application for review—
(a) before the expiry of the period of 2 years beginning with the date on which the order was made, or
(b) within the period of 2 years beginning with the date of a previous application for review.

(4) The following subsections specify the possible disposals which may be made by a fitness to practise panel which has completed a review of the fitness to practise of a registered professional who is subject to an indefinite suspension order.

(5) If the registered professional has applied under section 60 for the voluntary removal of the entry relating to the professional from a professionals register, the panel may make an order for the voluntary removal of that entry.

(6) If the panel determines that the registered professional's fitness to practise is no longer impaired, the panel—
(a) must revoke the indefinite suspension order, and
(b) may do either or both of the following—
(i) give advice to the professional on any matter related to the case,

(ii) give the professional a warning in respect of future conduct or performance.

(7) The panel may agree undertakings with the registered professional—
(a) if the professional admits that his or her fitness to practise is impaired, or
(b) if the panel determines that the professional's fitness to practise is impaired.

(8) If the panel determines that the registered professional's fitness to practise is impaired, the panel may dispose of the case as described in subsection (9) or (10).

(9) The panel may confirm the indefinite suspension order.

(10) The panel may revoke the indefinite suspension order and make a decision to—
(a) take no further action in respect of the registered professional,
(b) give a warning to the professional in respect of future conduct or performance, or
(c) make a conditional registration order.

163 Decisions in review cases: notification and taking effect

(1) Where a fitness to practise panel disposes of a review case in any of the ways specified in sections 159 to 162, the regulatory body concerned must give notice to the registered professional and the Professional Standards Authority of the decision as to the disposal of the case.

(2) In any case where the disposal follows a finding as to impairment of fitness to practise, the notice given to the registered professional must include—
(a) a statement of facts found by the panel, and
(b) the panel's finding as to impairment of fitness to practise.

(3) A decision to dispose of a review case in any of the ways specified in sections 159 to 162, except those disposals specified in subsection (4), takes effect immediately.

(4) Subsection (5) applies where a fitness to practise panel disposes of a review case in any of the ways specified in—
(a) section 159(8),
(b) section 160(6), (7) or (9),
(c) section 161(6), (7), (8) or (10), or
(d) section 162(9) or (10).

(5) The regulatory body concerned must also give notice to the registered professional of the right of appeal against the decision.

(6) A decision to dispose of a review case in any of the ways specified in subsection (4) does not take effect until—
(a) the end of the period of 28 days beginning with the day on which the registered professional was notified of the decision, or
(b) if an appeal is made, the appeal is withdrawn, discontinued or dismissed.

(7) Subsection (8) applies where—

(a) a registered professional is subject to a conditional registration order under section 146(5), 159(8)(c), 160(6) or (7), 161(8)(c) or 162(10)(c), and

(b) a fitness to practise panel disposes of a review case in any of the ways specified in section 160(6), (7) or (9)(c) or (d) ("the decision").

(8) The registered professional's conditional registration under the order as mentioned in subsection (7)(a) continues to have effect until—

(a) the decision takes effect in accordance with subsection (6), or

(b) an appeal against the decision is upheld,

despite the fact that, were it not for this subsection, the conditional registration would cease to have effect before that date.

(9) Where a registered professional is subject to a conditional registration order as mentioned in subsection (7)(a), and a fitness to practise panel disposes of a review case by extending the period of the conditional registration order under section 160(7)(c), that extended period of conditional registration is treated as having started on the date on which the previous period of conditional registration would, were it not for subsection (8), have ceased to have had effect.

(10) Subsection (11) applies where—

(a) a registered professional is subject to a suspension order under section 146(6), 159(8)(d), 160(9)(c) or 161(6) or (7), or an indefinite suspension order under section 161(10) or 162(9), and

(b) a fitness to practise panel disposes of a review case in any of the ways specified in section 161(6), (7), (8)(c) or (d) or (10) or 162(10)(c) ("the decision").

(11) The registered professional's suspension under the order as mentioned in subsection (10)(a) continues to have effect until—

(a) the decision takes effect in accordance with subsection (6), or

(b) an appeal against the decision is upheld,

despite the fact that, were it not for this subsection, the suspension would cease to have effect before that date.

(12) Where a registered professional is subject to a suspension order under section 146(6), 159(8)(d), 160(9)(c) or 161(6) or (7), and a fitness to practise panel disposes of a review case by extending the period of the suspension order under section 161(7)(a), that extended period of suspension is treated as having started on the date on which the previous period of suspension would, were it not for subsection (11), have ceased to have had effect.

CHAPTER 7

RESTORATION PROCEEDINGS

164 Restoration proceedings

(1) Where a regulatory body has referred to a fitness to practise panel under section 71(4) an application for restoration to a professionals register, or to a part of a register, the panel must—

(a) make a determination that the entry in respect of the practitioner must be restored to that professionals register (or that part of the register), or

(b) make a determination that the entry in respect of the practitioner must not be restored to that professionals register (or that part of the register).

(2) The regulatory body concerned must give notice to the practitioner of the decision.

(3) If the fitness to practise panel makes a determination under subsection (1)(b), the regulatory body concerned must also give notice to the practitioner of any right to appeal under section 166.

(4) If a practitioner has made two or more applications under section 71(2) for restoration to the same professionals register, or to the same part of a register, and a fitness to practise panel, on the second or any subsequent application, refuses restoration to that register (or that part of the register) under subsection (1)(b), the panel may direct that the practitioner may not make further applications under section 71(2) for restoration to that register (or that part of the register).

(5) If the fitness to practise panel gives a direction under subsection (4), the regulatory body concerned must give notice to the practitioner of—
(a) that direction, and
(b) the practitioner's right to appeal under section 166.

(6) If a fitness to practise panel makes a determination under subsection (1)(a), the panel may direct the registrar of the regulatory body concerned to restore the practitioner's entry to the professionals register.

(7) In this section and in section 165, "practitioner" means the person in respect of whom the referral to the fitness to practise panel was made.

165 Review of suspension of right to apply for restoration

(1) Subsection (2) applies where—
(a) a fitness to practise panel has given a direction under section 164(4) in respect of a practitioner (suspension of the right to apply for restoration), and
(b) a referral for the review of the direction has been made by the registrar of a regulatory body under section 71(5)(b).

(2) A fitness to practise panel must review the direction, and may confirm or revoke it.

CHAPTER 8

APPEALS AND REFERRALS TO THE COURT

166 Appeals against decisions of a fitness to practise panel

(1) This section applies where a fitness to practise panel—
(a) makes a decision to take no further action under section 146(3),
(b) gives a warning under section 146(4),
(c) makes a conditional registration order under section 146(5),
(d) makes a suspension order under section 146(6),
(e) makes a removal order under section 146(7),

(f) makes a decision in a review case under section 159(8),
(g) makes a decision in a review case under section 160(6), (7) or (9),
(h) makes a decision in a review case under section 161(6), (7), (8) or (10),
(i) makes a decision in a review case under section 162(9) or (10),
(j) makes a decision under section 164(1)(b) not to restore a person to a professionals register (or part of a register) for a reason that relates to the person's fitness to practise, or
(k) directs under section 164(4) that a person may not make further applications for restoration to a professionals register (or part of a register).

(2) The person in respect of whom a decision of a kind listed in subsection (1) was made may appeal against the decision to the relevant court.

(3) An appeal must be brought within the period of 28 days beginning with the day on which notice of the decision is given to the person concerned.

(4) On an appeal under this section, the relevant court may—
(a) confirm the decision,
(b) set aside the decision,
(c) substitute for the decision appealed against another decision that the fitness to practise panel could have made, or
(d) remit the case to the regulatory body to dispose of in accordance with the directions of the court.

(5) The court may make such order as to costs (or, in Scotland, expenses) as the court thinks fit.

(6) In this section "relevant court" means—
(a) the Court of Session, if the person's address in the professionals register is (or if the person were registered, would be) in Scotland,
(b) the High Court of Justice in Northern Ireland, if the person's address in the professionals register is (or if the person were registered, would be) in Northern Ireland, and
(c) otherwise, the High Court of Justice in England.

167 Referral of fitness to practise decisions by the Professional Standards Authority to a court

(1) If the conditions in subsection (2) are met, the Professional Standards Authority may refer to the relevant court—
(a) a decision of a fitness to practise panel specified in subsection (3), and
(b) a decision of the Statutory Committee of the Pharmaceutical Society of Northern Ireland specified in subsection (5).

(2) The conditions for the referral of a particular decision are—
(a) no referral of the decision has been made to a court by a regulatory body under a power conferred by regulations under section 168, and
(b) the Professional Standards Authority thinks that the decision does not achieve sufficient protection of the public.

(3) The referrable decisions of a fitness to practise panel are—
(a) subject to subsection (4), any decision under any of the following—
(i) section 144 (consensual disposals),

(ii) section 145 (disposals following a finding of no impairment),
(iii) section 146 (disposals following a finding of impairment),
(iv) section 159 (review of undertakings),
(v) section 160 (review of conditional registration orders),
(vi) section 161 (review of suspension orders),
(vii) section 162 (review of indefinite suspension orders),

(b) a decision to restore a person to a professionals register (or part of a register) under section 164(1)(a),

(c) a decision to give a direction under section 80 of the Medicines Act 1968 (power to disqualify and direct removal from the register).

(4) But a decision of a fitness to practise panel to make a removal order under section 146, 159, 160 or 161 is not a referrable decision.

(5) These are the referrable decisions of the Statutory Committee of the Pharmaceutical Society of Northern Ireland—

(a) a decision to give a direction under Article 20 of the Pharmacy (Northern Ireland) Order 1976 (S.I. 1976/1213 (N.I. 22)),

(b) a decision to give a direction under section 80 of the Medicines Act 1968.

(6) The Professional Standards Authority may refer to the relevant court a decision of a regulatory body specified in subsection (7), if the Authority thinks that the decision does not achieve sufficient protection of the public.

(7) These are the referrable decisions of a regulatory body—

(a) a decision to agree undertakings under section 129(3)(d),

(b) a decision to grant an application for voluntary removal from a professionals register under section 129(3)(e).

(8) In considering whether a decision achieves sufficient protection of the public, the Professional Standards Authority may take into account any relevant matter which was not taken into account by the fitness to practise panel, the Statutory Committee of the Pharmaceutical Society of Northern Ireland or the regulatory body (as the case may be).

(9) If the person in respect of whom the referrable decision was made has a right of appeal against the decision, the Professional Standards Authority must refer the decision before the end of the period of 40 days beginning with the day which is the last day on which the person is able to appeal against it.

(10) If the person in respect of whom the referrable decision was made does not have a right of appeal against the decision, the Professional Standards Authority must refer the decision before the end of the period of 40 days beginning with the day on which the Authority is notified of the decision.

(11) If the Professional Standards Authority refers a decision under this section—

(a) the case is to be treated by the court as an appeal by the Authority against the referred decision (even though the Authority was not a party to the proceedings resulting in the decision), and

(b) the body which made the referred decision is to be a respondent.

(12) The court may—

(a) confirm the referred decision,

(b) set aside the referred decision,

(c) substitute for the referred decision any other decision which could have been made by the body which made the referred decision, or

(d) remit the case to the body which made the referred decision to dispose of in accordance with the directions of the court.

(13) The court may make such order as to costs (or, in Scotland, expenses) as the court thinks fit.

(14) Except where subsection (15) applies, in this section "the relevant court" means—

(a) the Court of Session, if the person's address in the professionals register is (or if the person were registered, would be) in Scotland,

(b) the High Court of Justice in Northern Ireland, if the person's address in the professionals register is (or if the person were registered, would be) in Northern Ireland, and

(c) otherwise, the High Court of Justice in England.

(15) In the case of a social worker in England, "the relevant court" means the High Court of Justice in England and Wales.

168 Regulations about referral of fitness to practise decisions by a regulatory body

(1) The Secretary of State may make regulations giving a regulatory body the power to refer to the relevant court a decision of a fitness to practise panel specified in section 167(3)(a) or (b).

(2) The Secretary of State may make such regulations in relation to a regulatory body only if—

(a) regulations under section 29 have been made in relation to the regulatory body, and

(b) the person appointed by the regulations under section 29 has assumed responsibility for the administration of hearings and adjudication by panels established by the regulatory body.

(3) The Secretary of State—

(a) may seek advice from the Professional Standards Authority as to whether subsection (2)(b) is satisfied, and

(b) if the Secretary of State thinks that subsection (2)(b) is satisfied, the Secretary of State must prepare a report giving details.

(4) The Secretary of State may publish a report under subsection (3)(b).

(5) These are the conditions for a referral in accordance with regulations under this section—

(a) no referral of the decision in question has been made to a court by the Professional Standards Authority under section 167, and

(b) the regulatory body thinks that the decision does not achieve sufficient protection of the public.

(6) Where a referral to the relevant court has been made in accordance with regulations under this section, the court may—

(a) confirm the referred decision,

(b) set aside the referred decision,

(c) substitute for the referred decision any other decision which could have been made by the fitness to practise panel, or

(d) remit the case to the regulatory body to dispose of in accordance with the directions of the court.

(7) Where a referral to the relevant court has been made in accordance with regulations under this section, the court may make such order as to costs (or, in Scotland, expenses) as the court thinks fit.

(8) Regulations under this section must specify the period within which a referral must be made.

(9) The regulations may make supplementary provision in connection with referrals authorised by the regulations, and in particular may make any provision corresponding to provision made in section 167 regarding referrals of decisions by the Professional Standards Authority to a court.

(10) A statutory instrument containing regulations under this section may not be made unless—

(a) a draft of the report under subsection (3) has been laid before and approved by a resolution of each House of Parliament, and

(b) a draft of the statutory instrument has been laid before and approved by a resolution of each House of Parliament.

(11) Except where subsection (12) applies, in this section "the relevant court" means—

(a) the Court of Session, if the person's address in the professionals register is (or if the person were registered, would be) in Scotland,

(b) the High Court of Justice in Northern Ireland, if the person's address in the professionals register is (or if the person were registered, would be) in Northern Ireland, and

(c) otherwise, the High Court of Justice in England.

(12) In the case of a social worker in England, "the relevant court" means the High Court of Justice in England and Wales.

CHAPTER 9

FITNESS TO PRACTISE PROCEEDINGS

169 Scope and interpretation of Chapter 9

(1) Except where otherwise specified, this Chapter applies in respect of proceedings before a fitness to practise panel, including—

(a) review proceedings under section 158 (see Chapter 6), and

(b) restoration proceedings under Chapter 7.

(2) This Chapter does not apply in respect of proceedings before a fitness to practise panel, or that part of proceedings before a fitness to practise panel, in which that panel is considering—

(a) whether to make an interim order under section 152, or

(b) the review of an interim order under section 154.

(3) In this Chapter—

"fitness to practise hearing" means a hearing before a fitness to practise panel in fitness to practise proceedings,

"fitness to practise proceedings" means proceedings in respect of which this Chapter applies,

"parties" means the registered professional whose fitness to practise is in question and the regulatory body, or their representatives.

170 General objectives of fitness to practise panels and duties of parties in fitness to practise proceedings

(1) The general objectives of a fitness to practise panel in carrying out its functions in relation to fitness to practise proceedings are—

(a) to protect, promote and maintain the health, safety and well-being of the public;

(b) to promote and maintain—

(i) public confidence in the regulated health and social care profession to which the case relates; and

(ii) proper professional standards and conduct for individuals registered on the professionals register for that profession; and

(c) to deal fairly and justly with the case.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the registered professional whose fitness to practise is in question and the regulatory body;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the panel or regulatory body effectively;

(e) avoiding delay, so far as that is compatible with a proper consideration of the issues.

(3) It is the duty of the parties to—

(a) co-operate with the fitness to practise panel, and

(b) assist it in achieving its objective under subsection (1)(c).

(4) If the fitness to practise panel is satisfied that a person is in breach of the duty in subsection (3), it may draw any inference that it considers appropriate.

171 Fitness to practise proceedings: when a hearing is not necessary

(1) Fitness to practise proceedings, except review proceedings under section 158, may be determined by a fitness to practise panel without a hearing if—

(a) the parties agree in writing that the proceedings may be determined without a hearing,

(b) the parties agree in writing to the final decision which is to be made by the panel (including details of that decision such as the period for which an order is to have effect or any conditions to be imposed on the registered professional's registration),

(c) a statement of agreed facts is made in writing by—

(i) the regulatory body,

(ii) the registered professional whose fitness to practise is in question, and
(iii) the panel, and
(d) the panel decides that it is not necessary to hold a hearing.

(2) Review proceedings under section 158 may be determined by a fitness to practise panel without a hearing if—
(a) the parties agree in writing that the proceedings may be determined without a hearing,
(b) the parties agree in writing to the final decision to be made by the panel, which must be one specified in subsection (3), and
(c) the panel decides that it is not necessary to hold a hearing.

(3) The decisions referred to in subsection (2)(b) are—
(a) in the case of a review of the fitness to practise of a registered professional who has agreed undertakings, a decision by the panel to agree with the professional that the undertakings remain in effect with no variations,
(b) in the case of a review of the fitness to practise of a registered professional who is subject to a conditional registration order, a decision by the panel to confirm the conditional registration order with no variations,
(c) in the case of a review of the fitness to practise of a registered professional who is subject to a suspension order, a decision by the panel to confirm the suspension order with no variations.

(4) Where in accordance with subsection (1) or (2) proceedings are to be determined without a hearing—
(a) the panel's final decision may be made by the chair of the panel;
(b) at any stage during the proceedings the panel or the chair of the panel may require a hearing to be held.

(5) A regulatory body may by rules prescribe steps which may or must be taken by the parties or the panel to enable the panel to reach a decision as to whether it is necessary to hold a hearing.

172 Case management in fitness to practise proceedings

(1) A regulatory body may by rules make provision about preliminary case management.

(2) The rules may in particular make provision—
(a) for preliminary case management to be carried out by the fitness to practise panel or by a person appointed under the rules;
(b) about qualifications for such an appointment;
(c) about case reviews;
(d) about directions that may be given;
(e) about records of directions;
(f) about consequences of a failure to comply with directions (which may include the power of a fitness to practise panel to draw such inferences as it considers appropriate).

(3) Where the rules provide for preliminary case management to be carried out by a person other than the fitness to practise panel, they must provide for that person—

(a) to act independently of the parties, and

(b) to exercise any power to give directions only for the purpose of securing the just, expeditious and effective running of the fitness to practise proceedings.

(4) The general objective of a fitness to practise panel under section 170(1)(c) (to deal fairly and justly with cases) also applies to such a person.

(5) Rules under this section may not provide for the award of costs.

173 Evidence in fitness to practise proceedings

(1) A finding of fact by a fitness to practise panel in fitness to practise proceedings must be made on the balance of probabilities.

(2) In fitness to practise proceedings, evidence is not admissible unless—

(a) it would be admissible in civil proceedings in the relevant part of the United Kingdom, or

(b) the panel considers that the evidence is relevant, and that it is fair to admit it.

(3) For the purposes of subsection (2)(a) the "relevant part of the United Kingdom" means—

(a) in the case of any hearing before the panel, the part of the United Kingdom in which the hearing takes place,

(b) in a case where there is no hearing, the part of the United Kingdom in which the head office of the regulatory body concerned is located.

(4) A certificate, purporting to be signed by a competent officer of a court of any jurisdiction, that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, is conclusive evidence of the offence.

(5) A certificate that a person is included in a barred list (for the purposes of section 120(1)(c)), issued by the person responsible for maintaining the list, is conclusive evidence of that fact.

(6) A certificate issued by a relevant body (for the purposes of section 120(1)(d)) that it has determined that a person's fitness to practise is impaired is conclusive evidence of that determination.

174 Country in which fitness to practise hearing is to be held

(1) An appropriate person may make a request (a "country of hearing request") that a fitness to practise hearing should take place in the part of the United Kingdom in which—

(a) the registered professional whose fitness to practise is in question resides, or

(b) an event to which the matter being considered by the panel relates took place.

(2) A country of hearing request must be complied with unless the regulatory body concerned considers that there are reasons that justify refusing it.

(3) As soon as reasonably practicable after a matter is referred to a fitness to practise panel in fitness to practise proceedings, the regulatory body concerned must give notice to each appropriate person of the right to make a country of hearing request.

(4) "Appropriate person" means—
(a) the registered professional whose fitness to practise is in question,
(b) where section 121(1)(a) applies, the maker of the allegation, and
(c) anyone else who appears to the regulatory body to have a sufficient interest.

(5) A regulatory body may by rules make provision about—
(a) the time within which a country of hearing request may be made;
(b) the procedure for making a request;
(c) the procedure for giving notice under subsection (3).

175 Exclusion of the public from fitness to practise hearings

(1) A fitness to practise hearing must be held in public, with the following exceptions.

(2) The fitness to practise panel must exclude the public from any part of a hearing involving consideration of the physical or mental health of the registered professional whose fitness to practise is in question, unless—
(a) the professional requests that part of the hearing to be held in public, and
(b) the panel considers that doing so would not be against the public interest.

(3) The panel may exclude the public from all or part of a hearing if it considers that the circumstances of the case outweigh the public interest in holding the hearing in public.

(4) The panel may exclude a person from a hearing if it considers that the person's conduct is likely to disrupt the hearing.

176 Fitness to practise proceedings: witness summons

(1) For the purposes of fitness to practise proceedings in England and Wales or Northern Ireland—
(a) a fitness to practise panel may administer oaths,
(b) any of the parties may issue a witness summons requiring a witness to attend a hearing to give evidence or to produce documents (and if necessary the party may issue a writ of subpoena ad testificandum or duces tecum).

(2) No person is to be compelled by a document issued under subsection (1)(b) to produce any document which that person could not be compelled to produce on the trial of an action.

(3) Section 36 of the Senior Courts Act 1981 or section 67 of the Judicature (Northern Ireland) Act 1978 (which provide a special procedure for documents to be issued so as to be in force throughout the United Kingdom) applies in relation to fitness to practise proceedings in England and Wales or, as the case may be, in Northern Ireland as those provisions apply in relation to causes or

matters in the High Court or actions or suits pending in the High Court of Justice in Northern Ireland.

(4) For the purposes of fitness to practise proceedings in Scotland—
  (a) a fitness to practise panel may administer oaths; and
  (b) the Court of Session is, on the application of any of the parties, to have the power (as in any action in that court)—
    (i) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the panel and for the apprehension and bringing to the proceedings of any witness or haver failing to appear after due citation;
    (ii) to grant warrant for the discovery of documents;
    (iii) to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.

177 Special measures for witnesses etc in fitness to practise hearings

(1) A person giving evidence in a fitness to practise hearing, including the registered professional whose fitness to practise is in question, is entitled to special measures if—
  (a) the person is under 18, or
  (b) the panel considers that the quality of evidence given by the person is likely to be diminished by reason of—
    (i) physical disability, learning disability, mental health problems, an illness or health condition or a dependency on drugs or alcohol, or
    (ii) fear or distress in connection with giving evidence.

(2) A person giving evidence in a fitness to practise hearing is also entitled to special measures if the matter to which the proceedings relate is of a sexual nature and the person is an alleged victim.

(3) In deciding whether the quality of evidence given by a person is likely to be diminished by reason of a matter specified in subsection (1)(b), the fitness to practise panel must take into account the views of the person concerned.

(4) A fitness to practise panel may offer special measures to a person not entitled to them under subsection (1) or (2), if it thinks that this is in the public interest.

(5) "Special measures" means such measures as the fitness to practise panel considers appropriate for the purpose of improving the quality of evidence given by a person at the hearing.

(6) In considering which particular special measures may be appropriate, the fitness to practise panel must take into account the views of the person concerned.

(7) A person who is 18 or over and who has the capacity to do so may decline to accept special measures or any particular special measure.

(8) Whether a person has capacity for the purposes of subsection (7) is determined by the Mental Capacity Act 2005.

(9) A person who is under 18 (a "child") may decline to accept special measures or any particular special measure only if the fitness to practise panel is satisfied

that the quality of the child's evidence is not likely to be diminished by the absence of the measure or measures which the child wishes to decline.

(10) In reaching a view as required by subsection (9), the panel must consider—
(a) the child's age and maturity,
(b) the child's ability to understand the consequences of giving evidence without the special measure or measures,
(c) the child's best interests,
(d) the views of the child's parents or any person with parental responsibility for the child,
(e) the relationship (if any) between the child and any party to the proceedings,
(f) the nature and alleged circumstances of the matter to which the proceedings relate, and
(g) any other factor that the panel thinks is relevant.

(11) A fitness to practise panel must give a direction requiring the implementation or provision of any special measure which it has offered, except where the person concerned is entitled to decline the measure and has done so.

(12) If the matter to which the proceedings relate is of a sexual nature, the registered professional whose fitness to practise is in question may not personally cross-examine an alleged victim, unless—
(a) the alleged victim has given written consent to this, and
(b) the fitness to practise panel does not consider that the alleged facts of the matter amount to, or are likely to amount to, a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999.

(13) If subsection (12) means that the registered professional is not permitted to personally cross-examine a person, the fitness to practise panel must give the professional adequate opportunity to appoint a representative to do so.

(14) If the registered professional does not appoint a representative under subsection (13), but wishes an alleged victim to be cross-examined, the regulatory body must appoint a representative to cross-examine the person on behalf of the professional.

178 Fitness to practise hearings: procedure

(1) This section is about procedure at a fitness to practise hearing, but subsections (7) and (8) and (10) to (12) do not apply in relation to a hearing before a fitness to practise panel to which a matter has been referred under section 71(4) (restoration hearings).

(2) The registered professional is entitled to be represented by—
(a) a solicitor or counsel,
(b) a representative from any professional organisation, or
(c) if the fitness to practise panel agrees, any other person.

(3) The registered professional and the regulatory body are entitled to give evidence.

(4) A person representing or advising the registered professional may not give evidence.

(5) A fitness to practise panel may, on its own initiative or on the application of any of the parties, postpone or adjourn the hearing until such date and time as it thinks fit.

(6) If the panel intends to postpone or adjourn the hearing—
  (a) the parties must be given a reasonable opportunity to make representations, and
  (b) the parties must be notified as soon as practicable of the date, time and place of the further hearing.

(7) The fitness to practise panel may amend the particulars of any matter to which the proceedings relate, if the panel thinks the amendment is just and appropriate.

(8) If the panel intends to amend the particulars as mentioned in subsection (7), it must first—
  (a) hear the views of the parties, and
  (b) consult the legal assessor (if there is one).

(9) The hearing may proceed even if the registered professional is not present and not represented, if the panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the professional.

(10) Where the fitness to practise panel thinks it is in the interests of justice—
  (a) it may consider and determine together two or more matters relating to the same registered professional (whether or not the matters concern impairment of fitness to practise on the same ground), and
  (b) it may consider and determine together matters relating to two or more registered professionals (whether or not they are of the same regulated health and social care profession or are members of a profession regulated by the same regulatory body).

(11) Subsection (12) applies if—
  (a) a fitness to practise panel ("the first panel") determines a preliminary legal argument in fitness to practise proceedings, and
  (b) a fitness to practise panel subsequently continues those proceedings ("the subsequent panel").

(12) The determination of the first panel is binding on the subsequent panel (even if the membership of the subsequent panel is different from the membership of the first panel), unless the subsequent panel thinks that—
  (a) there has been a material change in circumstances and that it is in the interests of justice to reconsider the matter, or
  (b) it is otherwise in the interests of justice to do so.

(13) In this section, references to the registered professional are to the registered professional whose fitness to practise is in question.

179 Fitness to practise hearings rules

(1) Each regulatory body must make rules about the procedure to be followed in fitness to practise hearings ("fitness to practise hearings rules").

(2) The Secretary of State—

(a) may give guidance to the regulatory bodies about the contents of fitness to practise hearings rules, including guidance in the form of model rules, and

(b) must publish any guidance given under paragraph (a).

(3) A regulatory body must, when making fitness to practise hearings rules, have regard to any guidance given to the regulatory bodies under subsection (2)(a).

(4) Where guidance has been given in the form of model rules a regulatory body must, after making any fitness to practise hearings rules, publish a document explaining any significant departures from or additions to the model rules.

(5) The power of a regulatory body to make fitness to practise hearings rules is subject to sections 173 to 178.

CHAPTER 10

INTERIM ORDER PROCEEDINGS

180 Scope and interpretation of Chapter 10

(1) This Chapter applies in respect of proceedings before an interim orders panel.

(2) This Chapter also applies in respect of proceedings before a fitness to practise panel, or that part of proceedings before a fitness to practise panel, in which that panel is considering—

(a) whether to make an interim order under section 152, or

(b) the review of an interim order under section 154.

(3) In this Chapter—

"interim order hearing" means a hearing before an interim orders panel or a fitness to practise panel in interim order proceedings,

"interim order proceedings" means proceedings in respect of which this Chapter applies,

"panel" means the interim orders panel or fitness to practise panel before which the proceedings are brought,

"parties" means the registered professional whose fitness to practise is in question and the regulatory body, or their representatives.

181 General objectives of panels and duties of parties in interim order proceedings

(1) The general objectives of a panel in carrying out its functions in relation to interim order proceedings are—

(a) to protect, promote and maintain the health, safety and well-being of the public;

(b) to promote and maintain—

(i) public confidence in the regulated health and social care profession to which the case relates; and

(ii) proper professional standards and conduct for individuals registered on the professionals register for that profession; and

(c) to deal fairly and justly with the case.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the registered professional whose fitness to practise is in question and the regulatory body;
(b) avoiding unnecessary formality and seeking flexibility in the proceedings;
(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
(d) using any special expertise of the panel or regulatory body effectively;
(e) avoiding delay, so far as that is compatible with a proper consideration of the issues.

(3) It is the duty of the parties to—
(a) co-operate with the panel, and
(b) assist it in achieving its objective under subsection (1)(c).

(4) If the panel is satisfied that a person is in breach of the duty in subsection (3), it may draw any inference that it considers appropriate.

182 Interim order proceedings: when a hearing is not necessary

(1) Interim order proceedings may be determined by a panel without a hearing if—
(a) the parties agree in writing that the proceedings may be determined without a hearing,
(b) the parties agree in writing to the interim order which is to be made by the panel, or (in a case where the panel is considering the review of an interim order) to the decision specified in section 155(2)(b) to (e) which is to be made by the panel, including—
(i) the period for which the interim order is to have effect, and
(ii) (in the case of an interim conditional registration order) the conditions to be imposed on the registered professional's registration,
(c) a statement of agreed facts is made in writing by—
(i) the regulatory body,
(ii) the registered professional whose fitness to practise is in question, and
(iii) the panel, and
(d) the panel decides that it is not necessary to hold a hearing.

(2) Where in accordance with subsection (1) proceedings are to be determined without a hearing—
(a) an interim order may be made or confirmed by the chair of the panel;
(b) at any stage during the proceedings the panel or the chair of the panel may require a hearing to be held.

(3) A regulatory body may by rules prescribe steps which may or must be taken by the parties or the panel to enable the panel to reach a decision as to whether it is necessary to hold a hearing.

183 Case management in interim order proceedings

(1) A regulatory body may by rules make provision about preliminary case management.

(2) The rules may in particular make provision—
(a) for preliminary case management to be carried out by the panel or by a person appointed under the rules;
(b) about qualifications for such an appointment;
(c) about case reviews;
(d) about directions that may be given;
(e) about records of directions;
(f) about consequences of a failure to comply with directions (which may include the power of a panel to draw such inferences as it considers appropriate).

(3) Where the rules provide for preliminary case management to be carried out by a person other than the panel, they must provide for that person—
(a) to act independently of the parties, and
(b) to exercise any power to give directions only for the purpose of securing the just, expeditious and effective running of the interim order proceedings.

(4) The general objective of a panel under section 181(1)(c) (to deal fairly and justly with cases) also applies to such a person.

(5) Rules under this section may not provide for the award of costs.

184 Evidence in interim order proceedings

(1) In interim order proceedings, evidence is not admissible unless—
(a) it would be admissible in civil proceedings in the relevant part of the United Kingdom, or
(b) the panel considers that the evidence is relevant, and that it is fair to admit it.

(2) For the purposes of subsection (1)(a) the "relevant part of the United Kingdom" means—
(a) in the case of any hearing before the panel, the part of the United Kingdom in which the hearing takes place,
(b) in a case where there is no hearing, the part of the United Kingdom in which the head office of the regulatory body concerned is located.

(3) A certificate, purporting to be signed by a competent officer of a court of any jurisdiction, that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, is conclusive evidence of the offence.

(4) A certificate that a person is included in a barred list (for the purposes of section 120(1)(c)), issued by the person responsible for maintaining the list, is conclusive evidence of that fact.

(5) A certificate issued by a relevant body (for the purposes of section 120(1)(d)) that it has determined that a person's fitness to practise is impaired is conclusive evidence of that determination.

185 Country in which interim order hearing is to be held

(1) An appropriate person may make a request (a "country of hearing request") that an interim order hearing should take place in the part of the United Kingdom in which—

(a) the registered professional whose fitness to practise is in question resides, or

(b) an event to which the matter being considered by the panel relates took place.

(2) A country of hearing request must be complied with unless the regulatory body concerned considers that there are reasons that justify refusing it.

(3) As soon as reasonably practicable after a matter is referred to a panel in interim order proceedings, the regulatory body concerned must give notice to each appropriate person of the right to make a country of hearing request.

(4) "Appropriate person" means—

(a) the registered professional whose fitness to practise is in question,

(b) where section 121(1)(a) applies, the maker of the allegation, and

(c) anyone else who appears to the regulatory body to have a sufficient interest.

(5) A regulatory body may by rules make provision about—

(a) the time within which a country of hearing request may be made;

(b) the procedure for making a request;

(c) the procedure for giving notice under subsection (3).

186 Exclusion of the public from interim order hearings

The public must be excluded from an interim order hearing unless—

(a) the registered professional whose fitness to practise is in question requests that the hearing should be held in public, and

(b) the panel considers that doing so would not be against the public interest.

187 Interim order proceedings: witness summons

(1) For the purposes of interim order proceedings in England and Wales or Northern Ireland—

(a) a panel may administer oaths,

(b) any of the parties may issue a witness summons requiring a witness to attend a hearing to give evidence or to produce documents (and if necessary the party may issue a writ of subpoena ad testificandum or duces tecum).

(2) No person is to be compelled by a document issued under subsection (1)(b) to produce any document which that person could not be compelled to produce on the trial of an action.

(3) Section 36 of the Senior Courts Act 1981 or section 67 of the Judicature (Northern Ireland) Act 1978 (which provide a special procedure for documents to be issued so as to be in force throughout the United Kingdom) applies in relation to interim order proceedings in England and Wales or, as the case may be, in Northern Ireland as those provisions apply in relation to causes or

matters in the High Court or actions or suits pending in the High Court of Justice in Northern Ireland.

(4) For the purposes of interim order proceedings in Scotland—
  (a) a panel may administer oaths; and
  (b) the Court of Session is, on the application of any of the parties, to have the power (as in any action in that court)—
    (i) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the panel and for the apprehension and bringing to the proceedings of any witness or haver failing to appear after due citation;
    (ii) to grant warrant for the discovery of documents;
    (iii) to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.

188 Special measures for witnesses etc in interim order hearings

(1) A person giving evidence in an interim order hearing, including the registered professional whose fitness to practise is in question, is entitled to special measures if—
  (a) the person is under 18, or
  (b) the panel considers that the quality of evidence given by the person is likely to be diminished by reason of—
    (i) physical disability, learning disability, mental health problems, an illness or health condition or a dependency on drugs or alcohol, or
    (ii) fear or distress in connection with giving evidence.

(2) A person giving evidence in an interim order hearing is also entitled to special measures if the matter to which the proceedings relate is of a sexual nature and the person is an alleged victim.

(3) In deciding whether the quality of evidence given by a person is likely to be diminished by reason of a matter specified in subsection (1)(b), the panel must take into account the views of the person concerned.

(4) A panel may offer special measures to a person not entitled to them under subsection (1) or (2), if it thinks that this is in the public interest.

(5) "Special measures" means such measures as the panel considers appropriate for the purpose of improving the quality of evidence given by a person at the hearing.

(6) In considering which particular special measures may be appropriate, the panel must take into account the views of the person concerned.

(7) A person who is 18 or over and who has the capacity to do so may decline to accept special measures or any particular special measure.

(8) Whether a person has capacity for the purposes of subsection (7) is determined by the Mental Capacity Act 2005.

(9) A person who is under 18 (a "child") may decline to accept special measures or any particular special measure only if the panel is satisfied that the quality of

the child's evidence is not likely to be diminished by the absence of the measure or measures which the child wishes to decline.

(10) In reaching a view as required by subsection (9), the panel must consider—

(a) the child's age and maturity,

(b) the child's ability to understand the consequences of giving evidence without the special measure or measures,

(c) the child's best interests,

(d) the views of the child's parents or any person with parental responsibility for the child,

(e) the relationship (if any) between the child and any party to the proceedings,

(f) the nature and alleged circumstances of the matter to which the proceedings relate, and

(g) any other factor that the panel thinks is relevant.

(11) A panel must give a direction requiring the implementation or provision of any special measure which it has offered, except where the person concerned is entitled to decline the measure and has done so.

(12) If the matter to which the proceedings relate is of a sexual nature, the registered professional whose fitness to practise is in question may not personally cross-examine an alleged victim, unless—

(a) the alleged victim has given written consent to this, and

(b) the panel does not consider that the alleged facts of the matter amount to, or are likely to amount to, a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999.

(13) If subsection (12) means that the registered professional is not permitted to personally cross-examine a person, the panel must give the professional adequate opportunity to appoint a representative to do so.

(14) If the registered professional does not appoint a representative under subsection (13), but wishes an alleged victim to be cross-examined, the regulatory body must appoint a representative to cross-examine the person on behalf of the professional.

189 Interim order hearings: procedure

(1) This section is about procedure at an interim order hearing.

(2) The registered professional is entitled to be represented by—

(a) a solicitor or counsel,

(b) a representative from any professional organisation, or

(c) if the panel agrees, any other person.

(3) The registered professional and the regulatory body are entitled to give evidence.

(4) A person representing or advising the registered professional may not give evidence.

(5) A panel may, on its own initiative or on the application of any of the parties, postpone or adjourn the hearing until such date and time as it thinks fit.

(6) If the panel intends to postpone or adjourn the hearing—

(a) the parties must be given a reasonable opportunity to make representations, and

(b) the parties must be notified as soon as practicable of the date, time and place of the further hearing.

(7) The hearing may proceed even if the registered professional is not present and not represented, if the panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the professional.

(8) Where the panel thinks it is in the interests of justice—

(a) it may consider and determine together two or more matters relating to the same registered professional (whether or not the matters concern impairment of fitness to practise on the same ground), and

(b) it may consider and determine together matters relating to two or more registered professionals (whether or not they are of the same regulated health and social care profession or are members of a profession regulated by the same regulatory body).

(9) In the case of a hearing held in public, the panel may exclude a person from the hearing if it thinks that the person's conduct is likely to disrupt the hearing.

(10) Subsection (11) applies if—

(a) a panel ("the first panel") determines a preliminary legal argument in interim order proceedings, and

(b) a panel subsequently continues those proceedings ("the subsequent panel").

(11) The determination of the first panel is binding on the subsequent panel (even if the membership of the subsequent panel is different from the membership of the first panel), unless the subsequent panel thinks that—

(a) there has been a material change in circumstances and that it is in the interests of justice to reconsider the matter, or

(b) it is otherwise in the interests of justice to do so.

(12) In this section, references to the registered professional are to the registered professional whose fitness to practise is in question.

190 Interim order hearings rules

(1) Each regulatory body must make rules about the procedure to be followed in interim order hearings ("interim order hearings rules").

(2) The Secretary of State—

(a) may give guidance to the regulatory bodies about the contents of interim order hearings rules, including guidance in the form of model rules, and

(b) must publish any guidance given under paragraph (a).

(3) A regulatory body must, when making interim order hearings rules, have regard to any guidance given to the regulatory bodies under subsection (2)(a).

(4) Where guidance has been given in the form of model rules a regulatory body must, after making any interim order hearings rules, publish a document explaining any significant departures from or additions to the model rules.

(5) The power of a regulatory body to make interim order hearings rules is subject to sections 184 to 189.

CHAPTER 11

FITNESS TO PRACTISE: GENERAL AND SUPPLEMENTARY

191 Disclosure of information about fitness to practise

A regulatory body may, if it considers it to be in the public interest to do so, publish or disclose to any person information relating to a registered professional's fitness to practise a regulated health and social care profession.

192 Power to require information

(1) For the purpose of carrying out functions under this Part, the regulatory body may require—
  (a) a registered professional, or
  (b) any other person,
who in the opinion of the regulatory body is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply that information or produce that document.

(2) The regulatory body may, in particular, require the registered professional whose fitness to practise is being investigated, to provide details of any person—
  (a) by whom the registered professional is employed to provide services in, or in relation to, the regulated profession;
  (b) with whom the registered professional has an arrangement to provide such services.

(3) Nothing in this section shall require or permit any disclosure of information which is prohibited by any enactment.

(4) But where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the regulatory body may require that the information be put into a form which is not capable of identifying that individual.

(5) In determining for the purposes of subsection (3) whether a disclosure is not prohibited, by reason of being a disclosure of personal data which is exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of section 35(1) of that Act, it shall be assumed that the disclosure is required by this section.

(6) This section does not apply in relation to the supply of information or the production of a document which a person could not be compelled to supply or produce in civil proceedings before the relevant court.

(7) If a person fails to supply any information or produce any document within 14 days, or such longer period as the regulatory body may specify, of the person being required to do so under this section, the regulatory body may seek an order of the relevant court requiring the information to be supplied or the document to be produced.

(8) For the purposes of this section, "the relevant court" means—
  (a) in England and Wales, the High Court,
  (b) in Scotland, the Court of Session, and
  (c) in Northern Ireland, the High Court.

(9) In subsection (3) "enactment" means an enactment contained in, or in an instrument made under—
  (a) an Act of Parliament;
  (b) an Act of the Scottish Parliament;
  (c) an Act or Measure of the Welsh Assembly;
  (d) Northern Ireland legislation.

193 Publication of fitness to practise decisions

(1) A regulatory body must publish a decision of a fitness to practise panel to make a consensual disposal of a matter under section 144.

(2) A regulatory body must publish a decision of a fitness to practise panel to dispose of a case under section 145 (disposals following a finding of no impairment of fitness to practise).

(3) A regulatory body must publish a decision of a fitness to practise panel to dispose of a case under section 146 (disposals following a finding of impairment of fitness to practise).

(4) A regulatory body must publish a decision of a fitness to practise panel to dispose of a review case in any of the ways mentioned in sections 159 to 162.

(5) A regulatory body must publish the following decisions of a fitness to practise panel—
  (a) a decision to make an immediate order under section 148,
  (b) a decision under section 164(1)(b) not to restore a person to the professionals register,
  (c) a decision to give a direction under section 164(4) that a person may not make further applications for restoration to the professionals register.

(6) A regulatory body must publish the following decisions of an interim orders panel or a fitness to practise panel—
  (a) a decision to make an interim order under section 152,
  (b) a decision to confirm or vary an interim order on a review under section 155.

(7) A regulatory body must publish any decision it makes—
  (a) to issue a warning under section 129(3)(c),
  (b) to agree undertakings under section 129(3)(d), or
  (c) to grant an application for voluntary removal from a professionals register under section 129(3)(e).

(8) Subsections (1) to (7) are subject to subsections (9) and (10).

(9) A regulatory body may, but is not required to, publish any decision of a fitness to practise panel to take no further action in respect of a registered professional under section 145(2)(a), 146(3), 159(8)(a), 160(9)(a), 161(8)(a) or 162(10)(a).

(10) A regulatory body must not publish any information about a person's physical or mental health.

(11) A decision which is published under this section may be published in any manner that a regulatory body considers appropriate.

(12) In this section references to a regulatory body, in relation to a decision of a fitness to practise panel or an interim orders panel, are references to the regulatory body which regulates the profession to which the decision relates.

194 Guidance about fitness to practise

(1) A regulatory body may publish guidance about factors which in its view may make it appropriate, or inappropriate, for a fitness to practise panel or an interim orders panel to make or confirm an interim order under Chapter 5.

(2) A fitness to practise panel or an interim orders panel must have regard to guidance issued under subsection (1) in exercising any function under Chapter 5.

(3) A regulatory body may publish guidance about factors which in its view may make it appropriate, or inappropriate, for a fitness to practise panel to do any of the following—

(a) reach a consensual disposal of a matter under section 144,
(b) give advice or a warning under section 145,
(c) dispose of a matter in any of the ways mentioned in section 146(3) to (7),
(d) make an immediate order under section 148,
(e) dispose of a matter on review in any of the ways mentioned in sections 159 to 162,
(f) restore a person's entry to a professionals register (or part of a register) under section 164,
(g) direct under section 164(4) that a person may not make further applications for restoration to a professionals register (or part of a register).

(4) A regulatory body may publish guidance about—

(a) particular undertakings, or kinds of undertakings, which may be agreed by a fitness to practise panel, and when it may be appropriate or inappropriate to agree such undertakings,
(b) particular conditions, or kinds of conditions, which may be included in a conditional registration order, and when it may be appropriate or inappropriate to include such conditions,
(c) the period of time for which any of the following should have effect—
(i) undertakings,
(ii) conditions included in a conditional registration order,
(iii) a suspension order.

(5) A regulatory body may publish guidance about factors which it considers should be taken into account in determining whether or not a registered professional's fitness to practise is impaired on the grounds of adverse physical or mental health.

(6) A fitness to practise panel must have regard to guidance issued under subsections (3) to (5) in exercising any function under this Part.

195 Suspension: supplementary

(1) This section applies in respect of a person who is subject to—

(a) a suspension order made under section 146(6),

(b) a suspension order made, confirmed or varied on review under section 159(8)(d), 160(9)(c) or 161(6) or (7),

(c) an indefinite suspension order made or confirmed on review under section 161(10) or 162(9), or

(d) an interim suspension order made, confirmed or varied under section 152 or 155,

in respect of a regulated health and social care profession ("the relevant profession").

(2) The person is to be treated for all purposes other than those mentioned in subsection (3) as not being registered in the professionals register (or in the case of a register divided into parts, that part of the register) for the relevant profession, despite the fact that the person's name continues to appear in that register (or that part of the register).

(3) The person is to be treated as registered for the purposes of—

(a) any proceedings under this Part (including preliminary consideration or investigation under Chapter 2) which relate to the person's fitness to practise the relevant profession,

(b) an application made under rules under section 60 for voluntary removal from the professionals register, or part of the register, for the relevant profession, and

(c) proceedings under section 63 (incorrect or fraudulently procured entries) which relate to an entry in the professionals register, or part of the register, for the relevant profession.

196 Interpretation of Part 6

In this Part "registered professional" includes a person—

(a) whose registration would have lapsed under section 45(1) but for the fact that subsection (2) of that section applies to the person,

(b) in respect of whom a suspension order has effect under section 146(6), 159(8)(d), 160(9)(c), 161(6), (7) or (10) or 162(9), or

(c) in respect of whom an interim suspension order has effect under section 152 or 155.

PART 7

PROHIBITION ORDERS

Orders

197 Designation of a regulated activity

(1) The Secretary of State may by regulations—

(a) designate a category of activity listed in section 198(1) as a regulated activity for the purposes of this Part, and

(b) authorise a regulatory body prescribed in the regulations to make prohibition orders in respect of the regulated activity.

(2) In this Part—

"prescribed regulatory body" means a regulatory body prescribed under subsection (1); and

"prohibition order" means an order prohibiting a person from carrying out a regulated activity.

(3) Where the Secretary of State proposes to make regulations designating a category of activity (the "proposed designated activity") under this section, the Secretary of State must first—

(a) publish a draft of the instrument containing the regulations,

(b) invite representations to be made about the draft from—

(i) persons appearing to the Secretary of State to represent any profession or group of workers who carry out the proposed designated activity,

(ii) persons appearing to the Secretary of State to represent those provided with services by any such profession or group of workers, and

(iii) any other persons it appears to the Secretary of State to be appropriate to invite, and

(c) consult any other person required to be consulted under section 250.

(4) Section 245(3) to (7) applies to draft regulations under this section as it applies to draft regulations under section 244 but as if the references to section 244(8) were references to section 209(1).

(5) Regulations under this section designating a category of activity may only be made if the Secretary of State is satisfied that designation of the activity as a regulated activity is necessary for the protection of the public or is otherwise in the public interest.

(6) A draft instrument laid before Parliament for the purposes of section 209(1) must be accompanied by a report on the reasons why the Secretary of State considers that the designation is necessary for the protection of the public or is otherwise in the public interest.

198 Regulated activities

(1) Regulations under section 197 may designate any of the following as regulated activities—

(a) practising a prescribed health profession;

(b) practising a prescribed social care profession in England;

(c) carrying out a prescribed activity in the course of—

(i) providing health care services;

(ii) social care work in England;

(d) carrying out a prescribed type of role involving the supervision or management of—

(i) persons that provide health care;

(ii) persons that carry out social care work in England;

(iii) an organisation of a prescribed description that provides, arranges or regulates the provision of, health care services;

(iv) an organisation of a prescribed description that provides, arranges or regulates social care work in England;

(v) an organisation of a prescribed description that exercises functions or provides services that, in the opinion of the Secretary of State, are ancillary to, or connected with, the provision of health care services or social care work in England;

(e) the use by an individual of a prescribed title relating to an activity within paragraphs (a) to (d).

(2) The regulations may designate a combination of two or more categories of activity as a regulated activity.

(3) The regulations may not designate—
(a) a profession listed in Schedule 1,
(b) a profession regulated under section 244, or
(c) an activity to the extent that it is carried out by a group of workers regulated under section 244(1)(a)(ii) or (iv).

(4) In this section—
(a) "health profession" and "social care profession in England" have the meanings given by section 244;
(b) "health care services" means services concerned (wholly or partly) with the physical or mental health of individuals, including carrying out cosmetic procedures.

199 Conditions for making a prohibition order

(1) Regulations under section 197 must prescribe the circumstances in which a prescribed regulatory body may make a prohibition order.

(2) The regulations may, in particular, provide that the regulatory body may not make a prohibition order in respect of a person unless one or more of the following conditions is met—
(a) the person has been convicted of an offence of a prescribed kind;
(b) the person has been given a caution in respect of an offence of a prescribed kind;
(c) the person is included in a barred list;
(d) a relevant body has made a determination to the effect that the person's fitness to practise a health and social care profession or to carry out a particular kind of health and social care work is impaired;
(e) the regulatory body is satisfied that the person has failed to meet any standard of conduct specified under section 208;
(f) a bankruptcy order has been made in relation to the person or, in Scotland, the person's estate has been sequestrated;
(g) the person is subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4));
(h) the person is disqualified from being a charity trustee or trustee of a charity under section 178 of the Charities Act 2011;
(i) the regulatory body considers that it is necessary for the protection of the public, or that it is otherwise in the public interest, to make the order.

(3) In subsection (2) "barred list" and "relevant body" have the same meaning as in section 120.

200 Interim prohibition orders

(1) Regulations under section 197 must authorise a prescribed regulatory body to make interim prohibition orders.

(2) An interim prohibition order is an order prohibiting a person from carrying out a regulated activity pending the regulatory body's decision as to whether or not to make a prohibition order.

(3) The regulations must provide that the regulatory body may not make an interim prohibition order unless it considers that it is necessary for the protection of the public, or is otherwise in the public interest, to make the order as a matter of urgency.

201 Procedure for making an order

(1) The Secretary of State may by regulations make provision about the procedure to be followed by a prescribed regulatory body in determining whether or not to make—

(a) a prohibition order;

(b) an interim prohibition order.

(2) Regulations under subsection (1)(a) must provide for—

(a) an oral hearing to be held before the regulatory body determines whether or not to make a prohibition order,

(b) the hearing to be held in public, except in prescribed circumstances, and

(c) the person who is the subject of the determination to be entitled to be represented at the hearing by a person of a prescribed description.

(3) Regulations under this section may—

(a) make provision for functions in connection with a power to make prohibition orders and interim prohibition orders to be carried out by one or more persons appointed for that purpose, on such terms and conditions (including remuneration), as the regulatory body may determine,

(b) specify the circumstances in which a complaint made to a regulatory body about a person carrying out a regulated activity is to be referred to a body of a prescribed description for investigation;

(c) make provision about the procedure to be followed in investigating the complaint;

(d) make provision about notifying the person of—

(i) the complaint, and

(ii) any determination as to whether or not a prohibition order or an interim prohibition order is to be made in respect of the person.

(4) Regulations under this section may not require a person to give evidence or produce a document or other material evidence which the person could not be compelled to give or produce in civil proceedings in a court in England and Wales.

(5) The Secretary of State may by regulations require a prescribed regulatory body—

(a) to publish prescribed information about determinations made by the regulatory body in respect of prohibition orders and interim prohibition orders;
(b) to make such prescribed information available—
(i) to persons of a specified description, or
(ii) for public inspection.

202 Prohibition orders: supplementary provision

The Secretary of State may by regulations—
(a) make provision as to the time when a prohibition order takes effect;
(b) make provision about the review of a prohibition order by a prescribed regulatory body, including—
(i) the circumstances in which a prohibition order may be reviewed,
(ii) the procedure for applying for a review,
(iii) the timing of a review, and
(iv) the powers of the regulatory body on a review (including power to set aside the prohibition order).

203 Interim prohibition orders: review

(1) On the application of the person in respect of whom an interim prohibition order is made, the prescribed regulatory body must review the order—
(a) within the period of 3 months beginning with the date on which the order was made, and
(b) within each subsequent period of 3 months beginning with the date of the previous review.

(2) Following a review, the regulatory body may set aside an interim prohibition order.

(3) The Secretary of State may by regulations make provision about the procedure for a review under this section.

(4) The regulations must—
(a) specify the circumstances in which an oral hearing may or must be held on a review,
(b) provide for any such hearing to be held in public, except in prescribed circumstances, and
(c) provide for the person who is subject to the order under review to be entitled to be represented at any such hearing by a person of a prescribed description.

204 Appeals

(1) The Secretary of State must by regulations provide for a right of appeal to a court against—
(a) a prohibition order;
(b) a decision not to set aside a prohibition order on review;
(c) a decision not to set aside an interim prohibition order on review.

(2) Regulations under this section may include provision as to—

(a) the jurisdiction of the court to which an appeal may be made;
(b) the period within which an appeal may be made;
(c) the grounds on which an appeal may be made;
(d) the procedure for making an appeal;
(e) the powers of the court to which an appeal is made.

205 Offences

(1) It is an offence for a person to fail to comply with—
(a) a prohibition order, or
(b) an interim prohibition order.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.

(3) The Secretary of State may by regulations create summary offences relating to the employment or appointment of a person who is subject to—
(a) a prohibition order, or
(b) an interim prohibition order.

(4) Regulations creating an offence may not provide for the offence to be punishable otherwise than by a fine (whether an unlimited fine or a fine not exceeding a specified level on the standard scale).

Supplementary provision

206 List of prohibited persons

(1) A prescribed regulatory body must establish and maintain a list of persons in respect of whom a prohibition order or an interim prohibition order made by it is in effect.

(2) The Secretary of State may by regulations make provision about—
(a) the form and content of the list;
(b) whether or not the list, or specified information from the list, is to be published;
(c) making the list available—
(i) to persons of a specified description, or
(ii) for public inspection.

207 Information sharing

(1) The Secretary of State may by regulations require or authorise—
(a) a prescribed regulatory body to provide relevant information of a prescribed description to a prescribed body;
(b) a person of a prescribed description to provide relevant information of a prescribed description to a prescribed regulatory body.

(2) In subsection (1) "relevant information" means information that is relevant to the prescribed regulatory body's exercise of a power to make prohibition orders under regulations under section 197.

208 Standards of conduct

(1) The Secretary of State may by regulations require a prescribed regulatory body to determine the standards of conduct expected of a person carrying out a regulated activity.

(2) The regulatory body—
(a) must keep the standards under review, and
(b) may alter or replace the standards.

(3) The regulatory body must publish a statement of—
(a) the standards, and
(b) if the standards are altered or replaced under subsection (2)(b), the altered or replaced standards.

(4) The regulatory body may by rules make provision about the procedure to be followed in determining the standards.

(5) Rules under subsection (4) may, in particular—
(a) make provision about the criteria by reference to which the standards are to be determined;
(b) make provision about the arrangements for keeping the standards under review.

General

209 Regulations under Part 7

(1) A statutory instrument containing regulations under section 197 or 205(3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(2) A statutory instrument containing regulations under any other provision of this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

PART 8

OTHER REGULATORY PROVISIONS RELATING TO HEALTH AND SOCIAL CARE PROFESSIONS

Restrictions on professional activities and use of certain titles or descriptions

210 Restricted professional activities

(1) Schedule 5 contains provisions about restricted professional activities which either create offences or make other provision restricting the carrying out of such activities to registered professionals.

(2) The Secretary of State may by regulations amend or repeal any provision of that Schedule for the purpose of removing, altering or adding provisions about restricted professional activities.

(3) Regulations under this section—
(a) may create summary offences, but

(b) may not provide for an offence under that Schedule to be punishable otherwise than by a fine (whether an unlimited fine or a fine not exceeding a level on the standard scale).

(4) No regulations may be made under this section unless a draft of the statutory instrument containing them has been laid before and approved by each House of Parliament.

(5) In this section "restricted professional activities" means activities which (subject to any exceptions provided for in Schedule 5) are only to be performed by registered professionals.

211 Use of protected titles

(1) It is an offence for an individual who is not registered on the professionals register for a regulated health and social care profession to use, with intent to deceive, a title that is (or includes) a protected title for that profession.

(2) But subsection (1) does not apply to—

(a) the use of the title "social worker" (or of a title which includes those words) by a person who is registered as a social worker in a register kept by the Care Council for Wales, the Scottish Social Services Council or the Northern Ireland Social Care Council,

(b) the use of the title "pharmacist" (or of a title which includes that word) by a person who is registered as a pharmacist in a register kept by the Pharmaceutical Society of Northern Ireland, or

(c) the use of the title "pharmacy technician" (or of a title which includes those words) by a person who is registered as a pharmacy technician in a register kept by the Pharmaceutical Society of Northern Ireland.

(3) It is an offence for a body to use, with intent to deceive, a title that is (or includes) a protected title for a regulated health and social care profession unless the body has members of staff, or individuals providing services to it, who are registered on the professionals register for that profession.

(4) A person who commits an offence under this section is liable on summary conviction to a fine.

(5) Schedule 6 sets out the protected titles for each regulated health and social care profession.

(6) In this Act "protected title" means a title listed in Schedule 6 (but when used in relation to a particular regulated health and social care profession it refers to a title listed in that Schedule for that profession).

(7) The Secretary of State may by regulations amend Schedule 6 to add, amend or remove a protected title for any regulated health and social care profession.

(8) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.

212 False representations as to registration or licence to practise etc

(1) It is an offence for a person, with intent to deceive, to make a false representation as to—

(a) being registered in the professionals register for a regulated health and social care profession (or, if it has parts, in a part of the register);
(b) anything included, or not included, in an entry in such a register relating to that person;
(c) having a licence to practise; or
(d) anything included, or not included, in a licence to practise held by that person.

(2) It is an offence for a person, with intent to deceive, to make a false representation as to—
(a) having any qualification approved by a regulatory body under section 109;
(b) having undertaken or completed any course of education or training which is so approved; or
(c) having any other qualification, training or experience, that would, if disclosed to the registrar of a regulatory body, be taken into account by the registrar in considering—
(i) an application by that person for registration in the professionals register for a regulated health and social care profession;
(ii) what information to include in an entry on such a register relating to that person (whether before first registration or before amending an existing entry);
(iii) an application by that person for (or for the renewal of) a licence to practise.

(3) It is an offence for a person ("A"), with intent to deceive—
(a) to cause or permit another person to make a representation about A which, if A made it with intent to deceive, would be an offence under subsection (1) or (2); or
(b) to make a representation about another person which, if that person made it with intent to deceive, would be an offence under subsection (1) or (2).

(4) For the purposes of each of subsections (1) to (3)—
(a) a representation may take any form; and
(b) it is immaterial whether a representation relates to a matter mentioned in the relevant provision directly or indirectly.

(5) It is an offence for a person to fraudulently procure—
(a) the making, amendment, removal or restoration of an entry in a professionals register, or
(b) the grant, amendment or withdrawal of a licence to practise.

(6) A person who commits an offence under this section is liable on summary conviction to a fine.

(7) In this section "licence to practise" means a licence to practise a regulated health and social care profession under Part 4.

Regulation of midwifery

213 General supervision of midwives

(1) The Secretary of State may by regulations—
  (a) make provision for each supervising authority to exercise general supervision over midwives practising in its area, or
  (b) require or authorise the Nursing and Midwifery Council by rules to make such provision.

(2) The regulations may, in particular—
  (a) require a person who intends to practise as a midwife to give notice ("notice of intention to practise") to the supervising authority in whose area the person intends to practise;
  (b) require a supervising authority to inform the Nursing and Midwifery Council of any notice of intention to practise given to the authority;
  (c) make provision for a supervising authority to inspect records or premises;
  (d) specify the circumstances in which, and the procedure by which, a supervising authority may suspend a midwife from practice;
  (e) require a supervising authority to give notice to the Nursing and Midwifery Council if the authority considers that the fitness to practise of a midwife practising in its area may be impaired;
  (f) provide that a supervising authority may appoint a person to exercise functions relating to the supervision of midwives in its area only if the person holds specified qualifications;
  (g) make provision about the consequences of failure to comply with any requirement imposed by the regulations;
  (h) make provision about the supervision of midwives practising in more than one area;
  (i) require or authorise the Nursing and Midwifery Council by rules to make provision for any of the matters listed in paragraphs (a) to (h).

(3) In this section and section 214 "supervising authority" means—
  (a) in England, the National Health Service Commissioning Board;
  (b) in Wales, a Local Health Board;
  (c) in Scotland, a Health Board;
  (d) in Northern Ireland, the Regional Agency for Public Health and Social Well-being established under section 12 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1)(N.I.).

(4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

214 Supervision of midwives: standards

(1) The Secretary of State may by regulations—
  (a) specify standards for the exercise by supervising authorities of their functions under regulations or rules made under section 213;
  (b) make provision about the legal effect of the standards;
  (c) make provision about the arrangements for assessing whether a supervising authority meets the standards;

(d) make any other provision connected with the standards.

(2) Regulations under subsection (1) may require or authorise the Nursing and Midwifery Council by rules to make provision for any matter mentioned in paragraphs (a) to (d) of that subsection.

(3) The Council may issue guidance about the standards specified by regulations or rules under this section.

(4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Regulation of health and social care profession premises

215 Registered pharmacies: standards etc.

Schedule 7 makes provision in connection with the carrying on of a retail pharmacy business at or from a registered pharmacy, including provision about—

(a) setting and enforcing standards;
(b) information to be provided to the General Pharmaceutical Council;
(c) inspectors appointed by that Council to carry out enforcement and other functions; and
(d) improvement notices.

216 Regulation of premises

(1) The Secretary of State may by regulations authorise or require a regulatory body to make rules specifying requirements as to—

(a) the condition of premises of a description prescribed in the regulations at which a registered professional carries out activities in the course of practising a regulated health and social care profession so prescribed,
(b) the availability and condition of facilities and equipment at the premises,
(c) the conditions under which medicinal products are to be stored at the premises, and
(d) the management of waste at the premises (including arrangements for the disposal of medicinal products).

(2) Regulations under this section may—

(a) require a regulatory body to appoint inspectors for the purpose of assessing whether the requirements are met by particular premises,
(b) make provision about the powers and duties of inspectors appointed under the regulations,
(c) specify the person responsible for securing that premises meet the requirements (the "responsible person"), and
(d) make provision about the consequences of failure to meet the requirements.

(3) The powers conferred by virtue of subsection (2)(b) and (d) may include—

(a) powers of entry and inspection,

(b) power for an inspector to give notice requiring a responsible person to take specified steps within a specified period in order to rectify a failure to meet the requirements.

(4) Regulations conferring a power to give notice as described in subsection (3)(b) must provide for a right of appeal against the notice.

(5) Regulations under this section may provide for the creation of summary offences (including offences in connection with the obstruction of an inspector).

(6) Regulations creating an offence may not provide for such an offence to be punishable otherwise than by a fine (whether an unlimited fine or a fine not exceeding a specified level on the standard scale).

(7) In this section "medicinal products" has the meaning given by section 130 of the Medicines Act 1968.

(8) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Regulation of health and social care businesses

217 Regulation of health and social care businesses

(1) The Secretary of State may by regulations require a regulatory body to regulate bodies corporate or other prescribed persons carrying on a prescribed health and social care business.

(2) In this section "health and social care business" means a business involving—
(a) the carrying out, by any individual involved in the business, of restricted professional activities (within the meaning of section 210), or other activities, in the course of practising a regulated health and social care profession; or
(b) the use of a protected title by any individual involved in the business.

(3) Regulations under this section may prescribe a description of health and social care business by reference to any characteristics, including —
(a) the carrying out of particular activities by any individual involved in the business;
(b) the use of a particular title by the business or by any individual involved in the business.

(4) For the purposes of subsections (2) and (3) an "individual involved in the business" includes an individual providing services to the person carrying on the business.

(5) Regulations under this section—
(a) may, in particular, require a regulatory body to issue a code of conduct in relation to persons carrying on a prescribed health and social care business, or in relation to such businesses, but
(b) may not require a regulatory body to establish and maintain a register (see section 33).

(6) Regulations under this section may—

(a) prescribe the circumstances in which a relevant person's fitness to carry on a health and social care business is to be regarded as impaired;
(b) require or authorise a regulatory body to publish standards of conduct and performance for relevant persons;
(c) require or authorise a regulatory body to provide guidance on the fitness of relevant persons to carry on a health and social care business;
(d) make provision about the procedure for investigating and adjudicating allegations of impairment;
(e) make provision as to the consequences of a finding that a relevant person's fitness to carry on a health and social care business is impaired.

(7) For the purposes of subsection (6) a relevant person is a person subject to regulation by virtue of this section.

(8) Regulations under this section may—
(a) create summary offences relating to the carrying on of a prescribed health and social care business, and
(b) make provision in connection with such offences.

(9) Regulations creating an offence may not provide for the offence to be punishable otherwise than by a fine (whether an unlimited fine or a fine not exceeding a specified level on the standard scale).

(10) Regulations under this section may make provision by applying provisions of this Act with such modifications as the Secretary of State thinks fit.

(11) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(12) In this section "prescribed" means prescribed, or of a description prescribed, in regulations made by the Secretary of State.

PART 9

THE PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

The Authority

218 The Professional Standards Authority

(1) The Professional Standards Authority for Health and Social Care (in this Part referred to as "the Authority") is to continue to exist as a body corporate by virtue of this section.

(2) The Authority is not the servant or agent of the Crown, it does not enjoy any status, immunity or privilege of the Crown and its property is not to be regarded as property of, or property held on behalf of, the Crown.

(3) The Authority is to be treated as a cross-border public authority for the purposes of sections 23(2)(b) and 70(6) of the Scotland Act 1998 (power of the Scottish Parliament to require persons outside Scotland to attend to give evidence or to produce documents and accounts prepared by cross-border bodies).

(4) Schedule 8 (which makes further provision about the Authority) has effect.

219 General functions of the Authority

(1) The general functions of the Authority are—

(a) to promote the interests of the public in relation to the performance of their functions by the regulatory bodies;

(b) to promote best practice, efficiency and cost-effectiveness in the performance of those functions;

(c) to formulate principles relating to good professional regulation and to encourage the regulatory bodies to conform to them;

(d) to monitor the regulatory bodies' compliance with the duties under sections 13 and 14, and

(e) to promote co-operation between the regulatory bodies and the Pharmaceutical Society of Northern Ireland in relation to the performance of their functions.

(2) In this Part, except subsection (1)(d) and (e) and section 235, "regulatory body" includes the Pharmaceutical Society of Northern Ireland but this is subject to section 222(6).

220 General objectives of the Authority

(1) The main objective of the Authority, in carrying out its functions (so far as relating to the regulatory bodies) is to protect, promote and maintain the health, safety and well-being of the public.

(2) The Authority also has the following general objectives in carrying out those functions in relation to any regulatory body—

(a) to promote and maintain public confidence in each of the professions regulated by that regulatory body; and

(b) to promote and maintain proper professional standards and conduct for individuals registered on a professionals register kept by that regulatory body.

221 General functions of the Authority in relation to accredited voluntary registers

(1) The Authority has the following general functions—

(a) to promote the interests of the public in relation to the performance of voluntary registration functions;

(b) to promote best practice, efficiency and cost-effectiveness in the performance of those functions;

(c) to formulate principles relating to good regulation and to encourage persons performing voluntary registration functions to conform to those principles; and

(d) to promote co-operation between persons performing voluntary registration functions and between them (or any of them) and other persons performing related functions.

(2) In this section—

(a) references to voluntary registration functions are to the keeping of an accredited voluntary register, and

(b) "accredited voluntary register" means a register accredited under section 223.

222 Powers and duties of the Authority: general

(1) The Authority may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the performance of its functions.

This subsection is subject to subsections (4) to (6).

(2) The Authority may, for example, do any of the following—

(a) investigate and report on the performance of each regulatory body (including its efficiency and cost-effectiveness);

(b) investigate and report on ways of improving the efficiency and cost-effectiveness of the regulatory bodies;

(c) keep under review, and report on, the procedures for making rules adopted by the regulatory bodies (other than the Pharmaceutical Society of Northern Ireland);

(d) where a regulatory body performs functions corresponding or similar to those of another body (including another regulatory body), investigate and report on how the performance of such functions by the bodies in question compares;

(e) recommend to a regulatory body changes to the way in which it performs any of its functions (including changes which the Authority considers would improve efficiency or cost-effectiveness in performing the functions concerned).

(3) The power in subsection (1) includes in particular power to acquire and dispose of land and other property and to enter into contracts.

(4) The Authority may not do anything in relation to the case of any individual in relation to whom—

(a) there are, are to be or have been proceedings before a registration appeals panel, fitness to practise panel or interim orders panel; or

(b) an allegation has been made to the relevant regulatory body which could result in such proceedings.

(5) Subsection (4) does not prevent the Authority from—

(a) where section 167 applies, taking action under that section after the regulatory body's proceedings have ended;

(b) taking action under regulations made under section 234; or

(c) investigating particular cases with a view to making general reports on the performance of the regulatory body of its functions or making general recommendations to that body affecting future cases.

(6) The Authority may not do anything in relation to the functions of the Pharmaceutical Society of Northern Ireland (or its Council or an officer or committee of the Society) unless those functions are conferred on the Society (or its Council or an officer or committee of the Society)—

(a) by or by virtue of any provision of the Pharmacy (Northern Ireland) Order 1976 (S.I. 1976/1213 (N.I. 22)), other than Article 3(3)(e) (the benevolent functions),

(b) by or by virtue of an Order in Council under section 60 of the Health Act 1999 or an order under section 56 of the Health and Personal Social

Services Act (Northern Ireland) 2001 (which makes provision corresponding to section 60);

(c) by or by virtue of regulations under this Act;

(d) by or by virtue of any other enactment and relate to the profession of pharmacist in Northern Ireland.

Accreditation of voluntary registers

223 Power to accredit voluntary registers

(1) Where a person keeps a voluntary register, the Authority may, on an application by that person, take such steps as it considers appropriate for the purpose of establishing whether the register meets such criteria for accreditation as the Authority from time to time sets ("accreditation criteria").

(2) Accreditation criteria may, in particular, relate to—

(a) the provision to the Authority of information in connection with the keeping of the register;

(b) publication of names of persons included in the register or who have been removed from the register (whether voluntarily or otherwise);

(c) the establishment or operation of a procedure for appeals from decisions relating to inclusion in or removal from the register.

(3) If the Authority is satisfied that a voluntary register meets the accreditation criteria it may accredit the register.

(4) The Authority may carry out periodic reviews of the keeping of registers accredited under this section for the purpose of establishing whether they continue to meet the accreditation criteria.

(5) If on a review under subsection (4) the Authority is satisfied that a voluntary register no longer meets the accreditation criteria, the Authority may remove or suspend, or impose conditions on, the accreditation of the register.

(6) The Authority may refuse to accredit a register, or to continue to accredit a register, unless the person who keeps the register pays a fee of such amount as the Authority may determine.

(7) The Authority must publish the accreditation criteria it sets.

(8) The Authority must publish a list of registers accredited under this section.

224 Accreditation of voluntary registers: impact assessment

(1) Before accrediting a voluntary register under section 223, the Authority—

(a) must make an assessment of the likely impact of doing so, and

(b) must consult such persons as it considers appropriate.

(2) For that purpose the Authority must have regard to such guidance relating to the preparation of impact assessments as it considers appropriate.

(3) An assessment under this section must, in particular, include an assessment of the likely impact of accrediting the register on—

(a) persons who are, or are eligible to be, included in the register;

(b) persons who employ persons who are, or are eligible to be, included in the register;

(c) users of health care, users of social care in England and users of social work services in England.

(4) For the purposes of subsection (3) the Authority may request the person who keeps the register to provide it with such information as it specifies; and if the person fails to comply with the request the Authority may refuse to accredit the register.

(5) The Authority may publish any assessment it makes under this section.

(6) In deciding whether to accredit a register under section 223 the Authority must have regard to its assessment under this section.

225 Voluntary registers: interpretation

(1) In sections 223 and 224 "voluntary register" means a register of persons in which a person is not required by an enactment to be registered in order to be entitled to—
(a) use a title,
(b) practise as a member of a profession,
(c) engage in work that involves the provision of health care,
(d) engage in social care work in England, or
(e) participate in studies that fall within subsection (2) or (3).

(2) Studies fall within this subsection if they are studies for the purpose of becoming a member of a regulated health and social care profession.

(3) Studies fall within this subsection if they are studies for the purpose of becoming—
(a) an unregulated health professional,
(b) an unregulated health care worker, or
(c) an unregulated social care worker in England.

(4) The reference in subsection (1) to an enactment does not include a reference to an enactment in so far as it imposes a requirement of the kind mentioned in that subsection which applies—
(a) only to work of a particular kind, and
(b) only when work or practice of that kind is engaged in for particular purposes.

(5) In subsection (3)—
"unregulated health professional" means a member of a profession which—
(a) is concerned (wholly or partly) with the physical or mental health of individuals;
(b) is not a profession comprised of social care workers in England;
(c) is not a regulated health and social care profession;
"unregulated health care worker" means a person engaged in work which—
(a) involves the provision of health care, but
(b) is not work which may be engaged in only by members of a regulated health and social care profession; and

"unregulated social care worker in England" means a social care worker in England who is engaged in work other than work of a kind carried out by members of a regulated social work profession in England.

(6) In this section—

"enactment" means an enactment contained in, or in an instrument made under—

(a) an Act of Parliament;
(b) an Act of the Scottish Parliament;
(c) an Act or Measure of the Welsh Assembly;
(d) Northern Ireland legislation; and

"health care" means services concerned (wholly or partly) with the physical or mental health of individuals, including carrying out cosmetic procedures.

Other specific functions

226 Duty to inform and consult the public

(1) For the purpose of ensuring that the public is informed about the Authority and the exercise by it of its functions, the Authority must publish in such manner as it thinks fit information about the Authority and the exercise of its functions.

(2) The references in subsection (1) to the Authority's functions do not include a reference to its accreditation functions.

(3) For the purpose of ensuring that the public is informed about the exercise by the Authority of its accreditation functions, the Authority may publish in such manner as it thinks fit information about the exercise of those functions.

(4) Nothing in this section authorises or requires the publication of information in circumstances where the publication of that information—

(a) is prohibited by any enactment; or
(b) would constitute or be punishable as a contempt of court.

(5) The Authority must from time to time seek the views of—

(a) the public, and
(b) bodies which appear to the Authority to represent the interests of patients, users of health care, users of social care in England and users of social work services in England,

on matters relevant to the exercise by it of its functions (other than its accreditation functions).

(6) In this section "enactment" means an enactment contained in or in an instrument made under—

(a) an Act of Parliament;
(b) an Act of the Scottish Parliament;
(c) a Measure or Act of the Welsh Assembly;
(d) Northern Ireland legislation.

(7) For the purposes of this section the Authority's accreditation functions are—

(a) its functions under sections 221, 223 and 224,

(b) its functions under section 219 that relate to the performance of voluntary registration functions (within the meaning given by section 221), and
(c) its functions under section 227(1)(b).

227 Advice: powers of the Secretary of State and devolved authorities

(1) A national authority may request the Authority to give the national authority advice on—
(a) any matter connected with a profession appearing to the authority to be a health profession;
(b) any matter connected with the accreditation of voluntary registers;
(c) any other matter, if it is connected with any of the Authority's functions.

(2) The Secretary of State may request the Authority to give the Secretary of State advice on any matter connected with the social work profession in England or social care workers in England.

(3) A national authority must consult the Authority before making a request under this section.

(4) The Authority must comply with any such request unless it would be impracticable to do so in the circumstances.

(5) A national authority to whom the Authority gives advice under this section must pay such fee as the Authority determines.

(6) Any such fee may be charged by reference to the advice concerned or on a periodic basis.

(7) In this section "health profession" means a profession (whether or not regulated by or by virtue of any enactment) which is concerned wholly or partly with the physical or mental health of individuals.

228 Investigations: powers of the Secretary of State and devolved authorities

(1) A national authority may direct the Authority to investigate and report on a particular matter in respect of which the Authority's functions are exercisable.

(2) The national authority must consult the Authority before giving such a direction.

(3) A national authority for whom the Authority investigates and reports on a matter under this section must pay such fee as the Authority determines.

(4) Any such fee may be charged by reference to the investigation and report concerned or on a periodic basis.

229 Investigations: powers of the Authority

(1) For the purpose of carrying out an investigation under section 228, the Authority may require any person who in the opinion of the Authority is able to supply relevant information or produce any relevant document to supply that information or produce that document.

(2) For the purposes of subsection (1) information is relevant information and a document is a relevant document if it appears relevant to the carrying out of an investigation under section 228.

(3) Nothing in this section shall require or permit any disclosure of information which is prohibited by any enactment.

(4) But where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the Authority may require that the information be put into a form which is not capable of identifying that individual.

(5) In determining for the purposes of subsection (3) whether a disclosure is not prohibited, by reason of being a disclosure of personal data which is exempt from the non-disclosure provisions of the Data Protection Act 1998 by virtue of section 35(1) of that Act, it shall be assumed that the disclosure is required by this section.

(6) This section does not apply in relation to the supply of information or the production of a document which a person could not be compelled to supply or produce in civil proceedings before the relevant court.

(7) If a person fails to supply any information or produce any document within 14 days, or such longer period as the Authority may specify, of the person being required to do so under this section, the Authority may seek an order of the relevant court requiring the information to be supplied or the document to be produced.

(8) For the purposes of this section "the relevant court" means—
(a) in England and Wales, the High Court,
(b) in Scotland, the Court of Session, and
(c) in Northern Ireland, the High Court.

230 Sections 227 to 229: interpretation

(1) In sections 227 and 229 "enactment" means an enactment comprised in, or in an instrument made under—
(a) an Act of Parliament;
(b) an Act of the Scottish Parliament;
(c) an Act or Measure of the National Assembly for Wales;
(d) Northern Ireland legislation.

(2) In sections 227 and 228 "national authority" means—
(a) the Secretary of State;
(b) the Welsh Ministers;
(c) the Scottish Ministers; or
(d) the Department of Health, Social Services and Public Safety in Northern Ireland.

231 Advice and investigations: social work and social care work outside England

(1) The Secretary of State may by regulations confer on the Authority functions in relation to giving advice to the relevant national authority, or investigating and reporting to the relevant national authority, on matters connected with—

(a) the social work profession in Wales, Scotland or Northern Ireland or social work in those countries;
(b) social care workers in Wales, Scotland or Northern Ireland or social care work in those countries.

(2) The regulations may, in particular—
(a) amend sections 227 to 230(1);
(b) apply (with or without modifications) any provision of those sections; or
(c) make provision corresponding to any provision of those sections.

(3) In subsection (1) "national authority" has the same meaning as in section 230(3).

(4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.

232 Power to advise regulatory bodies

(1) The Authority may, for the purpose of assisting the Authority in its performance of its functions under this Part (other than sections 227 to 231), provide advice or provide auditing services to—
(a) a regulatory body,
(b) a body which has functions (whether or not relating to health and social care) corresponding to those of a regulatory body.

(2) A body provided with advice or auditing services under this section must pay such fee as the Authority may determine.

233 Assistance with appointments under paragraph 1 of Schedule 8

(1) The Secretary of State and the Authority may make arrangements for the Authority to assist the Secretary of State in connection with the exercise by the Secretary of State of any appointment function under paragraph 1 of Schedule 8.

(2) The Secretary of State and any other person may make arrangements for the other person to assist the Secretary of State in connection with the exercise by the Secretary of State of any appointment function under paragraph 1 of Schedule 8.

(3) Any reference to an appointment function includes any function of the Secretary of State that is connected with or incidental to a relevant appointment (such as determining the term of an appointment or other terms on which a person is appointed).

(4) A reference to assisting in connection with the exercise of a function does not include a reference to exercising that function.

234 Complaints

(1) The Secretary of State may make provision in regulations about the investigation by the Authority of complaints made to it about the way in which a regulatory body has exercised any of its functions.

(2) The regulations may in particular make provision as to—
  (a) who (or what description of person) is entitled to complain;
  (b) the nature of complaints which the Authority must (or need not) investigate;
  (c) matters which are excluded from investigation;
  (d) requirements to be complied with by a person who makes a complaint;
  (e) the procedure to be followed by the Authority in investigating complaints;
  (f) the making of recommendations or reports by the Authority following investigations;
  (g) the confidentiality or disclosure of any information supplied to the Authority or acquired by it in connection with an investigation;
  (h) the use which the Authority may make of any such information;
  (i) the making of payments to any persons in connection with investigations;
  (j) privilege in relation to any matter published by the Authority in the exercise of its functions under the regulations.

(3) The regulations may also make provision—
  (a) empowering the Authority to require persons to attend before it;
  (b) empowering the Authority to require persons to give evidence or produce documents to it;
  (c) about the admissibility of evidence;
  (d) enabling the Authority to administer oaths.

(4) No person may be required by or by virtue of regulations under this section to give any evidence or to produce any document or other material to the Authority which that person could not be compelled to give or produce in civil proceedings before the High Court or, in Scotland, the Court of Session.

(5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Co-operation between the Authority and other bodies

235 Duties to co-operate

(1) The Authority must co-operate, in the exercise of its functions, with the regulatory bodies.

(2) The Authority must co-operate, in the exercise of its functions, with each appropriate relevant authority, and each appropriate relevant authority must co-operate with the Authority, in the exercise of functions of the appropriate relevant authority falling within subsection (3).

(3) The functions are those relating (directly or indirectly) to the regulation of a regulated health and social care profession.

(4) A relevant authority is an appropriate relevant authority for the purposes of subsection (2) if the Authority considers it would be appropriate to co-operate with the relevant authority.

(5) The Authority must co-operate, in the exercise of its functions, with such other persons as it considers appropriate who exercise functions, or are engaged in

activities, relating (directly or indirectly) to the regulation of a regulated health and social care profession.

236 Co-operating in specific cases

(1) Where the Authority requests the co-operation of a relevant authority, in connection with the exercise by the Authority of a function falling within subsection (2), the relevant authority must comply with the request unless it considers that doing so—
  (a) would be incompatible with its own duties, or
  (b) would otherwise have an adverse effect on the exercise of its functions.

(2) The following functions fall within this subsection—
  (a) any function under this Act exercisable in relation to a registered professional,
  (b) any function under this Act exercisable in relation to a relevant education and training provider, and
  (c) any function under this Act exercisable in relation to persons operating a business or premises which is registered in any register kept by a regulatory body.

(3) Where a relevant authority requests the co-operation of the Authority, in connection with the exercise by the relevant authority of a regulatory function falling within subsection (4), the Authority must comply with the request unless it considers that doing so—
  (a) would be incompatible with its own duties, or
  (b) would otherwise have an adverse effect on the exercise of its functions.

(4) Regulatory functions fall within this subsection if they are exercisable—
  (a) in relation to a registered professional,
  (b) in relation to a relevant education and training provider, and
  (c) under this Act in relation to persons operating a business or premises which is registered in any register kept by a regulatory body.

(5) For the purposes of subsection (4) a function is a regulatory function if it relates (directly or indirectly) to a regulated health and social care profession.

(6) A person who decides not to comply with a request under subsection (1) or (3) must give the person who made the request written reasons for the decision.

(7) In this section "relevant education and training provider" has the same meaning as in Part 5.

237 "Relevant authorities"

(1) The following are relevant authorities for the purposes of sections 235 and 236—
  (a) an NHS body,
  (b) the Care Quality Commission,
  (c) Social Care and Social Work Improvement Scotland,
  (d) Healthcare Improvement Scotland,
  (e) the Health and Social Care Regulation and Quality Improvement Authority in Northern Ireland,

(f) the Welsh Ministers exercising functions under the Children and Families (Wales) Measure 2010, the Health and Social Care (Community Care and Standards) Act 2003, the Adoption and Children Act 2002, the Care Standards Act 2000 and the Children Act 1989,
(g) the Disclosure and Barring Service,
(h) the Scottish Ministers exercising functions under the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14),
(i) a chief officer of police of a police force in England and Wales,
(j) the chief constable of the Police Service of Scotland,
(k) the Chief Constable of the Police Service of Northern Ireland, and
(l) such other persons as the Secretary of State may prescribe by regulations.

(2) In subsection (1)(a) "NHS body" means—
(a) the National Health Service Commissioning Board;
(b) a clinical commissioning group;
(c) an NHS trust or NHS foundation trust.

(3) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Miscellaneous provisions

238 Power to direct regulatory bodies to make rules

(1) If the Authority considers that it would be desirable to do so for the protection of the public, it may give a direction requiring a regulatory body to make rules (under any power it has to do so) to achieve an effect specified in the direction.

(2) The Authority must send a copy of the direction to the relevant authority.

(3) For the purposes of this section the relevant authority is the Secretary of State unless the regulatory body in question is the Pharmaceutical Society of Northern Ireland when it is the Department of Health, Social Services and Public Safety in Northern Ireland.

(4) Where the relevant authority is the Secretary of State, the direction must specify the date on which it is to come into force; and the direction does not come into force unless the Secretary of State approves it in writing.

(5) Before giving approval under subsection (4), the Secretary of State must consult the Welsh Ministers, the Scottish Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland.

(6) Where the relevant authority is the Department of Health, Social Services and Public Safety in Northern Ireland, the direction does not come into force unless an order is made by the Department setting out the terms of the direction and specifying the date on which it is to come into force.

(7) The Department may not make such an order unless—
(a) a draft of the order has been laid before and approved by the Northern Ireland Assembly; and
(b) before laying the order the Department has consulted the Secretary of State, the Welsh Ministers and the Scottish Ministers.

(8) The power to make an order under subsection (7) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(9) The direction comes into force on the date specified in the direction or the order under subsection (6) (as the case may be).

(10) The Authority must publish the procedure it intends to follow when exercising its powers under this section (which must include consultation with the regulatory body concerned before giving any direction).

(11) For the purposes of this section and section 240 making rules includes amending or revoking them and "rules" includes regulations, bye laws and schemes.

239 Application of section 238 where earlier direction

(1) Subsections (2) to (5) and (9) of section 238 apply also to a direction which varies or revokes an earlier direction given to a regulatory body other than the Pharmaceutical Society of Northern Ireland.

(2) Subsections (2), (3) and (6) to (9) of section 238 apply also to the following directions—

(a) a direction which varies an earlier direction given to the Pharmaceutical Society of Northern Ireland;

(b) a direction which revokes such a direction, and is given after the Northern Ireland Assembly has resolved to approve the draft order relating to the earlier direction.

(3) Subsections (2) and (3) (but not subsections (6) to (9)) of section 238 apply also to a direction which—

(a) revokes an earlier direction given to the Pharmaceutical Society of Northern Ireland, but

(b) does not fall within subsection (2)(b) above.

(4) If the Authority gives a direction which falls within subsection (3) above the earlier direction which it revokes is to be treated as if subsections (6) and (7) of section 238 never applied to it.

240 Compliance with directions under section 238

(1) A regulatory body given a direction under section 238 which has come into force (and has not been revoked) must comply with the direction as soon as is practicable.

(2) A regulatory body is not to be taken to have failed to comply with a direction merely because a court determines that the rules made in pursuance of the direction are to be construed in such a way that the effect required by the direction is not achieved.

241 Funding of the Authority: regulations

(1) The Secretary of State may by regulations require each regulatory body to pay to the Authority periodic fees determined by the Secretary of State in respect of such of the Authority's functions as may be specified in the regulations (other

than accreditation functions within the meaning of section 226(7) and functions under sections 227 and 228).

(2) The regulations must, in particular, provide for the method of determining the amount of a fee payable under the regulations.

(3) The regulations may—

(a) require a fee to be paid within a specified period;

(b) require interest at a specified rate to be paid if a fee is not paid within the period so specified;

(c) make provision for the recovery of unpaid fees or interest.

(4) The regulations may provide for the Secretary of State to be able to re-determine the amount of a fee provided for by the regulations (whether on a request from the Authority or a regulatory body or on the Secretary of State's own initiative).

(5) The procedure set out in section 242 must be followed before the amount of a fee payable under the regulations is determined (or re-determined) by the Secretary of State.

(6) Before making the regulations, the Secretary of State must consult the Authority (as well as complying with section 250).

(7) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(8) In this section and section 242 "specified" means specified in regulations under this section.

242 Procedure to be followed by the Secretary of State before determining fees payable under the regulations

(1) Before determining the amount of a fee under regulations under section 241 in respect of specified functions of the Authority, the Secretary of State must request the Authority to make a proposal as to the amount of funding that the Secretary of State considers it requires in order to perform those functions for the period to which the fee would apply.

(2) The Authority must comply with such a request after consulting the regulatory bodies.

(3) After receiving the proposal the Secretary of State may consult the regulatory bodies.

(4) Having taken any representations from those bodies into account, the Secretary of State must—

(a) make a proposal as to the amount of funding that the Secretary of State considers the Authority requires in order to perform the functions in question, and

(b) determine in accordance with the method provided for by the regulations the fee that each regulatory body would be required to pay.

(5) The Secretary of State must then—

(a) consult the Authority about the proposal and the determination under subsection (4); and

(b) consult each regulatory body about the determination under subsection (4)(b) of the fee that it would be required to pay.

(6) Having taken into account such representations as it receives from those consultees, the Secretary of State must—

(a) determine the amount of funding that the Authority requires in order to perform for the period to which the fee would apply the functions in question; and

(b) determine in accordance with the method provided for by the regulations the fee that each regulatory body is to be required to pay towards that amount.

243 Payments and loans to Authority

(1) The Secretary of State may make payments to the Authority out of money provided by Parliament of such amounts, at such times and on such conditions (if any) as the Secretary of State considers appropriate.

(2) An appropriate authority may make payments to the Authority of such amounts, at such times and on such conditions (if any) as it considers appropriate.

(3) The Authority may borrow money for the purposes of or in connection with its functions; and subsections (4) and (5) are without prejudice to the generality of this subsection.

(4) The Secretary of State may make loans to the Authority out of money provided by Parliament on such terms (including terms as to repayment and interest) as the Secretary of State may determine.

(5) An appropriate authority may make loans to the Authority on such terms (including terms as to repayment and interest) as it may determine.

(6) The Secretary of State may give directions to the Authority as to the application of any sums received by it under subsection (1) or (4).

(7) An appropriate authority may give directions to the Authority as to the application of any sums received by it under subsection (2) or (5).

(8) The Authority must comply with any directions given under subsection (6) or (7).

(9) In this section, "appropriate authority" means the Welsh Ministers, the Scottish Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland.

PART 10

POWERS TO REGULATE HEALTH AND SOCIAL CARE PROFESSIONS ETC

Regulations

244 Power to regulate health and social care professions: general

(1) The Secretary of State may by regulations make provision—

(a) regulating—

(i) any health profession not listed in Schedule 1,

(ii) any group of health workers not appearing to the Secretary of State to be a health profession,

(iii) any social care profession in England not listed in Schedule 1,

(iv) any group of social care workers in England not appearing to the Secretary of State to be a social care profession,

which appears to the Secretary of State to require regulation in pursuance of this section;

(b) modifying the regulation of—

(i) a health profession listed in Schedule 1,

(ii) a health profession, or a group of health workers, which is regulated by provision made under paragraph (a)(i) or (ii),

(iii) the social work profession in England;

(iv) a social care profession in England listed in Schedule 1,

(v) a social care profession in England not listed in Schedule 1, or a group of social care workers in England, which is regulated by provision made under paragraph (a)(iii) or (iv),

so far as it appears to the Secretary of State to be necessary or expedient for the purpose of securing or improving the regulation of the profession or group or the services which the profession or group provides or to which it contributes;

(c) modifying the functions of the Professional Standards Authority (including modifying the bodies in relation to which the Authority performs functions or, as respects any of those bodies, the ranges of functions of the body as to which the Authority performs functions);

(d) modifying the functions of the Health and Care Professions Council that relate to the education and training of persons who are or wish to become approved mental health professionals.

(2) In this section—

"health profession" means—

(a) a profession listed in Schedule 1 other than the social work profession in England or a social care profession in England; or

(b) any profession that is not listed in that Schedule and appears to the Secretary of State to be concerned (wholly or partly) with the physical or mental health of individuals (not being a social care profession in England);

"health worker" means an individual who is engaged in work appearing to the Secretary of State to be concerned (wholly or partly) with the physical or mental health of individuals (not being social work or social care work);

"social care profession in England" means a profession appearing to the Secretary of State to consist of individuals engaged in social care work in England.

(3) For the purposes of subsection (2) the Secretary of State may treat a group of workers as a health profession or as a social care profession in England (as the case may be) if the Secretary of State considers that they are capable of being regulated as a health and social care profession, whether or not at the time in question that group of workers is generally regarded as a profession.

(4) In the definition of "health work" in subsection (2) the references to social work and social care work include both social work in England and social care work in England but also corresponding work outside England).

(5) The Secretary of State may also, by regulations, make provision relating to or connected with the functions of the General Pharmaceutical Council in relation to—

(a) the registration of pharmacy premises in Great Britain under Part 4 of the Medicines Act 1968 (pharmacies);

(b) the regulation of the use of premises in Great Britain for the purposes of a retail pharmacy business;

(c) compliance with the provisions of the Medicines Act 1968 or the Human Medicines Regulations 2012 (S.I. 2012/1916);

(d) compliance with the provisions of the Poisons Act 1972 by registered pharmacists and persons carrying on a retail pharmacy business; and

(e) the grant of authorisation under section 28 of the Regulation of Investigatory Powers Act 2000 (authorisation of directed surveillance).

(6) Subject to subsection (7), regulations under this section may make provision for any purposes mentioned in subsection (1) or (5) (or Schedule 9) by amending any enactment (whenever passed or made).

(7) Regulations under this section may not amend the following provisions of this Act—

section 1, 2 or Schedule 1,

section 3,

this section or section 245,

sections 246 and 247,

but this subsection does not prevent consequential amendments being made in relation to other provision made by regulations under this section.

(8) In subsection (6) "enactment" means an enactment contained in, or in an instrument made under—

(a) an Act of Parliament (including this Act);

(b) an Act of the Scottish Parliament;

(c) an Act or Measure of the Welsh Assembly;

(d) Northern Ireland legislation.

(9) Schedule 9 (which makes further provision about regulations under this section) has effect.

(10) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.

(11) If any provision of a statutory instrument containing regulations under this section—

(a) would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament, and

(b) is not merely incidental to or consequential on, provision that (if so included) would be outside that competence,

the statutory instrument may not be made unless (in addition to the procedure required by subsection (8)) a draft of the instrument has been laid before and approved by resolution of the Scottish Parliament.

245 Preliminary procedures for regulations under section 244

(1) This section applies if the Secretary of State proposes to make regulations under section 244.

(2) The Secretary of State must first—
  (a) publish a draft of the instrument containing the regulations;
  (b) invite representations to be made about the draft from—
    (i) persons appearing to the Secretary of State to represent any profession or group of workers the regulation of which is affected by the regulations;
    (ii) persons appearing to the Secretary of State to represent those provided with services by any such profession or group of workers; and
    (iii) any other persons it appears to the Secretary of State to be appropriate to invite;
  (c) consult any other person required to be consulted under section 250.

(3) If the draft regulations amend or repeal—
  (a) an enactment contained in an Act of the Scottish Parliament or an instrument made under such an Act, or
  (b) any other enactment which extends to Scotland and relates to matters falling within the legislative competence of the Scottish Parliament,

but do not contain provision of the kind mentioned in subsection (5), then the persons invited to make representations under subsection (2)(b)(iii) must include the Scottish Ministers.

(4) After the end of the period of three months beginning with the publication of the draft the Secretary of State may lay the draft instrument before Parliament (whether as published or with such modifications as the Secretary of State considers appropriate) for the purposes of section 244(8).

(5) If any provision of a draft instrument would, if included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament and is not merely incidental to or consequential on provision that (if so included) would be outside that competence—
  (a) the Secretary of State's duty under subsection (2) must be performed also by the Scottish Ministers, and
  (b) subsection (6) applies instead of subsection (4).

(6) After the end of the period of three months beginning with the publication of the draft, a draft instrument (whether as published or with such modifications as the Secretary of State and the Scottish Ministers consider appropriate) may be laid before Parliament (for the purposes of section 244(8)) and the Scottish Parliament.

(7) Any draft instrument laid under subsection (4) or (6) must be accompanied by a report by the Secretary of State or by the Secretary of State and the Scottish Ministers (as the case may be) on the consultation process under this section.

Use of section 60 of the Health Act 1999

246 General restriction on use of section 60

(1) In this section and section 247—

(a) "section 60" refers to section 60 of the Health Act 1999 (which confers powers to make Orders in Council regulating health professions, social workers and other care workers etc); and

(b) "Schedule 3" refers to Schedule 3 to that Act (which supplements section 60).

(2) Section 60 may no longer be used to make provision—

(a) modifying the regulation of any regulated health and social care profession;

(b) regulating, or modifying the regulation of any social care workers in England; or

(c) related to or connected with functions of the General Pharmaceutical Society in relation to the matters mentioned in section 60(2A).

(3) Nothing in this section affects—

(a) the operation of any Order in Council under section 60 which is made before subsection (2) comes into force;

(b) the use of any powers conferred by section 60 other than those mentioned in subsection (2), including in particular the power mentioned in sub-paragraph (1A) of paragraph 7 of Schedule 3 (transfer to the General Pharmaceutical Council of any of the functions of the Pharmaceutical Society of Northern Ireland);

(c) the generality of any powers under this Act to repeal or amend provisions of section 60 (whether in consequence of any provision of this Act or otherwise).

247 Use of section 60 in relation to the regulation of pharmacists and pharmacy technicians in Northern Ireland etc

(1) The power under section 60 to make provision modifying the regulation of professions regulated under the Pharmacy (Northern Ireland) Order 1976 (S.I. 1976/1213 (N.I. 22))("the modifying power") may be exercised by amending, repealing or revoking any enactment (whenever passed or made) in relation to, or in connection with, the regulation of those professions.

(2) The modifying power may in particular be used—

(a) to amend section 1(1) to add the Pharmaceutical Society of Northern Ireland to the list of regulatory bodies;

(b) to amend Schedule 1 (whether by adding an entry for the Pharmaceutical Society of Northern Ireland or otherwise);

(c) to amend any other enactment so as to include or exclude a reference to the Pharmaceutical Society of Northern Ireland or to any matter relating to or connected with the regulation of the professions regulated under the Pharmacy (Northern Ireland) Order 1976;

(d) to amend or revoke provisions of the Pharmacy (Northern Ireland) Order 1976 (or to revoke the whole Order) and to amend provisions of section 60 or Schedule 3 which refer to the professions regulated by that Order.

(3) In this section "enactment" means an enactment contained in or in an instrument made under—

(a) an Act of Parliament (including this Act, apart from this section);

(b) an Act of the Scottish Parliament;

(c) a Measure or Act of the Welsh Assembly;

(d) Northern Ireland legislation.

(4) This section has effect without prejudice to the generality of the powers conferred by section 60 apart from this section or of any powers to make regulations under this Act.

Repeal of existing legislation and consequential etc provision

248 Power to repeal existing legislation or to make transitional and consequential etc provision

(1) The Secretary of State may by regulations—
(a) repeal or revoke any health and social care professionals enactment (or amend such an enactment with a view to limiting its effect);
(b) make incidental, supplementary or consequential provision in connection with any provision of this Act;
(c) make transitional or transitory provision or savings in connection with the coming into force of any provision of this Act; or
(d) make supplementary, incidental, consequential or transitional provision or savings in connection with any provision made under paragraphs (a) to (c).

(2) Regulations under subsection (1)(b), (c) or (d) may amend, repeal, revoke or otherwise modify any enactment (including an enactment passed or made in the same Session as this Act).

(3) Regulations under subsection (1)(c) may, in particular, provide for any provision of this Act which comes into force before another provision of this Act has come into force to have effect, until that other provision has come into force, with such modifications as are provided for by the regulations.

(4) A statutory instrument containing regulations under subsection (1)—
(a) if it includes provision which amends, repeals or modifies an enactment contained in an Act of Parliament, may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament;
(b) in any other case, is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In this section "health and social care professionals enactment" means any enactment (whenever passed or made) which is contained in or in an instrument made under—
(a) the Medical Act 1983 so far as relating to, or to functions of, the General Medical Council or to the regulation of medical practitioners or any other regulated health and social care profession;
(b) the Dentists Act 1984;
(c) the Opticians Act 1989;
(d) the Osteopaths Act 1993;
(e) the Chiropractors Act 1994;
(f) the Nursing and Midwifery Order 2001 (S.I. 2002/253);
(g) the Health and Social Work Professions Order 2001 (S.I. 2002/254);
(h) Part 2 of the National Health Service Reform and Health Care Professions Act 2002;
(i) the Pharmacy Order 2010 (S.I. 2010/231);

(j) any other Act or Order in Council, so far as relating to any of the regulatory bodies or the Professional Standards Authority, to any functions of any of those bodies or that Authority or to the regulation of the regulated health and social care professions.

(6) In this section "enactment" means an enactment (including an enactment passed or made in the same Session as this Act) which is contained in or in an instrument made under—

(a) an Act of Parliament (including this Act);
(b) an Act of the Scottish Parliament;
(c) a Measure or Act of the Welsh Assembly;
(d) Northern Ireland legislation.

PART 11

SUPPLEMENTARY AND FINAL PROVISIONS

Consultation before making rules and regulations

249 Consultation by regulatory body before making rules etc

(1) Subsection (2) applies if a regulatory body (the "acting body") proposes to—

(a) make any rules under this Act,
(b) determine any standards under any of sections 105 to 107, or
(c) issue any guidance under this Act.

(2) The acting body must—

(a) carry out a public consultation (subject to subsection (6)); and
(b) consult the persons mentioned in subsection (5).

(3) For the purposes of this section an acting body carries out a public consultation by—

(a) publishing—
(i) a draft of the rules, statement of the standards or guidance,
(ii) an explanation of the purpose of the proposed rules, standards or guidance and a summary of the effect of the proposed rules, standards or guidance, and
(iii) notice that representations about the proposals may be made to that body within a specified time,
in the way appearing to that body to be best calculated to bring those matters to the attention of the public and to those affected by the proposed rules, standards or guidance; and
(b) taking reasonable steps to give notice of the consultation to—
(i) the persons mentioned in subsection (4)(a) to (c), and
(ii) such of the persons mentioned in subsection (4)(d) to (g) as the acting body considers it appropriate to give notice.

(4) The persons who should be given notice of the consultation are—

(a) registered professionals (including registered professionals who are registered in a professionals register kept by any other regulatory body) who may be affected by the proposed rules, standards or guidance;
(b) employers of professionals mentioned in paragraph (a);

(c) persons operating a business or premises which is registered in any register kept by the acting body, or another regulatory body, and who may be affected by the proposed rules, standards or guidance;

(d) organisations appearing to the acting body to be representative of professionals mentioned in paragraph (a);

(e) organisations appearing to the acting body to be representative of employers of professionals mentioned in paragraph (a);

(f) individuals with needs for the services of professionals mentioned in paragraph (a) and organisations appearing to the acting body to be representative of such individuals;

(g) persons providing, assessing or funding education, training and experience for professionals registered or seeking to be registered in any register kept by the acting body, or another regulatory body, who may be affected by the proposed rules, standards or guidance.

(5) The persons who must be consulted about the proposed rules, standards or guidance are—

(a) the other regulatory bodies, and the Pharmaceutical Society of Northern Ireland, if affected by the proposed rules, standards or guidance;

(b) the Professional Standards Authority;

(c) the Care Quality Commission,

(d) Social Care and Social Work Improvement Scotland,

(e) Healthcare Improvement Scotland,

(f) the Health and Social Care Regulation and Quality Improvement Authority in Northern Ireland,

(g) the Welsh Ministers exercising functions under the Children and Families (Wales) Measure 2010, the Health and Social Care (Community Care and Standards) Act 2003, the Adoption and Children Act 2002, the Care Standards Act 2000 and the Children Act 1989,

(h) the National Health Service Commissioning Board,

(i) a clinical commissioning group,

(j) Monitor,

(k) the Disclosure and Barring Service,

(l) the Scottish Ministers exercising functions under the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), and

(m) such other persons as the Secretary of State may prescribe by regulations.

(6) The acting body may, with the approval of the Professional Standards Authority, decide to dispense with a public consultation if the nature of the proposed rules, standards or guidance is such that the body considers that it would be inappropriate or disproportionate to carry one out.

(7) The Professional Standards Authority must publish its criteria for determining whether to approve a proposal by an acting body to dispense with a public consultation.

(8) A statutory instrument containing regulations under subsection (5)(m) is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) Nothing in this section prevents other consultation about proposed rules, standards or guidance.

250 Consultation by the Secretary of State before making regulations

(1) Before making any regulations under this Act the Secretary of State must consult the persons mentioned in subsection (2).

(2) The persons are—
  (a) such of the regulatory bodies as are affected by the regulations;
  (b) persons appearing to the Secretary of State to represent such of the regulated health and social care professions and such other professions as are affected by the regulations;
  (c) bodies appearing to the Secretary of State to represent the interests of such of the following as are affected by the regulations—
    (i) patients,
    (ii) users of health care,
    (iii) users of social work services in England,
    (iv) users of social care in England; and
  (d) such other persons as the Secretary of State considers appropriate.

(3) In subsection (2)(b) "other professions" includes any health profession or social care profession in England (within the meaning of section 244) that is not a regulated health and social care profession.

(4) Nothing in this section prevents other consultation about the exercise of a power to make regulations.

Default powers

251 Default powers of the Secretary of State

(1) This section applies where the Secretary of State considers that a regulatory body or the Professional Standards Authority (the "defaulting body")—
  (a) has defaulted in performing any functions and has not remedied the default; or
  (b) is likely to default in performing any functions.

(2) For the purposes of subsection (1) a defaulting body defaults in performing any functions if it fails to perform the functions to an acceptable standard (which includes failing to perform the functions at all).

(3) Before determining that the defaulting body has defaulted, or is likely to default, as mentioned in subsection (1) the Secretary of State must consult—
  (a) the defaulting body,
  (b) the Professional Standards Authority (unless it is the defaulting body), and
  (c) any other person who, in the opinion of the Secretary of State, has an interest in the making of the determination.

(4) But the Secretary of State may dispense with consulting some or all of the persons mentioned in subsection (3) if the Secretary of State considers that consultation is inappropriate in the circumstances.

(5) After determining that the defaulting body has defaulted, or is likely to default, as mentioned in subsection (1), the Secretary of State—

(a) may give notice to the defaulting body of the determination and give the body the opportunity to make representations about any remedial directions proposed by the Secretary of State; and

(b) may, having considered any representations of the body, give such remedial directions to the body as the Secretary of State considers appropriate.

(6) For the purposes of subsection (5) remedial directions are directions given for the purpose of ensuring that the functions concerned are performed to an acceptable standard.

(7) If the defaulting body fails to comply with any remedial directions, the Secretary of State may give effect to the directions.

(8) The powers available under subsection (7) include (without prejudice to the generality of that subsection) performing any function conferred on the defaulting body.

(9) If the defaulting body is a regulatory body, those powers do not include performing any function in relation to any entry in a register required to be kept by the body.

(10) In performing for the purposes of subsection (7) any function conferred on the Secretary of State, the Secretary of State may disregard any requirement to consult the defaulting body.

252 Section 251: authorisation to exercise default powers

(1) The functions conferred on the Secretary of State by section 251 may be exercised on behalf of the Secretary of State by a person authorised by the Secretary of State for that purpose.

(2) But a person authorised under subsection (1) may not, in exercising the power under section 251(7), make rules.

(3) If the defaulting body is a regulatory body the persons who may be authorised under subsection (1) include—

(a) the other regulatory bodies,

(b) the Professional Standards Authority,

(c) the Welsh Ministers, the Scottish Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland.

(4) If the defaulting body is the Professional Standards Authority the persons who may be so authorised—

(a) include the Welsh Ministers, the Scottish Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland, but

(b) exclude the regulatory bodies.

(5) If the Secretary of State authorises a person under subsection (1), the authorisation may include provision for the Secretary of State to make payments to the person; and the Secretary of State is entitled to recover the amount of those payments from the defaulting body.

Regulations and orders

253 Regulations: general

(1) Any power of the Secretary of State under this Act to make regulations is exercisable by statutory instrument.

(2) Any such power—

(a) may be exercised either in relation to all cases to which the power extends, or in relation to all cases subject to specified exceptions, or in relation to any specified cases or classes of case,

(b) may be exercised so as to make, as respects the cases in relation to which it is exercised—

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision for different purposes as respects the same case or class of case or different cases or different classes of case,

(iii) any such provision either unconditionally or subject to any condition, and

(c) may, in particular, make different provision for different areas.

(3) Any such power includes power to make supplementary, incidental, consequential or transitional provision or savings

(4) Any provision of this Act which provides for a draft of a statutory instrument containing regulations of a particular description to be laid before Parliament (with a view to its being approved by a resolution of each House) permits the laying of a draft of a statutory instrument containing such regulations with or without any other provision.

(5) Any provision of this Act which provides for a statutory instrument containing regulations of a particular description to be laid before Parliament and subject to annulment by resolution of either House does not apply to a statutory instrument which is approved in draft by a resolution of each House.

Interpretation

254 Meaning of "social care work in England" and related expressions

(1) In this Act "social care worker in England" means an individual who is engaged in social care work in England and "social care work in England" means work (other than social work in England) that is of any of the descriptions mentioned in subsection (2).

(2) The descriptions of work are—

(a) employment at a children's home, care home or residential family centre in England;

(b) management of a home or centre of a kind mentioned in paragraph (a);

(c) employment for the purposes of a domiciliary care agency, fostering agency, voluntary adoption agency or adoption support agency, in so far as the agency provides services to persons in England;

(d) management of an agency of the kind mentioned in paragraph (c);
(e) work for the purposes of the social services functions of a local authority whose area is in England;
(f) the provision in England of services similar to services which may or must be provided by a local authority in the exercise of its social services functions;
(g) the provision of personal care for persons in England;
(h) employment (in an undertaking other than an establishment or agency) which consists of or includes supplying, or providing services for the purposes of supplying, persons to provide personal care for persons in England;
(i) management of an undertaking of the kind mentioned in paragraph (h);
(j) employment in connection with the discharge of functions of the Secretary of State under section 80 of the Children Act 1989 (inspection of children's homes);
(k) employment as a member of staff of the Office for Standards in Education, Children's Services and Skills who inspects premises under—
(i) section 87 of the Children Act 1989 (welfare of children accommodated in independent schools and colleges),
(ii) section 31 of the Care Standards Act 2000 (inspections by persons authorised by registration authority), or
(iii) section 139 of the Education and Inspections Act 2006 (inspection by Chief Inspector);
(l) employment as a member of staff of the Care Quality Commission who, under Part 1 of the Health and Social Care Act 2008, inspects premises used for or in connection with the provision of social care (within the meaning of that Part);
(m) management of staff mentioned in paragraph (k) or (l);
(n) employment at a day centre in England;
(o) participation in a course approved by the Health and Care Professions Council under article 15 of the Health and Social Work Professions Order 2001 (S.I. 220/254) for persons wishing to engage in the social work profession in England.

(3) An expression used in subsection (2) and in section 55 of the Care Standards Act 2000 has the same meaning in that subsection as it has in that section.

(4) The Secretary may by regulations—
(a) amend subsection (2) by adding, repealing or altering any paragraph; or
(b) otherwise amend this section so as to alter the definition of "social care work" (including by substituting a wholly new definition).

(5) A statutory instrument containing regulations under subsection (4) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

255 Meaning of "social work profession in England" and related expressions

(1) In this Act the "social work profession in England" means the profession engaged in social work in England and "social work in England" means social

work which is required in connection with any health, education or social services provided in England.

(2) The exercise of functions of an approved mental health professional by a member of—

(a) a health profession listed in Schedule 1, or

(b) a profession regulated by the Pharmacy (Northern Ireland) Order 1976,

is not to be regarded as social work of the kind engaged in by the social work profession in England.

(3) In subsection (2) "member", in relation to a profession, means an individual who—

(a) in the case of a health profession listed in Schedule 1, is registered on the professionals register for that profession and who, in the case of registration as a medical practitioner, has a licence to practise as a medical practitioner; and

(b) in the case of a profession regulated by the Pharmacy (Northern Ireland) Order 1976 (S.I. 1213 (N.I. 22)), is registered on a register of professionals maintained under that Order.

(4) In this section "health profession listed in Schedule 1" means a profession so listed other than the social work profession in England or a social care profession in England.

256 Interpretation: general

(1) In this Act—

"approved mental health professional" has the meaning given in section 114 of the Mental Health Act 1983;

"existing regulatory body" has the meaning given in section 4(4);

"notice" means notice in writing;

"Professional Standards Authority" means the Professional Standards Authority for Health and Social Care;

"professionals register" has the meaning given in section 31(1);

"protected title" has the meaning given in section 211(6);

"registered professional" means an individual who is registered on the professionals register for a regulated health and social care profession (but see subsection (2) for more specific usages of the expression);

"regulated health and social care profession" has the meaning given in subsection (3) of section 1 or in that subsection as modified by subsection (4) of that section (as the case may require);

"regulatory body" (unless the context otherwise requires) has the meaning given in subsection (3) of section 1 or in that subsection as modified by subsection (4) of that section (as the case may require);

"rules" (unless the context otherwise requires) means rules made by a regulatory body;

"social care worker in England" and "social care work in England" have the meanings given in section 254;

"the social work profession in England" and "social work in England" have the meanings given in section 255.

(2) In the following specific contexts the expression "registered professional" refers (unless the context otherwise requires)—

(a) when used in relation to a particular regulatory body or its registrar, to an individual registered on a professionals register kept by that regulatory body; and

(b) when used in relation to a particular regulated health and social care profession, to an individual registered on the professionals register for that profession.

Final provisions

257 Extent

This Act extends to England and Wales, Scotland and Northern Ireland.

258 Commencement

(1) The following provisions come into force on the day on which this Act is passed—

(a) this section;

(b) any provision of this Act so far as is necessary for enabling the exercise on or after the day on which this Act is passed of any power to make regulations or an order that is conferred by the provision.

(2) The other provisions of this Act come into force on such day or days as the Secretary of State may appoint by order made by statutory instrument.

(3) An order under this section may—

(a) appoint different days for different purposes or different areas and

(b) include transitional or saving provision relating to the provisions being brought into force.

259 Short title

This Act may be cited as the Regulation of Health and Social Care Professions Etc. Act 2014.

SCHEDULES

SCHEDULE 1

Section 1(2)

THE REGULATED HEALTH AND SOCIAL CARE PROFESSIONS

Regulatory body	*Regulated health and social care professions*
General Chiropractic Council	Chiropractors
General Dental Council	Dentists Dental hygienists Dental technicians Clinical dental technicians Dental nurses Dental therapists Orthodontic therapists
General Medical Council	Medical practitioners
General Optical Council	Optometrists Dispensing opticians
General Osteopathic Council	Osteopaths
General Pharmaceutical Council	Pharmacists in Great Britain Pharmacy technicians in Great Britain

Regulatory body	*Regulated health and social care professions*
Health and Care Professions Council	Arts therapists
	Biomedical scientists
	Podiatrists (including chiropodists)
	Clinical scientists
	Dietitians
	Hearing aid dispensers
	Occupational therapists
	Operating department practitioners
	Orthoptists
	Paramedics
	Physiotherapists
	Practitioner psychologists
	Prosthetists and orthotists
	Radiographers
	Social workers in England
	Speech and language therapists
Nursing and Midwifery Council	Nurses
	Midwives

SCHEDULE 2

Section 31

PROFESSIONALS REGISTERS: REQUIREMENTS APPLICABLE TO SPECIFIC PROFESSIONS

General Dental Council's dental care professionals register

1 (1) The General Dental Council is, in addition to the professionals register for dentists, to keep a single professionals register for all the regulated dental care professions (instead of separate registers for each of those professions).

(2) The list of individuals registered in that register must indicate which of the dental care professions each individual's registration relates to.

(3) In this paragraph "regulated dental care profession" means a profession listed in the entry for the General Dental Council in Schedule 1, other than the profession of dentist.

General Medical Council's medical practitioners register: general practitioners and specialist medical practitioners

2 The General Medical Council's professionals register is to be divided into the following three parts—

(a) a part for medical practitioners (to be known as the principal list);

(b) a part for medical practitioners who are general practitioners (to be known as the general practitioners list);

(c) a part for specialist medical practitioners (to be known as the specialists list).

Nursing and Midwifery Council's nurses register

3 The Nursing and Midwifery Council's register for nurses is to be divided into the following two parts—

(a) a part for registered nurses first level;

(b) a part for registered nurses second level.

SCHEDULE 3

Section 32

OTHER REGISTERS

PART 1

EXISTING REGISTERS

General Dental Council: list of bodies corporate etc

1 (1) Sections 43A and 43B of the Dentists Act 1984 (duty to maintain a list of bodies corporate and financial penalties relating to the list) are repealed.

(2) Nothing in this paragraph affects the power of the Secretary of State to make regulations under section 33 of this Act applying to the General Dental Council.

General Optical Council: registers of students and bodies corporate

2 (1) The General Optical Council must continue to keep in accordance with section 8A of the Opticians Act 1989—

(a) a register of students undertaking training as optometrists; and

(b) a register of students undertaking training as dispensing opticians.

(2) Regulations under paragraph 5below applying to the General Optical Council may make provision—

(a) in connection with a register mentioned in sub-paragraph (1), or

(b) for a students register provided for by the regulations to supersede such a register,

(and in either case may amend or repeal provisions of the Opticians Act 1989 relating to a register mentioned in sub-paragraph (1)).

3 (1) The General Optical Council must continue to keep in accordance with section 9 of the Opticians Act 1989 a register of bodies corporate carrying on business as an optometrist or as a dispensing optician (or both).

(2) Regulations under section 33 of this Act applying to the General Optical Council may make provision—

(a) in connection with the register mentioned in sub-paragraph (1), or

(b) for a register provided for by the regulations to supersede that register,

(and in either case may amend or repeal provisions of the Opticians Act 1989 relating to that register).

General Pharmaceutical Council: pharmacy premises

4 (1) The General Pharmaceutical Council must continue to keep a register of pharmacy premises in Great Britain (within the meaning of the Medicines Act 1968) in accordance with sections 74 to 74K of that Act.

(2) That register is to be kept as a separate register (and not as part of any other register kept by that Council).

PART 2

STUDENT REGISTERS

5 (1) The Secretary of State may by regulations—

(a) require a regulatory body to keep a students register in relation to a health and social care profession regulated by that body; and

(b) make provision in connection with that register.

(2) A students register must consist only of persons who—

(a) are of a prescribed description;

(b) meet such other requirements as to eligibility for registration as may be prescribed; and

(c) who are not registered in the professionals register for the profession.

(3) A description of person specified under sub-paragraph (2)(a) may be framed by reference to persons undertaking or intending to undertake a course of study or training of a specified description.

(4) The requirements which may be imposed under sub-paragraph (2)(b) include (without prejudice to the generality of that power) requirements relating to a person's fitness for inclusion on the register.

(5) The regulations may (without prejudice to the generality of sub-paragraph (1)(b)) make provision as to—

(a) the procedure for dealing with registration applications;

(b) the payment of fees by applicants and by persons who are for the time being registered;

(c) expiry and renewal of entries;

(d) the content of the register;

(e) duties to provide information to the registrar;
(f) removal from the register (including removal on grounds corresponding to section 66);
(g) restoration of entries;
(h) appeals against decisions by the registrar;
(i) publication of the register (or of information contained in it);
(j) the procedure for considering, investigating or determining fitness to be or to remain registered.

(6) The regulations may confer powers on the regulatory body to make rules on any prescribed matter.

(7) A students register may relate to the United Kingdom or to any one or more of England, Wales, Scotland or Northern Ireland.

(8) A statutory instrument containing regulations under this paragraph or paragraph 6(1) below is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this paragraph "prescribed" means prescribed in regulations under this paragraph.

6 (1) The Secretary of State may by regulations require a regulatory body to determine standards of conduct expected of a person registered on a students register.

(2) A regulatory body—
(a) must keep the standards under review, and
(b) may alter or replace the standards.

(3) A regulatory body must publish a statement of—
(a) the standards, and
(b) if the standards are altered or replaced under sub-paragraph (2)(b), the altered or replaced standards.

(4) A regulatory body may by rules make provision about the procedure to be followed in determining the standards.

(5) Rules under sub-paragraph (4) may, in particular—
(a) provide for a committee to be established to carry out functions in connection with determining the standards;
(b) make provision about the criteria by reference to which the standards are to be determined;
(c) make provision about the arrangements for keeping the standards under review.

PART 3

SUPPLEMENTARY REGISTERS

7 (1) The Secretary of State may by regulations—
(a) require a regulatory body to keep a supplementary register in relation to a health and social care profession regulated by that body; and
(b) make provision in connection with that register.

(2) A supplementary register must consist only of persons who—
  (a) meet such requirements as to eligibility for registration as may be prescribed; and
  (b) are not registered in the professionals register for the profession.

(3) Regulations requiring a supplementary register to be kept may only be made if the regulatory body concerned has requested that provision be made for such a register.

(4) The requirements which may be imposed under sub-paragraph (2)(a) include (without prejudice to the generality of that power) requirements relating to—
  (a) qualifications, training or experience relevant to the profession;
  (b) a person's intentions as to registration on the professionals register;
  (c) a person's intentions as to practising the profession (whether within or outside the United Kingdom);
  (d) a person's intentions as to undertaking any description of work, activity or role connected with the profession (such as a teaching post);
  (e) fitness for inclusion on the register;
  (f) continuing professional development.

(5) The regulations may (without prejudice to the generality of sub-paragraph (1)(b)) make provision as to—
  (a) the procedure for dealing with registration applications;
  (b) the payment of fees by applicants and by persons who are for the time being registered;
  (c) expiry and renewal of entries;
  (d) the content of the register;
  (e) duties to provide information to the registrar;
  (f) removal from the register (including removal on grounds corresponding to section 66);
  (g) restoration of entries;
  (h) appeals against decisions by the registrar;
  (i) publication of the register (or of information contained in it);
  (j) the procedure for considering, investigating or determining fitness to be or to remain registered.

(6) The regulations may confer powers on the regulatory body to make rules on any prescribed matter.

(7) A supplementary register may relate to the United Kingdom or to any one or more of England, Wales, Scotland or Northern Ireland.

(8) A statutory instrument containing regulations under this paragraph or paragraph 8(1) below is subject to annulment in pursuance of a resolution of either House of Parliament.

(9) In this paragraph "prescribed" means specified in regulations under this paragraph.

8 (1) The Secretary of State may by regulations require a regulatory body to determine standards of conduct expected of a person registered on a supplementary register.

(2) A regulatory body—
  (a) must keep the standards under review, and
  (b) may alter or replace the standards.

(3) A regulatory body must publish a statement of—
  (a) the standards, and
  (b) if the standards are altered or replaced under sub-paragraph (2)(b), the altered or replaced standards.

(4) A regulatory body may by rules make provision about the procedure to be followed in determining the standards.

(5) Rules under sub-paragraph (4) may, in particular—
  (a) provide for a committee to be established to carry out functions in connection with determining the standards;
  (b) make provision about the criteria by reference to which the standards are to be determined;
  (c) make provision about the arrangements for keeping the standards under review.

SCHEDULE 4

Section 67

LISTED OFFENCES

PART 1

LIST OF OFFENCES FOR THE PURPOSES OF SECTION 67(1)(A)

1 Murder.

2 An offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (trafficking people for exploitation).

3 An offence under any of the following provisions of the Sexual Offences Act 2003—
  (a) section 1 (rape),
  (b) section 2 (assault by penetration),
  (c) sections 5 to 8 (rape and other offences against children under 13),
  (d) sections 9 to 12 (child sex offences),
  (e) sections 30 to 33 (offences against persons with a mental disorder impeding choice),
  (f) sections 47 to 50 (abuse of children through prostitution and pornography), or
  (g) section 59A (trafficking people for sexual exploitation).

4 An offence under any of the following provisions of the Sexual Offences (Scotland) Act 2009 (asp 9)—
  (a) section 1 (rape),
  (a) section 2 (assault by penetration),
  (b) sections 18 to 26 (rape and other offences against children under 13), or
  (c) sections 28 to 33 (offences against older children).

5 An offence under any of sections 3 to 6 of the Sexual Offences (Scotland) Act 2009 (sexual coercion) committed against a person who is, by virtue of section 17 of that Act (capacity to consent: mentally disordered persons), treated as incapable of consenting.

6 An offence under any of sections 9 to 12 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (sexual services of children and child pornography).

7 An offence under any of the following provisions of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2))—

(a) Article 5 (rape),
(a) Article 6 (assault by penetration),
(a) Articles 12 to 15 (rape and other offences against children under 13),
(b) Articles 16 to 19 (offences against children under 16),
(c) Articles 37 to 40 (abuse of children through prostitution and pornography), or
(a) Article 43 to 46 (offences against persons with a mental disorder impeding choice).

PART 2

LIST OF OFFENCES FOR THE PURPOSES OF SECTION 67(1)(B)

1 Blackmail under section 21 of the Theft Act 1968.

2 Blackmail under section 20 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)).

3 Extortion (in Scotland).

4 An offence under section 3 of the Sexual Offences Act 2003 (sexual assault).

5 An offence under section 3 of the Sexual Offences (Scotland) Act 2009 (sexual assault).

6 An offence under Article 7 of the Sexual Offences (Northern Ireland) Order 2008 (sexual assault).

SCHEDULE 5

Section 210

RESTRICTED PROFESSIONAL ACTIVITIES

PART 1

THE RESTRICTIONS

Dentists and dental care professionals: practising dentistry

1 (1) It is an offence for a person to—

(a) practise dentistry,
(b) hold himself or herself out, directly or by implication, as practising or as being prepared to practise dentistry,

unless that person is a registered dentist or registered dental care professional.

(2) A person who commits an offence under this paragraph is liable on summary conviction to a fine.

2 (1) Subject as follows, for the purposes of paragraph 1 the practice of dentistry includes—

(a) performing any operation, or

(b) giving any treatment, advice or attendance,

as is usually performed or given by dentists.

(2) A person who performs any operation on, or gives any treatment, advice or attendance to, any person—

(a) for the purpose of or in connection with the fitting, insertion or fixing of dentures, artificial teeth or other dental appliances, or

(b) as preparation for carrying out any of those activities,

is to be treated as having practised dentistry within the meaning of sub-paragraph (1).

(3) The practice of dentistry does not include the performance of any medical task by a person who—

(a) is qualified to carry out such a task; and

(b) is a member of a profession regulated by a regulatory body (other than the General Dental Council) or the Pharmaceutical Society of Northern Ireland.

(4) The practice of dentistry does not include dental work to which this sub-paragraph applies (see sub-paragraphs (5) and (6)) which is undertaken under the direct personal supervision of—

(a) a registered dentist; or

(b) a registered dental care professional of a kind authorised by rules made by the General Dental Council to carry out such supervision.

(5) Sub-paragraph (4) applies to dental work undertaken—

(a) by a person recognised by a dental authority as a student of dentistry or by a medical authority as a medical student; and

(b) as part of a course of instruction or training approved by that authority for students of that kind or as part of an examination so approved;

and in paragraph (a) "dental authority" means a medical authority which grants degrees, licences or other diplomas in dentistry.

(6) Sub-paragraph (4) also applies to dental work undertaken by a person as part of—

(a) a course of instruction or training being followed in order to qualify for registration in the dental care professionals register as a dental care professional of any description; or

(b) an examination which that person must pass in order to satisfy the requirements for registration in that register as a dental care professional of any description.

Hearing aid dispensers: testing of hearing

3 (1) It is an offence for a person to carry out the activities of a hearing aid dispenser unless that person is—

(a) a registered hearing aid dispenser; or

(b) a medical practitioner who is registered in the specialists list as having a specialty in otolaryngology, oto rhino laryngology or ENT surgery; or

(c) a person carrying out activities as part of a course of education or training approved by the Health and Care Professions Council for persons wishing to become registered hearing aid dispensers or as part of an examination so approved.

(2) For this purpose the activities of a hearing aid dispenser are—

(a) assessing or testing an individual's hearing, or

(b) prescribing a hearing aid for an individual,

with a view to the sale of a hearing aid to, or for the use of, that individual.

(3) In sub-paragraph (2)—

"hearing aid" means an electronic device, designed to be placed outside or within the ear, which processes and amplifies sounds using electro-acoustic or electromagnetic systems in order to compensate for hearing loss;

"sale" means supply by way of retail sale or by way of hire (whether by the person carrying out the activity mentioned in sub-paragraph (2)(a) or (b) or by another person) but does not include a sale to a person acquiring for the purposes of trade;

"the specialists list" has the meaning given in paragraph 2 of Schedule 3.

(4) A person who commits an offence under this paragraph is liable on summary conviction to a fine.

Medical practitioners: recovering charges for medical services

4 (1) A person is not entitled to recover any charge for any medical advice or attendance or for the performance of any operation unless—

(a) at the time the relevant service was performed that person was a registered medical practitioner and held a licence to practise; or

(b) the charge falls within sub-paragraph (2).

(2) A charge falls within this sub-paragraph if it is a charge in respect of medical services lawfully provided—

(a) under arrangements to provide services as part of any of the UK health services;

(b) by any person who is not a registered medical practitioner but who is entitled to provide those services by virtue of an enforceable EU right;

(c) by a person who is a member of a profession regulated by a regulatory body (other than the General Medical Council) or the Pharmaceutical Society of Northern Ireland.

(3) In any proceedings for the recovery of a charge of the kind mentioned in sub-paragraph (1) it is for the claimant to prove that paragraph (a) or (b) of that sub-paragraph applies.

Medical practitioners: holding restricted appointments

5 (1) A person may not hold an appointment to which this paragraph applies unless that person is a registered medical practitioner who holds a licence to practise.

(2) This paragraph applies to any appointment as a physician, surgeon or medical officer—

(a) in the naval, military or air services of the Crown,

(b) in any hospital or other place for the reception of persons suffering from a mental disorder,

(c) in any hospital, infirmary or dispensary (other than one falling within paragraph (b)) which is not supported wholly by voluntary contributions,

(d) in any prison,

(e) in any other public establishment, body or institution,

or to any friendly or other society for providing mutual relief in sickness, infirmity or old age.

(3) Nothing in this paragraph prevents any person who is not a Commonwealth citizen from being and acting as the resident physician or medical officer of any hospital established exclusively for the relief of foreigners in sickness, so long as the person—

(a) has obtained from a foreign university a degree or diploma of doctor in medicine and has passed the regular examinations entitling the person to practise medicine in their home country; and

(b) is engaged in no medical practice except as such a resident physician or medical officer.

6 (1) None of the suspension events mentioned in sub-paragraph (2) terminate an appointment to which paragraph 5 applies; but the person concerned must not perform the duties of such an appointment during the suspension.

(2) The suspension events are—

(a) the suspension of registration of a person as a medical practitioner by a fitness to practise panel following a finding of impairment of fitness to practise by reason of deficient professional performance or adverse physical or mental health;

(b) an order for immediate suspension made by a fitness to practise panel under section 148;

(c) an interim suspension order made, confirmed or varied by an interim orders panel or a fitness to practise panel under section 152 or 155 (including such an order as extended under section 156).

Medical practitioners: signing medical certificates

7 (1) A medical certificate is not valid unless the person signing it is a registered medical practitioner who holds a licence to practise.

(2) For this purpose "medical certificate" means a certificate required by any enactment (whenever passed or made) from any physician, surgeon, licentiate in medicine and surgery or other medical practitioner.

Midwives: attending a woman in childbirth

8 (1) It is an offence for a person to attend a woman in childbirth unless the person attending is—

(a) a registered midwife;

(b) a registered medical practitioner; or

(c) a person who attends the woman as part of a qualifying course while undergoing training in order to qualify for registration as a midwife or as a medical practitioner.

(2) Sub-paragraph (1) does not apply to attention given in a case of sudden or urgent necessity.

(3) In sub-paragraph (1)(c) "qualifying course" means a course of practical instruction in midwifery recognised by the Nursing and Midwifery Council or by the General Medical Council.

(4) A person who commits an offence under this paragraph is liable on summary conviction to a fine.

Optometrists etc: testing of sight and fitting contact lenses

9 (1) It is an offence for a person to test the sight of another individual, unless the person testing is a registered optometrist or a registered medical practitioner.

(2) It is an offence to fit a contact lens for another individual unless the person fitting it is a registered dispensing optician, a registered optometrist or a registered medical practitioner.

(3) Sub-paragraphs (1) and (2) are subject to the exceptions provided for in paragraph 10.

(4) In this paragraph and paragraph 10—

(a) "testing of sight" means testing sight with the object of—

(i) determining whether there is any, and if so what, defect of sight; and

(ii) correcting, remedying or relieving any such defect of an anatomical or physiological nature by means of an optical appliance prescribed on the basis of the determination;

(b) "fitting a contact lens" means—

(i) assessing whether a contact lens meets the needs of the individual concerned; and

(ii) where appropriate, providing the individual with one or more contact lenses for use during a trial period.

(5) In sub-paragraph (4)(a) "optical appliance" means an appliance designed to correct, remedy or relieve a defect of sight.

(6) A person who commits an offence under this paragraph is liable on summary conviction to a fine.

10 (1) It is not an offence under paragraph 9 for a person recognised by a medical authority as a medical student to—

(a) test the sight of another individual, or

(b) to fit contact lenses for an individual,

if that activity is carried out as part of a course of instruction approved by that authority for medical students or as part of an examination so approved.

(2) In sub-paragraph (1) "medical authority" means a body, or a combination of bodies, included in the list maintained by the General Medical Council under section 4(1) of the Medical Act 1983.

(3) The General Optical Council may by rules—

(a) exempt from the offence in paragraph 9(1) the testing of sight by persons training as optometrists, or any prescribed class of such persons;

(b) exempt from the offence in paragraph 9(2) the fitting of contact lenses by persons training as optometrists or dispensing opticians, or any prescribed class of such persons.

(4) Rules under sub-paragraph (3) may provide for an exemption to apply only in such cases, or subject to compliance with such conditions, as are prescribed by the rules.

Optometrists and dispensing opticians: sale and supply of optical appliances etc

11 (1) It is an offence for a person to sell any optical appliance or zero-powered contact lens unless the sale is effected by or under the supervision of—

(a) a registered dispensing optician,

(b) a registered optometrist, or

(c) a registered medical practitioner who holds a licence to practise.

(2) It is a defence for a person accused of an offence under this paragraph of selling any optical appliance to prove that the appliance concerned was sold as an antique or second hand article and that at the time of the sale that person did not know, and had no reason to believe, that the appliance was acquired for the purpose of being used for correcting, remedying or relieving a defect of sight.

(3) Sub-paragraph (1) is also subject to the exceptions provided for in paragraphs 12 to 14.

(4) Sub-paragraph (1) applies to a relevant supply of an optical appliance or a zero-powered contact lens as it applies to the sale of an optical appliance or zero-powered contact lens.

(5) For that purpose a relevant supply is a supply of the appliance or lens—

(a) in the course of the practice or business of an optometrist or dispensing optician (whether by the person carrying on the business or by a person employed by that person); and

(b) effected in pursuance of arrangements made—

(i) with a Minister of the Crown or Government department Scottish Ministers, Welsh Ministers or a Northern Ireland department; or

(ii) with any body on whom functions are conferred by or by virtue of any NHS legislation.

(6) In sub-paragraph (5)(b) "NHS legislation" means—

(a) the National Health Service Act 2006;

(b) the National Health Service (Scotland) Act 1978;

(c) the National Health Service (Wales) Act 2006;

(d) the Health and Personal Social Services (Northern Ireland) Order 1972 or the Health and Personal Social Services (Northern Ireland) Order 1991.

(7) In this paragraph and paragraphs 12 to 14 "optical appliance" means an appliance designed to correct, remedy or relieve a defect of sight.

(8) A person who commits an offence under this paragraph is liable on summary conviction to a fine.

12 (1) Paragraph 11(1) does not apply to any of the following sales—

(a) a sale for a person who has attained the age of 16 of spectacles which have two single vision lenses of the same positive spherical power not exceeding 4 dioptres where the sale is wholly for the purpose of correcting, remedying or relieving presbyopia;

(b) a sale of an optical appliance intended for use as protection or cover for the eyes in sports if—

(i) neither lens fitted to the appliance has a positive or negative spherical power exceeding 8 dioptres;

(ii) the appliance is an appliance with a single vision lens or single vision lenses; and

(iii) the appliance falls within any category of appliance specified in regulations made by the Secretary of State for the purposes of this paragraph; and

(c) a sale of a contact lens for a person who has attained the age of 16 where the sale satisfies the requirements of sub-paragraph (2).

(2) Those requirements are that—

(a) the seller has—

(i) the original specification provided pursuant to section 25(5) of the Opticians Act 1989;

(ii) a copy of the original specification which the seller has verified with the provider of it; or

(iii) an order from the purchaser, submitted in writing (including by electronic means) which contains the particulars of the specification of the person who intends to wear the contact lens ("the wearer") and the seller verifies those particulars with the person who provided the original specification;

(b) the seller is reasonably satisfied that the goods ordered are for the use by the person named in the specification;

(c) the seller is, or is under the general direction of, a registered dispensing optician, a registered optometrist or a registered medical practitioner; and

(d) the wearer—

(i) is not, so far as the seller knows, registered as blind or registered as partially sighted in a register compiled by a

local authority under section 29(4)(g) of the National Assistance Act 1948 (welfare services);

(ii) has not been certified as blind or as partially sighted and in consequence registered as blind or partially sighted in a register maintained by or on behalf of a council constituted under the Local Government (Scotland) Act 1994; or

(iii) has not been certified as blind and in consequence registered as blind in a register maintained by or on behalf of a Health and Social Services Board in Northern Ireland.

(3) In this paragraph—

(a) "seller"—

(i) includes any person who supplies the optical appliance or, as the case may be, the zero-powered contact lens (whether or not any payment is made for the supply); and

(ii) does not include a person who supplies the contact lens as part of the assessment process in the course of fitting lenses to the individual; and

(b) lenses are to be taken to have the same positive spherical power if the difference between them is within the tolerances relating to the power of such lenses specified from time to time by the British Standard Specification.

13 Paragraph 11(1) does not apply to the sale of an optical appliance or zero-powered contact lens—

(a) to a registered medical practitioner, registered optometrist, registered dispensing optician or business registered under the register of businesses kept by the General Optical Council;

(b) to a manufacturer of or dealer in optical appliances or zero-powered contact lenses for the purposes of their business;

(c) to any authority or person carrying on a hospital, clinic, nursing home or other institution providing medical or surgical treatment;

(d) to any authority or person providing a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8), which includes the provision of medical or surgical treatment;

(e) to a Minister of the Crown or Government department, Scottish Ministers, Welsh Ministers or a Northern Ireland department; or

(f) for the purposes of its export.

14 (1) The Secretary of State may make regulations exempting from paragraph 11(1) the sale of optical appliances of any description specified in the regulations, subject to conditions so specified.

(2) If optical appliances of a specified description consist of or include one or more lenses the regulations must specify, as a condition subject to which their sale is exempt from paragraph 11(1), the condition that the appliance being sold must be in accordance with a written prescription which—

(a) has been given by a registered optometrist or a registered medical practitioner following a testing of sight by that person; and

(b) bears a date not more than such time as is specified in the regulations before the prescription is presented to the proposed seller.

(3) The regulations may not specify (as exempt appliances)—

(a) contact lenses, or

(b) any optical appliance for a person under 16 years of age.

Pharmacists: practising as a pharmacist or a pharmacy technician

15 (1) It is an offence for a person who is not a registered pharmacist to practise as a pharmacist.

(2) It is an offence for a person who is not a registered pharmacy technician to practise as a pharmacy technician.

(3) For the purposes of this paragraph a person practises as a pharmacist or as a pharmacy technician if, while acting in the capacity of or purporting to be a pharmacist or pharmacy technician (as the case may be), that person undertakes any work or gives any advice in relation to—

(a) the preparation, assembly, dispensing, sale, supply or use of medicines,

(b) the science of medicines,

(c) the practice of pharmacy, or

(d) the provision of health care.

(4) A person who commits an offence under this paragraph is liable on summary conviction to a fine.

PART 2

SUPPLEMENTARY PROVISIONS

Time limit for prosecutions

16 (1) Subject to sub-paragraph (4), proceedings for an offence under any provision of this Schedule may be brought within the period of six months beginning with the date on which sufficient evidence came to the prosecutor's knowledge.

(2) A certificate signed by or on behalf of the prosecutor and stating the date on which sufficient evidence came to the prosecutor's knowledge is conclusive evidence of that date; and any certificate purporting to be so signed is to be taken as having been so signed unless the contrary is proved.

(3) In this paragraph "sufficient evidence" means evidence sufficient in the opinion of the prosecutor to warrant proceedings for the offence.

(4) No proceedings may be brought for an offence under any provision of this Schedule after the end of the period of two years beginning with the date on which the alleged offence is committed.

Procedure for regulations under this Schedule

17 A statutory instrument containing regulations under any provision of this Schedule is subject to annulment in pursuance of a resolution of either House of Parliament.

Interpretation

18 (1) The following provisions have effect for the interpretation of this Schedule.

(2) A reference to a "registered" professional of any description is to a person who is for the time being (or was at the material time) registered in the professionals register for the profession concerned.

(3) "Licence to practise", in relation to a medical practitioner, means a licence to practise as a medical practitioner.

(4) A reference to a registered dental care professional refers to a person who is for the time being (or was at the material time) registered in the dental care professionals register, regardless of which description of dental care professional the person is registered as.

SCHEDULE 6

Section 211

PROTECTED TITLES

The General Chiropractic Council

Profession	*Protected titles*
Chiropractors	Chiropractor
	Chiropractic practitioner
	Chiropractitioner
	Chiropractic physician

The General Dental Council

Profession	*Protected titles*
Dentists	Dentist
	Dental surgeon
	Dental practitioner
Dental hygienists	Dental hygienist
Dental technicians	Dental technician
	Dental technologist
Clinical dental technicians	Clinical dental technician
	Clinical dental technologist
	Denturist

Profession	*Protected titles*
Dental nurses	Dental nurse Dental surgery assistant
Dental therapists	Dental therapist
Orthodontic therapists	Orthodontic therapist Orthodontic auxiliary

The General Medical Council

Profession	*Protected titles*
Medical practitioners	Physician Doctor of medicine Apothecary Surgeon General practitioner Bachelor of medicine Licentiate in medicine and surgery Any other title implying General Medical Council registration

The General Optical Council

Profession	*Protected titles*
Optometrists	Optometrist Ophthalmic optician
Dispensing opticians	Optician

Profession	*Protected titles*
	Dispensing optician

The General Osteopathic Council

Profession	*Protected titles*
Osteopaths	Osteopath
	Osteopathic practitioner
	Osteopathic physician
	Osteopathist
	Osteotherapist

The General Pharmaceutical Council

Profession	*Protected titles*
Pharmacists in Great Britain	Pharmacist
Pharmacy technicians in Great Britain	Pharmacy technician

The Health and Care Professions Council

Profession	*Protected titles*
Arts therapists	Art therapist
	Art psychotherapist
	Drama therapist
	Music therapist
Biomedical scientists	Biomedical scientist
Chiropodists and podiatrists	Chiropodist
	Podiatrist
Clinical scientists	Clinical scientist

Profession	*Protected titles*
Dietitians	Dietitian Dietician
Hearing aid dispensers	Hearing aid dispenser
Occupational therapists	Occupational therapist
Operating department practitioners	Operating department practitioner
Orthoptists	Orthoptist
Paramedics	Paramedic
Physiotherapists	Physiotherapist Physical therapist
Practitioner psychologists	Clinical psychologist Counselling psychologist Educational psychologist Forensic psychologist Health psychologist Occupational psychologist Practitioner psychologist Registered psychologist Sport and exercise psychologist
Prosthetists and orthotists	Prosthetist Orthotist

Profession	*Protected titles*
Radiographers	Radiographer Diagnostic radiographer Therapeutic radiographer
Social workers in England	Social worker
Speech and language therapists	Speech and language therapist Speech therapist

The Nursing and Midwifery Council

Profession	*Protected titles*
Nurses	Registered nurse Specialist community public health nurse
Midwives	Midwife

SCHEDULE 7

Section 215

REGISTERED RETAIL PHARMACIES: STANDARDS, INSPECTIONS, ENFORCEMENT ETC

Standards: general

1 (1) The General Pharmaceutical Council ("the Council) must determine standards that are to be met in connection with the carrying on of a retail pharmacy business at a registered pharmacy by the person carrying on that business.

(2) The standards may in particular relate to—

(a) governance arrangements for registered pharmacies, including arrangements for managing and monitoring the safe and effective provision of pharmacy services at or from registered pharmacies;

(b) the working environment at, the patient and public experience at and the condition of registered pharmacies;

(c) the condition of the equipment and facilities used in the provision of pharmacy services at or from registered pharmacies;

(d) the working environment at and condition of associated premises and the condition of equipment and facilities at associated premises (being premises at which activities are carried on which are integral to the provision of pharmacy services at or from registered pharmacies, but only to the extent appropriate for ensuring the safe and effective provision of pharmacy services at or from registered pharmacies;

(e) training of pharmacy staff;

(f) arrangements for ensuring pharmacy staff—

(i) have the authority and ability to act to ensure, and

(ii) are properly held accountable for,

the health, safety and well-being of patients to whom pharmacy services are provided at or from registered pharmacies, and of other persons at registered pharmacies.

(3) The Council—

(a) must keep the standards under review;

(b) may make rules about the procedure to be followed in determining the standards (which may include provision about the criteria by reference to which the standards may be determined and about the arrangements for keeping them under review);

(c) may alter or replace the standards;

(d) must publish the standards (and any altered or replacement standards); and

(e) may issue guidance about the standards.

2 (1) Section 80 of the Medicines Act 1968 (power to disqualify and direct removal from the register) has effect with the following modifications.

(2) In subsection (1)(c) for "provided for in rules made under Article 7(1) of the Pharmacy Order 2010" substitute "set under paragraph 1 of Schedule 7 to the Regulation of Health and Social Care Professions Etc. Act 2014 (registered retail pharmacies: standards etc)".

(3) After subsection (1) insert—

"(1A) Where—

(a) a pharmacist or partnership carries on a retail pharmacy business, and

(b) in respect of premises in Great Britain at which that pharmacist or partnership carries on that business there is a failure to meet the standards set under paragraph 1 of Schedule 7 to the Regulation of Health and Social Care Professions Etc. Act 2014,

then, subject to the following provisions of this Part of this Act, the relevant disciplinary committee, after inquiring into the case, may direct that the pharmacist or partnership is to be disqualified for the purposes of this Part.

(1B) In this section and sections 82 and 83, "pharmacy owner" means a pharmacist, partnership or body corporate that is carrying on a retail pharmacy business (or if the context so requires, a person or partnership that has carried on a retail pharmacy business but is

subject to directions under this Part preventing the person or partnership from doing so or limiting their capacity to do so).

(1C) In a case falling within subsection (1)(c) or (1A), the relevant disciplinary committee may only give a direction under that provision if they are satisfied that the pharmacy owner is unfit to carry on a retail pharmacy business safely and effectively, so far as concerning—

(a) the retail sale of medicinal products (whether they are on a general sale list or not), or

(b) the supply of such products in circumstances corresponding to retail sale."

(4) In subsection (2)—

(a) for "within the preceding subsection" substitute "within subsection (1) or (1A)";

(b) in paragraph (a), for "that subsection" substitute "those subsections" and for "body corporate" substitute "pharmacy owner"; and

(c) in paragraph (b) for "the preceding subsection" substitute "those subsections".

(5) after subsection (2) insert—

"(2A) But in a case falling within subsection (1)(c) or (1A) the relevant disciplinary committee may only direct the registrar under subsection (2)(b) to remove premises from the register if they are satisfied that the pharmacy owner is unfit to carry on a retail pharmacy business safely and effectively at those premises so far as concerns—

(a) the retail sale of medicinal products (whether they are on a general sale list or not), or

(b) the supply of such products in circumstances corresponding to retail sale."

(6) In subsection (3)—

(a) after "subsection (1)" insert "or (1A)", and

(b) for "the last preceding subsection", in each place it occurs, substitute "subsection (2)".

(7) In section 82(2) and (3) of that Act (procedure relating to disqualification) for "body corporate" substitute "pharmacy owner".

Information to be provided to the General Pharmaceutical Council

3 (1) The Council may make rules requiring any person carrying on a retail pharmacy business to provide information to the Council about any matter connected with the carrying on of that business or the premises at which it is carried on.

(2) The information which may be the subject of requirements under the rules include—

(a) details of the person carrying on the retail pharmacy business including—

(i) if that person is an individual, details of the home address of that individual;

(ii) if that person is a partnership, details of the address of its principal office and of the names and home addresses of the partners;

(iii) if that person is a body corporate, details of the address of its registered or principal office and of the names and home addresses of its directors;

(b) a list of all the premises at which the retail pharmacy business is carried on;

(c) where medicinal products are sold by retail, or supplied in circumstances corresponding to retail sale, at or from premises of a body corporate that is carrying on a retail pharmacy business at those premises, the name and home address of the superintendent pharmacist of that business;

(d) details of the type or types of activities undertaken at or from the premises at which the retail pharmacy business is carried on;

(e) details of any relevant offence committed in the United Kingdom or elsewhere (see sub-paragraph (5)); and

(f) details of any relevant investigation (see sub-paragraph (6)).

(3) The rules may make provision as to—

(a) the form and manner in which information is to be provided to the Council;

(b) when information is to be so provided.

(4) The rules may provide for information to be provided—

(a) at the request of the Council;

(b) on (or within a specified period after) the occurrence of any event of a description specified in the rules; or

(c) on such dates or at such intervals as may be specified in the rules or the Council may determine (whether generally, in relation to a description of persons carrying on a retail pharmacy business or in relation to particular persons carrying on such a business).

(5) For the purposes of sub-paragraph (2)(e) "relevant offence" means—

(a) if the person carrying on the retail pharmacy business is an individual, a criminal offence with which that individual has been charged (or cautioned);

(b) if that person is a partnership, a criminal offence with which the partnership (whether or not as an entity separate from the partners) or any partner has been charged (or cautioned);

(c) if that person is a body corporate, a criminal offence with which the body or any of its directors or (if not a director) its superintendent pharmacist has been charged (or cautioned);

and it is irrelevant whether or not a charge results in a conviction or caution.

(6) For the purposes of sub-paragraph (2)(f) "relevant investigation" means an investigation by a licensing, regulatory or other authority into the conduct of—

(a) if the person carrying on the retail pharmacy business is an individual, that individual;

(b) if that person is a partnership, the partnership or any partner;

(c) if that person is a body corporate, the body corporate or any of its directors or (if not a director) its superintendent pharmacist;

and the reference to details of a relevant investigation includes details of the outcome of the investigation.

The Council inspectorate

4 (1) The Council must establish an inspectorate by appointing inspectors for the purpose of carrying out the functions set out in paragraph 4.

(2) An inspector is to hold and vacate office in accordance with the terms of the inspector's appointment.

(3) The Council may pay to an inspector such—

(a) remuneration,

(b) pensions, allowances, expenses or gratuities, or

(c) contributions or payments toward provision for such pensions, allowances or gratuities,

as it may determine.

5 The functions of an inspector are—

(a) to enforce standards set by the Council under paragraph 1;

(b) to assist the Council in its investigation of matters to which Part 6 of the Pharmacy Order 2010 applies;

(c) to secure compliance by registrants and by persons carrying on a retail pharmacy business at a registered pharmacy with the provisions of Parts 3 and 4 of the Medicines Act 1968 (which contain provisions about dealings with medicinal products and about pharmacies) in so far as they relate to the sale and supply of medicinal products;

(d) to secure compliance by registered pharmacists and persons carrying on a retail pharmacy business with the provisions of the Poisons Act 1972 and rules made under section 7 of that Act (poisons rules);

(e) to enforce Article 38 of the Pharmacy Order 2010, any other provisions of that Order and any rules made under that Order.

Inspection and enforcement

6 (1) The Council must make provision in rules relating to—

(a) the intervals at which inspectors may conduct routine inspections of registered pharmacies; and

(b) the circumstances in which inspectors may conduct special inspections of, and other visits to, registered pharmacies.

(2) Rules under this paragraph are not to limit an inspector's power of entry under paragraph 7.

(3) The Council may, in such manner as it sees fit, publish reports of routine inspections, special inspections and other visits to registered pharmacies by inspectors (and the reports must include an account of the outcome of those inspections and visits).

(4) If a report the Council proposes to publish under sub-paragraph (3) includes personal data, it is to be assumed for the purposes of section 35(1) of the Data Protection Act 1998 (disclosure required by law etc) that the disclosure of personal data is required by that sub-paragraph.

Inspector's power of entry

7 (1) An inspector, on producing (if asked)—

(a) evidence of the inspector's identity; and

(b) evidence of the inspector's appointment,

may, for the purposes of the exercise of a function conferred on the inspector by paragraph 5(a), (b) or (e) enter any registered pharmacy or other premises at any reasonable hour.

(2) In the case of premises which are or form part of a private dwelling house, an inspector may enter the premises by virtue of this paragraph only if 24 hours notice of the proposed entry has been given to the occupier.

(3) If a justice of the peace, on sworn information in writing from an inspector, is satisfied that entry to a registered pharmacy or other premises is required for the purposes of the exercise of a function conferred by paragraph 5(a), (b) or (e) and is also satisfied that—

(a) admission has been refused, or a refusal is expected, and notice to apply for a warrant has been given to the occupier;

(b) asking for admission or the giving of that notice would defeat the object of entry;

(c) the case is one of urgency; or

(d) the premises are unoccupied or the occupier is temporarily absent,

the justice may by signed warrant authorise the inspector to enter the premises, if need be by reasonable force.

(4) A warrant issued by a justice of the peace under sub-paragraph (3) is valid for the period of one month beginning with the day on which the warrant is issued.

(5) An inspector who is authorised to enter any premises by a warrant issued by a justice of the peace under sub-paragraph (3) must, on entering the premises, produce the warrant to any person at the premises appearing to the inspector to be in charge of, or responsible for, the premises or, if the premises are unoccupied, leave a copy of the warrant at the premises.

(6) An inspector entering premises by virtue of this paragraph—

(a) may be accompanied by a police officer or by such other persons as the inspector considers necessary;

(b) may bring into the premises such equipment as the inspector considers necessary.

(7) If an inspector enters any unoccupied premises by virtue of this paragraph the inspector must leave the premises as effectively secured against unauthorised entry as the premises were found.

(8) In the application of this paragraph to Scotland a reference to a justice of the peace includes a reference to the sheriff and to a magistrate.

8 (1) An inspector may, upon entering any premises by virtue of paragraph 7—

(a) inspect the premises and any plant, machinery or equipment at the premises;

(b) search the premises;

(c) inspect and remove from the premises any substance, article or product (whether or not appearing to the inspector to be a medicinal product);

(d) take and remove from the premises samples of any substance, article or product;

(e) carry out any examinations and tests and make any enquiries (including such enquiries of any person as the inspector considers it appropriate to make relating to the fitness to practise of a registrant who is or has been employed on the premises to provide pharmacy services);

(f) require any person holding or accountable for any documents or records (whether or not kept at the premises being inspected) to produce them for inspection at the premises.

(2) The power conferred by sub-paragraph (1)(f) includes power to require any documents or records that are kept by means of a computer or other electronic device to be produced in a form in which they are legible and can be taken away.

(3) In an inspector requires documents or records to be produced for inspection by virtue of the power conferred by sub-paragraph (1)(f), the inspector may—

(a) take copies of or extracts from such documents or records;

(b) take possession of the documents or records or of the computer or other electronic device in which they are stored and retain them for as long as the inspector considers necessary;

(c) require access to any computer or other electronic device or to any associated apparatus or material that has been used in connection with the documents or records and inspect or check the operation of the computer, device, apparatus or material.

(4) The power conferred by sub-paragraph (3)(c) includes power to require any person having charge of, or otherwise concerned with the operation of, the computer, device, apparatus or material to afford such assistance as the inspector may reasonably require.

(5) An inspector has power to do anything which is calculated to facilitate the discharge of the inspector's functions or which is incidental or conducive to the discharge of those functions.

Obstruction of inspector: offences

9 (1) It is an offence for a person—

(a) to intentionally obstruct an inspector exercising functions under paragraph 7 or 8;

(b) to fail, without reasonable excuse, to give an inspector any assistance or information that the inspector may reasonably require from that person for the performance of the inspector's functions under this Schedule;

(c) to furnish to an inspector exercising any functions under this Schedule any information that that person knows or has reason to believe is false or misleading; or

(d) to fail to produce a document or record when required to do so by an inspector exercising any functions under this Schedule.

(2) A person who commits an offence under this paragraph is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Improvement notices

10 (1) If an inspector has reasonable grounds for believing that there is—

(a) a failure in connection with the carrying on of a retail pharmacy business at a registered pharmacy entered in the pharmacies register under section 74A of the Medicines Act 1968 (registration of premises in Great Britain) to meet the standards set by the Council under paragraph 1;

(b) a failure to comply with conditions to which the entry of a registered pharmacy entered in that register is subject by virtue of section 74D(1) of that Act (conditional registration); or

(c) a failure to comply with a requirement contained in any rules made under paragraph 3.

the inspector may serve an improvement notice on the person carrying on the retail pharmacy business at the registered pharmacy.

(2) An improvement notice must—

(a) state the inspector's grounds for believing that there is a failure referred to in sub-paragraph (1);

(b) specify the measures that the person to whom the notice is addressed must take in order to rectify that failure;

(c) require that person to take those measures, or measures that the inspector agrees are at least equivalent to them, within the period specified in the notice (not being less than 28 days beginning with the day on which the notice is served); and

(d) state that there is a right of appeal to a magistrates' court or the sheriff under paragraph 14 (and that the appeal must be brought within the period of 28 days beginning with the day on which the notice is served).

(3) An improvement notice is served by an inspector—

(a) on an individual if it is—

(i) delivered to that individual in person;

(ii) left at that individual's proper address;

(iii) sent by post or otherwise delivered to that individual at that individual's proper address;

(b) on a partnership, if it is—

(i) delivered personally to a partner or a person having control or management of the partnership business;

(ii) left at the partnership's proper address;

(iii) sent by post or otherwise delivered to the partnership's proper address;

(c) on a body corporate, if it is—

(i) delivered personally to the secretary or clerk of the body;

(ii) left at the body's proper address; or

(iii) sent by post or otherwise delivered to the body's proper address.

(4) For the purposes of sub-paragraph (3) and of section 7 of the Interpretation Act 1978 (which defines "service by post") in its application to that sub-paragraph, the proper address of a person is—

(a) for an individual, that individual's home address as recorded in the pharmacies register;

(b) for a partnership, the address of its principal office;
(c) for a body corporate, the address of its registered or principal office.

(5) An improvement notice is treated as having been served, where the notice is sent by post, at the time at which the notice would be delivered in the ordinary course of post or, where the notice is left at an address, on the next working day after the day on which it was left at that address.

(6) The Council may make rules for an improvement notice which is required to be served on any person to be served by an electronic communication.

(7) Rules under sub-paragraph (6) must secure that—
(a) an improvement notice cannot be served by an electronic communication unless the person concerned has consented in writing to the receipt of notices from the Council by that means and the communication is sent to the number or address specified by that person when giving consent;
(b) an electronic communication received outside a person's normal business hours is to be taken to have been served on the next working day.

(8) In this paragraph "working day" means a day which is not a Saturday or Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the part of Great Britain in which the premises to which the notice relates are located.

11 (1) It is an offence for a person carrying on a retail pharmacy business at a registered pharmacy to fail to comply with the terms of an improvement notice served under paragraph 10.

(2) But no offence is committed if the failure to comply with the terms of an improvement notice is because of a failure to comply with standards set under paragraph 1 that the registrar has made a condition of the entry of the registered premises in the pharmacies register in pursuance of section 74D of the Medicines Act 1968 (conditional registration).

(3) Proceedings for an offence under this paragraph may be begun—
(a) in England and Wales, at any time within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the Council to justify a prosecution came to the Council's knowledge;
(b) in Scotland, at any time within the period of 6 months beginning with the date on which evidence sufficient in the prosecutor's opinion to justify a prosecution came to the prosecutor's knowledge;

but no prosecution may be begun after the end of the period of two years beginning with the day on which the offence was committed (that is to say the day after the last day of the period of 28 days beginning with the day on which the improvement notice in question was served).

(4) A person who commits an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

12 (1) Proceedings for an offence under paragraph 11 alleged to have been committed by a partnership must be brought in the name of the partnership (and not that of any of the partners).

(2) Rules of court relating to the service of documents are to have effect in such proceedings as if the partnership were a body corporate whose directors are the partners.

(3) In such proceedings Schedule 3 to the Magistrates' Courts Act 1980 (corporations) applies as it applies to a body corporate.

(4) A fine imposed on a partnership on a conviction for an offence is to be paid out of the assets of the partnership.

13 (1) Where an inspector is satisfied that a person carrying on a retail pharmacy business at a registered pharmacy has failed to comply with the terms of an improvement notice served under paragraph 10, the inspector must give notice of that fact to the registrar.

(2) That duty applies whether or not proceedings are to be brought against that person for an offence under paragraph 11.

(3) Upon receipt of a notice under this paragraph the registrar may—

(a) remove the entry of the registered pharmacy from the pharmacies register;

(b) suspend the entry pending compliance by the person with such requirements or conditions as the registrar considers it necessary to impose.

(4) Where under sub-paragraph (3) the registrar removes or suspends the entry of a registered pharmacy the registrar must send to the person carrying on the retail pharmacy business a statement in writing giving the person notice of—

(a) the removal or suspension and the reasons for it; and

(b) the right of appeal to the Appeals Committee under article 40 of the Pharmacy Order 2010.

(5) The notice under this paragraph must be sent—

(a) if the person carrying on the retail pharmacy business is an individual, to that individual at the individual's home address as recorded in the pharmacies register;

(b) if that person is a partnership, to the partnership at its principal office;

(c) if that person is a body corporate, to the body corporate at its registered address or its principal office.

14 (1) A person on whom an improvement notice is served may appeal against the notice to a magistrates' court or, in Scotland, to the sheriff within the period of 28 days beginning with the day on which the notice is served.

(2) An appeal to a magistrates' court is by way of complaint (and the Magistrates' Courts Act 1980 applies to the proceedings).

(3) An appeal to the sheriff is by summary application.

(4) The court may suspend the improvement notice pending the determination or abandonment of an appeal.

(5) On an appeal the court may either cancel the notice or confirm it with or without modification.

Interpretation

15 In this Schedule—

"electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation);

"the Council" means the General Pharmaceutical Council;

"improvement notice" means a notice served on any person under paragraph 10;

"inspector" means an inspector appointed under paragraph 4;

"medicinal product" has the same meaning as it has in the Medicines Act 1968 by virtue of section 130 of that Act (meaning of "medicinal product" and related expressions);

"pharmacies register" means Part 3 of the register kept under article 19 of the Pharmacy Order 2010;

"registered pharmacy" means a pharmacy entered on Part 3 of that register;

"registrant" means a registered pharmacist or a registered pharmacy technician;

"registrar" means the person appointed by the Council under section 36;

"regulatory body" includes the Pharmaceutical Society of Northern Ireland;

"retail pharmacy business" has the same meaning as in the Pharmacy Order 2010;

"retail sale" and "sold by retail" are to be construed in accordance with section 13 of the Medicines Act 1968 (meaning of "wholesale dealing", "retail sale" and related expressions);

"superintendent pharmacist" means a registered pharmacist who is a superintendent for the purposes of section 71(1) of the Medicines Act 1968 (business carried on by a body corporate);

"supply in circumstances corresponding to retail sale" is to be construed in accordance with section 131(4) of the Medicines Act 1968.

SCHEDULE 8

Section 218

THE PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

Membership

1 The Authority is to consist of a chair appointed by the Secretary of State and the following seven other members—

(a) six non-executive members appointed by the Secretary of State; and

(b) one executive member appointed under paragraph 10.

2 The Secretary of State may by regulations provide for—

(a) the conditions to be fulfilled for appointment as chair or other member;

(b) the tenure of office of the chair and non-executive members (including the circumstances in which they cease to hold office or may be removed or suspended from office);

(c) the appointment of a member as deputy chair and the circumstances in which the member ceases to hold office or may be removed or suspended from office.

Committees and sub-committees

3 The Authority may make arrangements for the appointment and constitution of committees and sub-committees (including committees and sub-committees which consist of or include persons who are not members of the Authority).

Procedure etc

4 The Authority may regulate its own procedure.

5 The validity of any proceedings of the Authority is not affected by a vacancy among its members or by a defect in the appointment of a member.

Members' interests

6 The Authority must maintain a system for the declaration and registration of private interests of its members.

7 The Authority must publish entries recorded in the register of members' interests.

Remuneration and allowances

8 (1) The Authority may pay to its chair and to any other member such remuneration and allowances as the Authority may determine.

(2) The Authority may pay to any member of a committee or sub-committee of the Authority such allowances as the Authority may determine.

(3) The Authority may provide for the payment of such pension, allowance or gratuities as it may determine to or in respect of a person who is or has been the chair or any other member of the Authority.

(4) The Authority may, where it considers there are special circumstances that make it right for a person ceasing to hold office as chair of the Authority to receive compensation, pay to that person such compensation as it may determine.

Employees

9 The Authority may appoint such employees as it considers appropriate on such terms and conditions as it may determine.

10 (1) The Authority must appoint one of its employees as the executive member referred to in paragraph 1(b) on such terms and conditions as the Authority may determine.

(2) Any decision of the Authority under sub-paragraph (1) must be taken by the members appointed under paragraph 1 other than the executive member referred to in paragraph 1(b).

Delegation of functions

11 (1) The Authority may arrange for the discharge of any of its functions (other than the power to give directions) by—

(a) a committee or sub-committee of the Authority;

(b) a member or employee of the Authority; or

(c) any other person.

(2) If the Authority does arrange for the discharge of any function as mentioned in sub-paragraph (1)(c), the arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

Assistance

12 (1) The Authority may arrange for such persons as it thinks fit to assist it in the discharge of any of its functions in relation to a particular case or class of case.

(2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

Accounts

13 (1) The Authority must keep accounts in such form as the Secretary of State may determine.

(2) The Authority must prepare annual accounts in respect of each financial year in such form as the Secretary of State may determine.

(3) The Authority must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which they relate as the Secretary of State may determine.

(4) Within that period the Authority must also send copies of the annual accounts to—

(a) the Scottish Ministers;

(b) the Welsh Ministers;

(c) the Department of Health, Social Services and Public Safety in Northern Ireland.

(5) The Comptroller and Auditor General must—

(a) examine, certify and report on the annual accounts; and

(b) lay a copy of the accounts and that report before Parliament.

(6) A copy of the accounts must be—

(a) laid before the Scottish Parliament by the Scottish Ministers,

(b) laid before the National Assembly for Wales by the Welsh Ministers, and

(c) laid before the Northern Ireland Assembly by the Department of Health, Social Services and Public Safety in Northern Ireland.

(7) In this paragraph and paragraph 14 "financial year" means a period of 12 months ending with 31 March.

Reports and other information

14 (1) The Authority must prepare a report on the exercise of its functions during each financial year.

(2) The report must—

(a) explain how the Authority has sought during the year to achieve its main objective under section 220(1) (to protect, promote and maintain the health, safety and well-being of the public) and its other general objectives under section 220(2),

(b) state how far, in its opinion, the Authority has, in carrying out its functions so far as relating to the regulatory bodies, achieved those objectives;

(c) state how far, in its opinion, each regulatory body has in carrying out its functions achieved its main objective under section 3(1) (to protect etc the health, safety and well-being of the public);

(d) state how far, in its opinion, each regulatory body has in carrying out its functions in relation to each health and social care profession it regulates achieved its general objectives under section 3(2) (to promote and maintain public confidence in that profession and proper professional standards and conduct for individuals registered in the professionals register for that profession).

(3) As soon as possible after the end of each financial year the Authority must lay a copy of its report for that year before—

(a) Parliament,

(b) the Scottish Parliament,

(c) the National Assembly for Wales,

(d) the Northern Ireland Assembly.

15 (1) The Authority must comply with any request from Parliament to prepare, and lay before it, other reports or to provide Parliament with other information.

(2) The Authority must also comply with any corresponding request by—

(a) the Scottish Parliament, in relation to matters which concern a subject for which any of the Scottish Ministers has general responsibility;

(b) the Northern Ireland Assembly, in relation to transferred matters concerning Northern Ireland ("transferred matters" having the meaning given by section 4(1) of the Northern Ireland Act 1998).

Application of seal and evidence

16 The application of the seal of the Authority must be authenticated by the signature of—

(a) any member of the Authority, or

(b) any other person who has been authorised by the Authority (whether generally or specifically) for that purpose.

17 A document purporting to be duly executed under the seal of the Authority or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Meetings of the Authority in Northern Ireland

18 (1) Sections 23 to 27 of the Local Government Act (Northern Ireland) 1972 (which provides for public access to meetings of a district council and for the publication of information concerning such meetings) apply, with the modifications set out below, to meetings of the Authority in Northern Ireland as they apply in relation to meetings of a district council.

(2) The modifications are—

(a) any reference to a district council is to be read as a reference to the Authority, and

(b) any reference to councillors or members of the council is to be read as a reference to members of the Authority.

Regulations: procedure

19 A statutory instrument containing regulations under paragraph 2 of this Schedule is subject to annulment in pursuance of an resolution of either House of Parliament.

SCHEDULE 9

Section 244

REGULATIONS UNDER SECTION 244

Matters generally within the scope of regulations

1 Regulations under section 244 (in this Schedule referred to as "regulations") may make provision, in relation to any one or more professions, relating to any of the following matters (among others)—

(a) the establishment or continuance in existence of a regulatory body;

(b) the functions of a regulatory body or its registrar or of any other public authority

(c) provisions as to keeping a register (or part of a register);

(d) education and training;

(e) privileges of registered persons;

(f) standards of conduct and performance;

(g) discipline and fitness to practise;

(h) investigation and enforcement by or on behalf of the regulatory body;

(i) appeals;

(j) default powers exercisable by a person other than the regulatory body.

2 Regulations may make provision, in relation to any one or more groups of social care workers in England, relating to any of the following matters (among others)—

(a) the establishment or continuance in existence of a body to regulate those workers;
(b) the functions of any regulatory body or any body established under paragraph (a);
(c) provision as to keeping a register (or part of a register) for those workers;
(d) education and training;
(e) privileges of registered persons;
(f) standards of conduct and performance;
(g) discipline and the removal or suspension of registration or the imposition of conditions on registration;
(h) investigation and enforcement;
(i) appeals;
(j) default powers exercisable other than by the body responsible for regulating those workers.

3 The provision that may be made by virtue of paragraph 1(f) or 2(f) includes provision for standards of conduct and performance of registered persons carrying out the functions of an approved mental health professional.

4 (1) References to "regulation" in section 244 and this Schedule include (among other things)—
(a) the regulation of persons seeking admission to practice or who were, but are no longer, allowed to practise;
(b) the regulation of activities carried on by persons who are not registered persons, but which are carried on in connection with the practice of a profession;
(c) the regulation of the qualifications or experience required of a medical practitioner to perform primary medical services under Part 4 of the National Health Service Act 2006 or Part 4 of the National Health Service (Wales) Act 2006;
(d) the regulation of the qualifications required for a dental practitioner to perform primary dental services under Part 5 of the National Health Service Act 2006 or Part 5 of the National Health Service (Wales) Act 2006.

(2) In this paragraph—
"dental practitioner" means a registered dentist or a person registered in the dental care professionals register;
"medical practitioner" means a registered medical practitioner who holds a licence to practice.

5 References to "regulation" in section 244 and this Schedule, in relation to social care workers in England, include (among other things)—
(a) the regulation of persons seeking to be registered or who were, but are no longer, allowed to be registered as social care workers in England;
(b) the regulation of activities carried on by persons who are not registered social care workers (or members of the social work profession in England) but which are carried on in connection with social care work in England.

Manner of exercise of power

6 (1) A power to make regulations may in particular be exercised in the ways set out in this paragraph.

(2) It may be exercised by amending or repealing (or revoking) any enactment or prerogative instrument and any other instrument or document (whenever passed or made).

(3) It may be exercised so as to make provision—

(a) for the delegation of functions (other than a function of making, confirming or approving subordinate legislation);

(b) conferring power to make, confirm or approve subordinate legislation.

(4) It may be exercised so as to—

(a) make provision for the charging of fees;

(b) confer functions (including power to pay grants) on, or modify the functions of, Ministers of the Crown, the Scottish Ministers, a Northern Ireland department or Welsh Ministers;

(c) confer powers to make rules on any regulatory body;

(d) create a summary criminal offence punishable with a fine (whether an unlimited fine or a fine not exceeding a specified level on the standard scale).

(5) In this paragraph "enactment" means an enactment contained in, or in an instrument made under—

(a) an Act of Parliament;

(b) an Act of the Scottish Parliament;

(c) an Act or Measure of the Welsh Assembly;

(d) Northern Ireland legislation.

Matters outside the scope of regulations

7 Regulations may not abolish any of the existing regulatory bodies.

8 Regulations may not confer any additional powers of direction over the Professional Standards Authority.

APPENDIX B
LIST OF RECOMMENDATIONS

PART 2: THE STRUCTURE OF REFORM

Recommendation 1: There should be a single statute which provides the framework for all the regulatory bodies and the Professional Standards Authority.

This recommendation can be found at paragraph 2.6 of the Report and is given effect by clause 1 and part 10 of the draft Bill.

Recommendation 2: The new legal framework should give the regulators greater operational autonomy, and impose greater consistency between the regulators in certain key areas where it is in the public interest to do so, such as fitness to practise adjudication.

This recommendation can be found at paragraph 2.12 of the Report.

Recommendation 3: The regulators should be given powers to make legal rules which are not subject to approval by Government or any Parliamentary procedure. The Professional Standards Authority should oversee the processes adopted by the regulators to make and amend rules.

This recommendation can be found at paragraph 2.24 of the Report and is given effect by clauses 23 and 24 of the draft Bill.

Recommendation 4: The draft Bill should not interfere with the legislative competence of the devolved assemblies.

This recommendation can be found at paragraph 2.33 of the Report.

Recommendation 5: The new legal framework should proceed on the basis of a Legislative Consent Motion in Northern Ireland and Scotland.

This recommendation can be found at paragraph 2.33 of the Report.

Recommendation 6: The Pharmaceutical Society of Northern Ireland should not be incorporated into the new legislative scheme unless its representational role is removed.

The Department of Health, Social Services and Public Safety for Northern Ireland and the UK Government should consider removing the representational role of the Pharmaceutical Society of Northern Ireland and incorporating the Society into the new scheme, or merging it with the General Pharmaceutical Council.

This recommendation can be found at paragraph 2.40 of the Report.

Recommendation 7: The order-making power under section 60 of the Health Act 1999 should not be capable of modifying the draft Bill. It should be retained only for the purposes of the Pharmaceutical Society of Northern Ireland and the Medicines Act 1968.

This recommendation can be found at paragraph 2.49 of the Report and is given effect by clauses 246 to 247 of the draft Bill.

Recommendation 8: The formal role of the Privy Council in relation to health and social care professionals regulation should be removed entirely.

This recommendation can be found at paragraph 2.56 of the Report.

Recommendation 9: The Government should be given regulation-making powers on matters currently within the scope of section 60 of the Health Act 1999 and direct Privy Council order-making powers. The procedure for such regulations would reflect existing arrangements under section 60, including a separate procedure in Scotland on devolved matters where appropriate.

This recommendation can be found at paragraph 2.70 of the Report and is given effect by clauses 244 to 245 of the draft Bill.

Recommendation 10: The Government should be given powers to notify and then give directions to a regulator, or the Professional Standards Authority, if it has failed or is likely to fail to perform any of its statutory functions. If the body fails to comply with any direction given, the Government should be able to give effect to the direction itself.

This recommendation can be found at paragraph 2.79 of the Report and is given effect by clauses 251 to 252 of the draft Bill.

Recommendation 11: Parliament should consider establishing a specialist Joint Select Committee on health and social care professionals regulation. Otherwise, the Health Committee should consider holding annual accountability hearings with the regulators, co-ordinated with the Professional Standards Authority's performance reviews. The Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly should also consider introducing similar arrangements.

This recommendation can be found at paragraph 2.86 of the Report.

Recommendation 12: The regulators' annual reports, strategic plans and accounts should be laid in the UK Parliament, Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly

This recommendation can be found at paragraph 2.86 of the Report and is given effect by clause 21 of the draft Bill.

PART 3: GENERAL OBJECTIVES

Recommendation 13: The main objective of each regulator and the Professional Standards Authority should be to protect, promote and maintain the health, safety and well-being of the public. The regulators and the Authority also have the following general objectives: to promote and maintain public confidence in the profession and to promote and maintain proper standards and conduct for individual registrants.

This recommendation can be found at paragraph 3.23 of the Report and is given effect by clauses 3 and 220 of the draft Bill.

PART 4: THE REGULATORY BODIES

Recommendation 14: The regulatory bodies should be required to ensure that, as far as possible, members concentrate on strategic or policy matters rather than operational delivery.

This recommendation can be found at paragraph 4.10 of the Report and is given effect by clause 10 of the draft Bill.

Recommendation 15: The regulatory bodies should have powers to delegate their functions, apart from making rules, to any staff members or internal bodies.

This recommendation can be found at paragraph 4.10 of the Report and is given effect by clause 11 of the draft Bill.

Recommendation 16: The Government should have a regulation-making power to make provision for the constitution of any regulatory body.

This recommendation can be found at paragraph 4.19 of the Report and is given effect by clause 5 of the draft Bill.

Recommendation 17: Registrant members should not form a majority on any regulatory body.

This recommendation can be found at paragraph 4.19 of the Report and is given effect by clause 6(2) of the draft Bill.

Recommendation 18: The Government should consider taking steps to ensure that members of the regulatory bodies cannot be removed from office on the basis of ill health alone.

This recommendation can be found at paragraph 4.19 of the Report.

Recommendation 19: The Government should have powers to appoint members of the regulatory bodies following a selection process run by the regulator concerned and confirmation by the Professional Standards Authority that the process adopted has been open, fair and transparent.

This recommendation can be found at paragraph 4.27 of the Report and is given effect by clause 8 of the draft Bill.

Recommendation 20: The Government should consider inviting the Health Committee to oversee the appointment of chairs of the regulatory bodies.

This recommendation can be found at paragraph 4.27 of the Report.

Recommendation 21: A registrant member of a regulatory body should be defined as someone who is or has been registered with any of the professionals regulators, including predecessor organisations, or is eligible to be registered. A lay member should mean a member who is not a registrant when appointed.

This recommendation can be found at paragraph 4.32 of the Report and is given effect by clauses 6(7) and 7 of the draft Bill.

Recommendation 22: Concurrent membership of the regulatory bodies should be prohibited.

This recommendation can be found at paragraph 4.35 of the Report and is given effect by clause 6(6) of the draft Bill.

Recommendation 23: The Government should be required to review the provisions constituting the regulatory bodies and determine whether they conform to the requirements of the draft Bill, and introduce regulations containing any necessary changes.

This recommendation can be found at paragraph 4.36 of the Report and is given effect by clause 6(8) of the draft Bill.

PART 5: REGISTERS AND REGISTRATION

Recommendation 24: Each regulator should be required to keep a register for each profession it regulates. The Government should have regulation-making powers to alter the structure of the registers.

This recommendation can be found at paragraph 5.14 of the Report and is given effect by clauses 30 and 31 of the draft Bill.

Recommendation 25: Each regulator should be required to appoint a registrar.

This recommendation can be found at paragraph 5.14 of the Report and is given effect by clause 36 of the draft Bill.

Recommendation 26: Separate parts of the General Medical Council's and Nursing and Midwifery Council's registers should be established for general practitioners and specialist medical practitioners, and for first and second level nurses.

This recommendation can be found at paragraph 5.14 of the Report and is given effect by schedule 2 to the draft Bill.

Recommendation 27: The Government should have regulation-making powers to enable the introduction of compulsory student registration for any regulated profession.

This recommendation can be found at paragraph 5.23 of the Report and is given effect by schedule 3, part 2 to the draft Bill.

Recommendation 28: The regulators' powers to keep voluntary registers should be removed. The Professional Standards Authority should retain its powers to set standards for and accredit voluntary registers kept by others.

This recommendation can be found at paragraph 5.32 of the Report and is given effect by clauses 35 and 223 to 225 of the draft Bill.

Recommendation 29: All registrants should intend to practise the profession in order to be registered.

This recommendation can be found at paragraph 5.44 of the Report and is given effect by clause 37(2)(c) of the draft Bill.

Recommendation 30: The Government should have regulation-making powers to require a regulator to keep a supplementary register of professionals who do not intend to practise.

This recommendation can be found at paragraph 5.44 of the Report and is given effect by schedule 2, part 3 to the draft Bill.

Recommendation 31: The Government should have regulation-making powers to establish barring schemes, to be run by the regulators. Such a scheme could be introduced in respect of a prescribed health or social care profession, a specified field of activity, a role involving supervision or management, and prescribed title.

This recommendation can be found at paragraph 5.54 of the Report and is given effect by part 7 of the draft Bill.

Recommendation 32: The regulators should be able to register professionals on a full, conditional (in fitness to practise cases) or temporary basis. The Government should have regulation-making powers to introduce other forms of registration (including provisional registration).

This recommendation can be found at paragraph 5.64 of the Report and is given effect by clauses 37, 41, 42, 43, 52 and 54(4) of the draft Bill.

Recommendation 33: The regulators should have powers to register practitioners on a temporary basis or annotate their registers if the Secretary of State advises that an emergency has occurred.

This recommendation can be found at paragraph 5.64 of the Report and is given effect by clauses 49 to 50 of the draft Bill.

Recommendation 34: In order to be registered an applicant must be appropriately qualified, be fit to practise, have adequate indemnity or insurance arrangements (except social workers) and pay any prescribed fee. The regulators would have rule-making powers to specify the precise detail under each of these headings.

This recommendation can be found at paragraph 5.85 of the Report and is given effect by clauses 37 to 40 of the draft Bill.

Recommendation 35: The Government should have regulation-making powers to make provision for the treatment of exempt applicants (under the EU Qualifications Directive) for registration in a professionals register in relation to proficiency in English.

This recommendation can be found at paragraph 5.85 of the Report and is given effect by clause 46 of the draft Bill.

Recommendation 36: Each registrar should be required to deal expeditiously with applications for registration or renewal.

This recommendation can be found at paragraph 5.89 of the Report and is given effect by clause 47(2) of the draft Bill.

Recommendation 37: The regulators should be required to publish their registers and powers to keep their registers up to date. There should be a duty to remove practitioners who have died, remove entries where the person is no longer entitled to be registered and restore entries in certain cases.

This recommendation can be found at paragraph 5.98 of the Report and is given effect by clauses 61, 69 to 72, and 90 to 93 of the draft Bill.

Recommendation 38: Where a regulator has reasonable grounds for believing that an entry in the register has been fraudulently procured or incorrectly made, it may remove that entry. A right of appeal should lie to a registration appeals panel and to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

This recommendation can be found at paragraph 5.98 of the Report and is given effect by clause 63 of the draft Bill.

Recommendation 39: Each entry in the public register must contain the registrant's name, reference number, registration status, date of registration and primary qualification, and (where appropriate) the part of the register in which the person has been entered.

This recommendation can be found at paragraph 5.112 of the Report and is given effect by clause 53(1) of the draft Bill.

Recommendation 40: The regulators should have powers to include additional qualifications or specialisms in the public register but only if there is a risk to the public if the register is not so annotated and such annotation is a proportionate and cost-effective response to the risks posed.

This recommendation can be found at paragraph 5.112 of the Report and is given effect by clauses 53(6) and 53(7) of the draft Bill.

Recommendation 41: Public registers should indicate all current sanctions imposed on a registrant, cases where impairment has been found but no sanctions imposed, current interim orders and consensual disposals. The public registers should include details of all previous sanctions (except warnings which are over five years old).

This recommendation can be found at paragraph 5.112 of the Report and is given effect by clauses 53 to 59 of the draft Bill.

Recommendation 42: The regulators should be required to maintain lists of persons whose entry has been removed following a finding of impairment or voluntary removal.

This recommendation can be found at paragraph 5.112 of the Report and is given effect by clause 93 of the draft Bill.

Recommendation 43: The regulators should be required to publish all fitness to practise decisions.

This recommendation can be found at paragraph 5.112 of the Report and is given effect by clause 193 of the draft Bill.

Recommendation 44: The regulators should be required to establish registration appeals panels and provide a further right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

This recommendation can be found at paragraph 5.120 of the Report and is given effect by clauses 73 to 89 of the draft Bill.

Recommendation 45: All applications for restoration to the register in cases where a registrant's entry has been removed following a finding of impairment must be considered by a fitness to practise panel. In other cases, regulators should be required to establish in rules a process for considering applications for restoration.

This recommendation can be found at paragraph 5.129 of the Report and is given effect by clauses 69 to 72 of the draft Bill.

PART 6: EDUCATION, CONDUCT AND PRACTICE

Recommendation 46: The regulators should be required to set the standards for education, training and experience, and have broad powers to approve matters such as institutions, examinations, tests, courses, programmes, environments, posts and individuals.

This recommendation can be found at paragraph 6.15 of the Report and is given effect by clauses 105 to 109 of the draft Bill.

Recommendation 47: The regulators should have powers to refuse, withdraw or suspend approval of education providers, attach conditions to any approvals and issue warnings.

This recommendation can be found at paragraph 6.15 of the Report and is given effect by clauses 112 to 114 of the draft Bill.

Recommendation 48: The regulators should be given a power to appoint one or more persons to inspect an education of training provider and report on any relevant matter. There should be a general power for the regulators to require information from the education or training provider.

This recommendation can be found at paragraph 6.15 of the Report and is given effect by clauses 110 to 111 of the draft Bill.

Recommendation 49: The regulators should be required to publish a list of approved institutions, examinations, tests, courses, programmes, environments, posts and individuals. The regulators should also be required to publish a list of approvals that have expired or been withdrawn.

This recommendation can be found at paragraph 6.25 of the Report and is given effect by clause 115 of the draft Bill.

Recommendation 50: The regulators should have powers to require information from an education or training provider about student fitness to practise sanctions.

This recommendation can be found at paragraph 6.25 of the Report and is given effect by clause 111 of the draft Bill.

Recommendation 51: The regulators should have powers to approve national assessments of students.

This recommendation can be found at paragraph 6.25 of the Report and is given effect by clause 116 of the draft Bill.

Recommendation 52: The regulators should be required to set the standards for the profession(s) they regulate. Where a registrant fails to comply with the standards, that failure may be taken into account in fitness to practise proceedings. The regulators would have powers to give guidance on these standards as they see fit.

This recommendation can be found at paragraph 6.43 of the Report and is given effect by clause 105 of the draft Bill.

Recommendation 53: The regulators should be required to set standards of continuing professional development, and should have the power to make rules setting out the circumstances in which registrants will be regarded as having failed to comply and the consequences.

This recommendation can be found at paragraph 6.51 of the Report and is given effect by clause 107 of the draft Bill.

Recommendation 54: The Government should have regulation-making powers to introduce or authorise systems of revalidation for any of the regulated professions.

This recommendation can be found at paragraph 6.51 of the Report and is given effect by part 4 of the draft Bill.

PART 7: IMPAIRED FITNESS TO PRACTISE

Recommendation 55: A person's fitness to practise a regulated profession should be regarded as impaired by reason only of:

(1) deficient professional performance;

(2) disgraceful misconduct;

(3) the inclusion of the person in a barred list;

(4) a determination by a relevant body to the effect that the person's fitness to practise is impaired;

(5) adverse physical or mental health;

(6) insufficient knowledge of the English language;

(7) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;

(8) the person having accepted or been dismissed with an admonition under section 302 of the Criminal Procedure (Scotland) Act 1995, been discharged under section 246(2) or (3) of the Act, accepted a conditional offer under section 302 of that Act, or accepted a compensation offer under section 302A of that Act;

(9) the person having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992; or

(10) the person having been bound over to keep the peace by a magistrate's court in England or Wales.

This recommendation can be found at paragraph 7.22 of the Report and is given effect by clause 120 of the draft Bill.

PART 8: FITNESS TO PRACTISE INVESTIGATIONS

Recommendation 56: A regulator should have the power to initiate fitness to practise proceedings where an allegation suggesting impaired fitness to practise is made to the regulator or the regulator otherwise has reason to believe that a registrant's fitness to practise is impaired. There should be no set format for allegations.

This recommendation can be found at paragraph 8.10 of the Report and is given effect by clause 121 of the draft Bill.

Recommendation 57: The regulators should be required to refer allegations for preliminary consideration in accordance with rules. The rules may make provision about the procedure for preliminary consideration. Members of regulatory bodies and fitness to practise panels should be prohibited from this task.

This recommendation can be found at paragraph 8.14 of the Report and is given effect by clauses 121 to 122 of the draft Bill.

Recommendation 58: An allegation should not proceed if it is received more than five years since the most recent events giving rise to the allegation, except where the allegation relates to certain convictions, determinations by other regulatory bodies, inclusion on a barred list or where the regulator considers that it is in the public interest for the case to proceed.

This recommendation can be found at paragraph 8.30 of the Report and is given effect by clauses 123(1)(a) and 123(4) of the draft Bill.

Recommendation 59: The regulators should not be able to refer for investigation any case that does not amount to an allegation, is vexatious, has been made anonymously and cannot be otherwise verified, and where the complainant refuses to participate and the allegation cannot be verified.

This recommendation can be found at paragraph 8.30 of the Report and is given effect by clauses 123(1)(b) and 123(1)(c) of the draft Bill.

Recommendation 60: The regulators should be required to refer allegations concerning convictions resulting in custodial sentences directly to a fitness to practise panel and have powers to specify in rules any other categories of cases that must be referred directly.

This recommendation can be found at paragraph 8.30 of the Report and is given effect by clause 124 of the draft Bill.

Recommendation 61: Following a decision to proceed with an investigation or make a direct referral to a fitness to practise panel, the regulators should be required to notify the registrant, the complainant, the UK Government and devolved administrations, and any employer. The regulators should have powers to notify any other person where it is in the public interest to do so. The regulators would be required to make rules about notification requirements.

This recommendation can be found at paragraph 8.30 of the Report and is given effect by clause 126 of the draft Bill.

Recommendation 62: The regulators should be required to notify the registrant and the complainant once a decision has been made to close a case following initial consideration, except where this is not in the public interest.

This recommendation can be found at paragraph 8.30 of the Report and is given effect by clause 125 of the draft Bill.

Recommendation 63: A regulator must remove automatically any registrant who has been convicted of murder, trafficking people for exploitation, blackmail (where a custodial sentence is imposed), rape and sexual assault (where a custodial sentence is imposed), and certain offences against children. There should be a right to make representations to the regulator and a right to appeal to the higher courts on the factual basis of an error in law or finding of fact.

This recommendation can be found at paragraph 8.30 of the Report and is given effect by clauses 66, 67 of and schedule 4 to the draft Bill.

Recommendation 64: The regulators should be required to make rules specifying their investigation process. The regulators would have discretion over the content of the rules, except that members of the regulatory body and fitness to practise panellists would be prohibited from the task of investigation.

This recommendation can be found at paragraph 8.46 of the Report and is given effect by clause 128 of the draft Bill.

Recommendation 65: The regulators should be given a power to require the disclosure of relevant information by any person (including the registrant) in fitness to practise proceedings. However, a person cannot be required to supply any information or documents which are prohibited by or under any enactment. The regulators should have powers to seek an order for disclosure from the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.

This recommendation can be found at paragraph 8.46 of the Report and is given effect by clause 192 of the draft Bill.

Recommendation 66: The regulators must refer a case to a fitness to practise panel if there is a realistic prospect that the panel will find that the professional's fitness to practise is impaired and it is in the public interest to refer to a panel.

This recommendation can be found at paragraph 8.54 of the Report and is given effect by clause 129(2) of the draft Bill.

Recommendation 67: Following the conclusion of an investigation and where the case is not being referred to a fitness to practise panel, the regulators should have powers to:

(1) take no further action;

(2) give advice on any matter related to the allegation to the registrant and to any other person or body involved in the investigation, in respect of any matter related to the investigation;

(3) give a warning to the registrant regarding their future conduct or performance;

(4) agree with the registrant that they will comply with such undertakings as the regulator considers appropriate; or

(5) grant a registrant's application for voluntary removal.

The Government's regulation-making powers should include the ability to add new powers and remove any powers from this list.

This recommendation can be found at paragraph 8.69 of the Report and is given effect by clause 129(3) of the draft Bill.

Recommendation 68: The Professional Standards Authority's power to refer fitness to practise decisions to the higher courts should be extended to include consensual disposals.

This recommendation can be found at paragraph 8.69 of the Report and is given effect by clauses 167(6) and 167(7) of the draft Bill.

Recommendation 69: The Government's regulation-making powers should include the power to introduce mediation for one or more of the regulators.

This recommendation can be found at paragraph 8.73 of the Report and is given effect by clause 133 of the draft Bill.

Recommendation 70: The regulators should have powers to review decisions:

(1) not to refer an allegation for an investigation following initial consideration;

(2) not to refer a case to a fitness to practise panel and to take no further action; and

(3) to dispose of a case following investigation by giving advice, issuing a warning, agreeing undertakings, granting voluntary removal, or referring to mediation where applicable.

A regulator should have a power to undertake a review on its own initiative or on the application of the registrant, the maker of the allegation, the Professional Standards Authority or any other person who, in the opinion of the regulator, has an interest in the decision.

A review must take place if the regulator considers that the decision may be materially flawed or that there is new information which may have led to a different decision. A review cannot take place if more than two years have elapsed since the decision was made, unless a review is necessary in the public interest.

The regulator may, as a result of the review, substitute a new decision, refer the allegation for reconsideration or decide that the original decision should stand.

This recommendation can be found at paragraph 8.84 of the Report and is given effect by clause 134 of the draft Bill.

Recommendation 71: A regulator should have the power to cancel a referral to a fitness to practise or an interim orders panel, if it no longer considers that there is a realistic prospect of a finding of impairment or it considers that it is no longer appropriate for the registered professional to be subject to fitness to practise proceedings.

This recommendation can be found at paragraph 8.84 of the Report and is given effect by clause 135 of the draft Bill.

PART 9: FITNESS TO PRACTISE PANELS AND ADJUDICATION

Recommendation 72: The Professional Standards Authority should be required to oversee the regulators' progress towards introducing greater separation between investigation and adjudication, and provide best practice advice.

This recommendation can be found at paragraph 9.18 of the Report and is given effect by clause 168(4) of the draft Bill.

Recommendation 73: The Government should have regulation-making powers to introduce a separate adjudication system for any of the regulators, based on the Medical Practitioners Tribunal Service.

This recommendation can be found at paragraph 9.18 of the Report and is given effect by clause 168(4) of the draft Bill.

Recommendation 74: All fitness to practise hearings should be conducted by a panel of at least three members (including at least one lay member). Members of the regulatory bodies (including those from other regulators), members of the Professional Standards Authority's board, and investigators should be prohibited from membership of fitness to practise panels. The regulators would have rule-making powers on other aspects of panels, such as the appointment of advisers and legal chairs.

This recommendation can be found at paragraph 9.39 of the Report and is given effect by clauses 137 to 138 of the draft Bill.

Recommendation 75: The regulators should be required to establish a body responsible for appointments, appraisal and continued professional development of fitness to practise and interim order panellists. The Professional Standards Authority should produce good practice guidance and set standards for the appointments processes used by the regulators.

This recommendation can be found at paragraph 9.39 of the Report and is given effect by clauses 28 and 139 of the draft Bill.

Recommendation 76: The regulators should have powers to make rules about the circumstances in which hearings are not required, and the decisions can be made on the papers. Such decisions could only be made where both parties consent and the decision-maker agrees that it is not necessary to hold a hearing.

This recommendation can be found at paragraph 9.39 of the Report and is given effect by clauses 81, 171 and 182 of the draft Bill.

Recommendation 77: The regulators should have powers to establish rules for pre-hearing case management.

This recommendation can be found at paragraph 9.45 of the Report and is given effect by clauses 82, 172, 183 of the draft Bill.

Recommendation 78: Case managers should be required to act independently of the parties and given powers to give directions to secure the just, expeditious and effective running of proceedings before fitness to practise panels. Rules may provide that a panel can draw appropriate inferences from the failure by a party to comply with directions issued by a case manager.

This recommendation can be found at paragraph 9.45 of the Report and is given effect by clauses 82(3), 172(3) and 183(3) of the draft Bill.

Recommendation 79: The regulators must comply with an interested party's request that a fitness to practise hearing takes place in the UK country in which the registrant resides or where the incident took place, unless the regulatory body considers that there are reasons that justify refusing the request.

This recommendation can be found at paragraph 9.51 of the Report and is given effect by clauses 84, 174, 185 of the draft Bill.

Recommendation 80: Fitness to practise panels should not admit evidence that would not be admissible in civil proceedings in the UK country where the hearing takes place, unless such evidence is relevant and it is fair to admit it.

This recommendation can be found at paragraph 9.57 of the Report and is given effect by clauses 83(2), 173(2) and 184(1) of the draft Bill.

Recommendation 81: The civil standard of proof should apply to all fitness to practise hearings.

This recommendation can be found at paragraph 9.62 of the Report and is given effect by clauses 83(1) and 173(1) of the draft Bill.

Recommendation 82: Fitness to practise hearings should be held in public, unless the particular circumstances of the case outweigh the public interest in holding the hearing in public. Interim order hearings and cases where the health of the registrant is under consideration should be held in private unless a registrant requests a public hearing, and where the panel considers that it is not against the public interest for the hearing to be held in public.

This recommendation can be found at paragraph 9.69 of the Report and is given effect by clauses 85, 175, 186 of the draft Bill.

Recommendation 83: Any person giving evidence before a fitness to practise panel (including the practitioner) should be entitled to special measures, if:

(1) the person is under 18 (unless the person opts out and this would not diminish the quality of their evidence);

(2) the quality of evidence given by the person is likely to be diminished as a result of physical disability, learning disability, mental health problems, an illness or health condition, or a dependency on drugs or alcohol, or fear or distress in connection with testifying; or

(3) the proceedings relate to matters of a sexual nature and the person is an alleged victim.

In deciding whether or not the quality of evidence is likely to be diminished, the panel must take into account the views of the person concerned.

Panels should have powers to offer special measures to a person not entitled to them if this is in the public interest.

This recommendation can be found at paragraph 9.80 of the Report and is given effect by clauses 177 and 188 of the draft Bill.

Recommendation 84: The registrant should not be permitted to personally cross-examine the alleged victim in person in a case involving allegations of a sexual nature. There should be provision for a representative to be appointed for this purpose. The only exception should be if the witness gives written consent and the allegation does not amount to a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999.

This recommendation can be found at paragraph 9.80 of the Report and is given effect by clauses 177(12) to (14) and 188(12) to (14) of the draft Bill.

Recommendation 85: Fitness to practise panels should have the general objective of dealing with cases fairly and justly (and meet the objectives set out in clause 3 of the draft Bill). The parties should be required to co-operate with the panel, and panels would be entitled to draw inferences where parties failed to comply with this duty.

This recommendation can be found at paragraph 9.89 of the Report and is given effect by clauses 80, 170 and 181 of the draft Bill.

Recommendation 86: Consistency should be imposed on certain matters concerning due process and the powers of fitness to practise panels (such as the right to representation, witness summons and powers to join cases).

This recommendation can be found at paragraph 9.93 of the Report and is given effect by clauses 86, 88, 176, 178, 187 and 189 of the draft Bill.

Recommendation 87: The regulators should be required to make rules on the procedures to be followed in fitness to practise hearings.

This recommendation can be found at paragraph 9.93 of the Report and is given effect by clauses 89, 179 and 190 of the draft Bill.

Recommendation 88: The Government should be given a power to give guidance about the content of fitness to practise hearings rules, including in the form of model rules.

This recommendation can be found at paragraph 9.93 of the Report and is given effect by clauses 89(2), 179(2) and 190(2) of the draft Bill.

Recommendation 89: All fitness to practise panels should have the same powers to impose sanctions or otherwise dispose of cases. The sanctions would be advice, warnings, conditions, suspension and removal from the register. All panels would be able to agree undertakings and voluntary removal, and issue immediate orders pending the outcome of any appeal to the higher courts. The Government would have regulation-making powers to amend the powers available to panels.

This recommendation can be found at paragraph 9.119 of the Report and is given effect by clauses 143 to 150 of the draft Bill.

Recommendation 90: The regulators should have powers to publish guidance for fitness to practise and interim order panels. The panels would be required to have regard to such guidance.

This recommendation can be found at paragraph 9.119 of the Report and is given effect by clause 194 of the draft Bill.

Recommendation 91: Fitness to practise panels should be required to review conditions, suspensions and undertakings as directed in the original order or agreement, or if new evidence comes to light that a hearing is desirable. The options available to a panel should be to confirm the order, extend or reduce the period of the order, revoke or vary any conditions or impose any other sanction or consensual disposal. In the case of undertakings, the panel should have the ability to change the agreement with the registrant in the same way.

This recommendation can be found at paragraph 9.130 of the Report and is given effect by clauses 157 to 163 of the draft Bill.

Recommendation 92: Fitness to practise panels must review an indefinite suspension order (health only cases) where the person concerned so requests, and at least 24 months have elapsed since the previous review. The options available to a panel would be to confirm the order, terminate the order or impose any other sanction (except removal) or consensual disposal.

This recommendation can be found at paragraph 9.130 of the Report and is given effect by clause 162 of the draft Bill.

Recommendation 93: Practitioners should continue to have a right of appeal against certain decisions of a fitness to practise panel to the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.

This recommendation can be found at paragraph 9.134 of the Report and is given effect by clause 166 of the draft Bill.

PART 10: JOINT WORKING

Recommendation 94: Any two or more regulators should be able to arrange for any of their respective functions to be exercised jointly. The Professional Standards Authority should be given a general functions to promote co-operation between the regulators.

This recommendation can be found at paragraph 10.14 of the Report and is given effect by clause 12 of the draft Bill.

Recommendation 95: Each regulator should be given an express power to delegate any of its functions (except the power to make rules) to another regulator or any other person. This would not affect any liability or responsibility of the regulator for the exercise of its functions.

This recommendation can be found at paragraph 10.14 of the Report and is given effect by clause 11 of the draft Bill.

Recommendation 96: The regulators should be required to co-operate with each other, the Professional Standards Authority and specified “relevant authorities”. A similar duty should be placed on the Professional Standards Authority.

This recommendation can be found at paragraph 10.23 of the Report and is given effect by clauses 13, 15, 235 and 237 of the draft Bill.

Recommendation 97: When a regulator requests the co-operation of a relevant authority (or when such an authority makes a similar request of the regulator), the requested party must comply with the request unless doing do would be incompatible with its own duties or would otherwise have an adverse effect on the exercise of its functions. A person who decides not to comply must give written reasons.

A similar power should be given to the Professional Standards Authority.

This recommendation can be found at paragraph 10.23 of the Report and is given effect by clause 14, 15, 236 and 237 of the draft Bill.

PART 11: PREMISES AND BUSINESS REGULATION

Recommendation 98: The draft Bill should retain the premises regulation provisions of the Pharmacy Order 2010 (with some minor amendments).

This recommendation can be found at paragraph 11.17 of the Report and is given effect by schedule 7 to the draft Bill.

Recommendation 99: The Government's regulation-making powers should include the ability to introduce a new system of business regulation, including business registration, for the General Optical Council and General Dental Council.

This recommendation can be found at paragraph 11.25 of the Report and is given effect by clause 33 of the draft Bill.

Recommendation 100: The regulators should have a power to finance an independent consumer complaints service. The approval of the Professional Standards Authority should be required in order to exercise this power.

This recommendation can be found at paragraph 11.30 of the Report and is given effect by clause 27 of the draft Bill.

Recommendation 101: The Government's regulation-making powers should include the ability to introduce new systems of business and premises regulation for any regulator.

This recommendation can be found at paragraph 11.33 of the Report and is given effect by clauses 33 and 34 of the draft Bill.

PART 12: THE PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE

Recommendation 102: The Professional Standards Authority's general functions should be extended to include promoting economic efficiency and cost effectiveness by the regulators.

This recommendation can be found at paragraph 12.17 of the Report and is given effect by clauses 21 and 222 of the draft Bill.

Recommendation 103: The draft Bill should consolidate and implement the Professional Standards Authority's power to direct a regulator to make rules to achieve an effect specified in the direction.

This recommendation can be found at paragraph 12.17 of the Report and is given effect by clause 238 of the draft Bill.

Recommendation 104: The Professional Standards Authority should be required to provide advice or undertake an investigation on any matters relevant to its functions when requested to by the Government and devolved administrations. When undertaking an investigation the Authority should have a power to require information.

This recommendation can be found at paragraph 12.17 of the Report and is given effect by clauses 227 to 230 of the draft Bill.

Recommendation 105: The Government regulation-making powers should include the ability to extend the remit of the Professional Standards Authority to include giving advice on social care matters to the devolved administrations and overseeing the Care Councils in Scotland, Wales and Northern Ireland. This would be subject to the approval of the relevant devolved administrations.

This recommendation can be found at paragraph 12.17 of the Report and is given effect by clause 229 of the draft Bill.

Recommendation 106: The Government must ensure that sufficient resources are available to fund Professional Standards Authority's new role.

This recommendation can be found at paragraph 12.17 of the Report.

Recommendation 107: The Government should have powers to make appointments to the Professional Standards Authority's board. The administration of appointments would be undertaken by the Professional Standards Authority in accordance with its guidelines and standards.

This recommendation can be found at paragraph 12.21 of the Report and is given effect by clauses 233 of and schedule 8(2) to the draft Bill.

Recommendation 108: The Government should have the power to make regulations to enable the Professional Standards Authority to investigate complaints about the ways in which a regulator has exercised its functions.

This recommendation can be found at paragraph 12.25 of the Report and is given effect by clause 234 of the draft Bill.

Recommendation 109: The Professional Standards Authority should have a power to refer to the higher courts certain fitness to practise decisions which fail to achieve sufficient protection of the public. This power should be exercised alongside a regulator's power to refer cases (in cases when the regulator has been granted such a right by virtue of establishing a sufficiently independent adjudication procedure). The Authority would be able to refer the case if the regulator decides not to.

This recommendation can be found at paragraph 12.33 of the Report and is given effect by clause 167 of the draft Bill.

PART 13: OTHER ISSUES

Recommendation 110: The regulators should be required to carry out a public consultation before they make or issue rules, standards or guidance.

This recommendation can be found at paragraph 13.7 of the Report and is given effect by clause 249 of the draft Bill.

Recommendation 111: A regulator may dispense with the duty to consult in a particular case if it considers that it would be inappropriate or disproportionate to consult, and approval has been given by the Professional Standards Authority.

This recommendation can be found at paragraph 13.7 of the Report and is given effect by clause 249(6) of the draft Bill.

Recommendation 112: The regulators should have a power to do anything which is calculated to facilitate, or which is conductive or incidental to, the exercise of their functions.

This recommendation can be found at paragraph 13.10 of the Report and is given effect by clause 9 of the draft Bill.

Recommendation 113: The status of the regulators as bodies corporate should be continued in the new legal framework.

This recommendation can be found at paragraph 13.13 of the Report.

Recommendation 114: The regulators should be able to apply to become registered with the Charity Commission, the Office of the Scottish Charity Regulator and the Charity Commission for Northern Ireland.

This recommendation can be found at paragraph 13.13 of the Report.

Recommendation 115: The regulators should not be required to establish formal committees.

This recommendation can be found at paragraph 13.17 of the Report.

Recommendation 116: The protected titles and functions, and relevant offences, should be set out on the face of the draft Bill. The Government's regulation-making powers should include the ability to amend or remove any of these titles and functions.

This recommendation can be found at paragraph 13.27 of the Report and is given effect by clauses 210 to 212 of and schedule 5 and 6 to of the draft Bill.

Recommendation 117: The Government should consider undertaking a full review of the existing protected titles and functions, and relevant offences.

This recommendation can be found at paragraph 13.27 of the Report.

Recommendation 118: The regulators should continue to have the ability to bring prosecutions (except in Scotland) and would be required to set out their policy on bringing prosecutions in a publicly available document.

This recommendation can be found at paragraph 13.27 of the Report and is given effect by clause 22 of the draft Bill.

Recommendation 119: Interim orders should be made or reviewed by an interim orders or fitness to practise panel. Interim orders panels must consist of at least three members (including at least one lay member). Panellists should be appointed by the same body or person that is responsible for fitness to practise panel appointments. Members of an interim order panel will be prohibited from sitting on a fitness to practise panel in relation to the same case.

This recommendation can be found at paragraph 13.49 of the Report and is given effect by clauses 140 to 141 and 151 of the draft Bill.

Recommendation 120: The test for an interim order should be that it is necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registrant.

This recommendation can be found at paragraph 13.49 of the Report and is given effect by clause 152(5) of the draft Bill.

Recommendation 121: Interim orders should be imposed for up to 18 months and must be reviewed every six months (or sooner if the person makes a request in the first three months or if new evidence becomes available which justifies an earlier hearing).

This recommendation can be found at paragraph 13.49 of the Report and is given effect by clauses 152(6) and 154 of the draft Bill.

Recommendation 122: Applications to extend orders should continue to be decided by the higher courts.

This recommendation can be found at paragraph # of the Report and is given effect by clause 156 of the draft Bill.

Recommendation 123: Registrants should have a right of appeal against decisions of interim orders panels.

This recommendation can be found at paragraph 13.49 of the Report and is given effect by clause 153 of the draft Bill.

Recommendation 124: The UK Government and the governments in the Channel Islands and the Isle of Man should consider reviewing whether the new legal framework should be extended to the British Islands as a whole.

This recommendation can be found at paragraph 13.49 of the Report.

Recommendation 125: The Government should be given regulation-making powers to make provision for the general supervision of midwives by the Nursing and Midwifery Council, and determine the functions and powers of local supervising authorities.

This recommendation can be found at paragraph 13.60 of the Report and is given effect by clauses 213 to 214 of the draft Bill.

ISBN 978-1-4741-0183-7