

# A new approach to performance reviews

## REPORT ON OUR CONSULTATION



February 2022

## About the Professional Standards Authority for Health and Social Care

The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament. We oversee the work of 10 statutory bodies that regulate health professionals in the UK and social workers in England.

We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise. We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards. To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation.

We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce. Our organisational values are: integrity, transparency, respect, fairness and teamwork. We strive to ensure that our values are at the core of our work. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

# Report on our consultation

## A new approach to performance reviews

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## Executive summary

### The performance review process

The Authority has a duty to report to Parliament each year about how well the regulators we oversee are protecting the public.<sup>1</sup> We fulfil this duty by assessing the performance of these regulators against our *Standards of Good Regulation*. These Standards set out the outcomes we expect regulators to achieve. We call our assessments 'performance reviews' and conduct them on a rolling 12-month cycle for each regulator.

We have been running our current process of performance reviews since 2016, although we updated our *Standards of Good Regulation* at the end of 2019. In the last five years, and reflecting on feedback from stakeholders, we have identified a number of areas which we think could be improved. We decided that it was time to look again at our approach to performance review to ensure that our process remains appropriate in the light of the new Standards and continues to be proportionate and effective. We have, therefore, been consulting stakeholders to seek their views on the system and our proposals for change.

### The consultation and responses

This was our second consultation on this work, and it ran from 26 October 2021 to 21 December 2021. We held an [earlier consultation](#) on our broad approach to performance reviews, which helped develop our thinking and informed these proposals.

In this consultation, we sought feedback on three key areas:

- ▶ Moving from an annual process to one where we look in detail periodically, with ongoing monitoring in between to maintain our oversight
- ▶ Our proposals for setting this period as a three-year cycle
- ▶ The factors we will consider when determining whether we need to look in more depth at a regulator's performance.

We asked 12 questions and received 20 responses, including from regulators we oversee, government health organisations, professional bodies and unions, an education institution, a law firm and members of the public.

We expect that these proposals will enable us to more effectively use a risk-based approach to performance review.

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<sup>1</sup> Paragraph 16 (1A)(b) of the NHS Reform and Health Care Professions Act 2002, as amended states that the Authority must prepare a report on the exercise of its functions each financial year which states 'how far, in the opinion of the Authority, each regulatory body has complied with any duty imposed on it to promote the health, safety and well-being of [users of health care, users of social care in England, users of social work services in England and other members of the public]'.

## Next steps

Responses to the consultation broadly supported our proposals overall. A small number disagreed with some of our proposals or provided mixed responses and suggested additional considerations. All responses provided valuable feedback which we will take into account in implementing the new process.

We will therefore implement the proposed new performance review approach.

In the new process, we will undertake a 'periodic review' of each regulator every three years. This will be our opportunity to look closely at all aspects of the regulator's work. Between these reviews, we will monitor their performance, particularly in the light of issues we identify in the periodic reviews, and may, if necessary, undertake further work or bring forward a periodic review. In both periodic and monitoring review years, we will undertake our reviews in the course of the year rather than waiting until the end of it. This will enable us to reach decisions and publish reports sooner than we currently do.

We will introduce the new process for the 2021/22 round of performance reviews. We have considered the order in which we review regulators and have engaged with the regulators to decide the order of reviews for the first cycle. We plan to publish our first report under the new process in early summer 2022.

In our report following our first consultation, we committed to making the following changes:

- ▶ Amend our processes so that we do more work in year and engage more regularly with regulators, with the aim of publishing our reports within three months of the end of the period on which we are reporting
- ▶ Engage with a broader range of stakeholders
- ▶ Make our reports clearer, more concise and more helpful in promoting improvements in regulation
- ▶ Develop our understanding of risk including profession-specific risks and use this to inform the scope of our reviews.

We have already started work to implement these commitments.

## Who responded?

We launched our consultation on 26 October 2021 and it ran until 21 December 2021. We asked 12 questions and received 20 responses to the consultation, including from regulators we oversee, government health organisations, members of the public, registrants, professional bodies/trade unions, an education institution and a law firm. The breakdown of the responses is as follows:

- ▶ Regulators – nine responses
- ▶ Professional bodies/trade unions – five responses
- ▶ Two government health organisations
- ▶ Two individuals

- ▶ One education institution
- ▶ One law firm.

During the consultation period, we held a roundtable for stakeholders which was attended by professional bodies and government health organisations. While not all attendees submitted formal responses to the consultation, key points from discussions fed into the overall consultation analysis.

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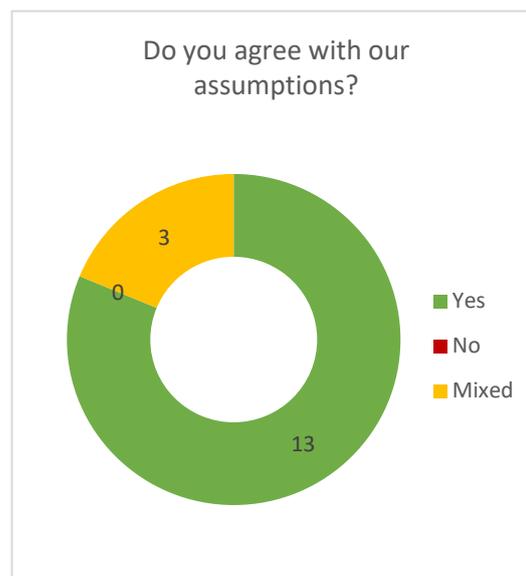
## What respondents told us

### 1. Assumptions used to develop the proposed approach [Question 1: Do you agree with our assumptions?]

#### Consultation responses

- 1.1 Within the consultation document, we summarised a number of assumptions we have been working to when developing our proposed approach to performance reviews. These were:
- We will continue to focus on public protection while making our performance reviews more proportionate
  - Our performance reviews are designed to give sufficient, rather than total, assurance about a regulator
  - We accept a certain level of risk in our oversight. Reducing the frequency of our reviews increases the risk of our knowledge of a regulator decreasing. This risk will be offset by a monitoring process between reviews, along with improving our evidence base, for example through greater stakeholder engagement
  - Periodic and monitoring reviews are inextricably linked – the more we know from one, the less we should need to gather in the other
  - The overall cycle of reviews should be less burdensome on regulators than the current equivalent. Our risk-based approach may mean that some regulators receive greater attention than others. We should be able to free up capacity towards wider work to improve regulation.
- 1.2 Most respondents agreed with the assumptions, with many providing additional comments in relation to these. No respondents disagreed, but some suggested additional assumptions or advised caution around those provided.
- 1.3 Respondents were clear in their support for a more proportionate process that retains its focus on public protection. Some respondents stressed that public protection should always take priority over any perceived burden on the regulator.

1.4 Some respondents argued that we should not duplicate the oversight provided by regulators' Councils and Boards. Some welcomed the recognition that performance reviews provide sufficient rather than total assurance. One respondent asked the extent to which this is dependent upon regulators having their own assurance processes, which are likely to vary. Some respondents also sought clarity on how the assumptions will translate into practice.



### Our response

1.5 We are clear that we will maintain our focus on public protection while doing everything we can to ensure our processes are proportionate. Our processes will continue to aim to give sufficient rather than total assurance.

1.6 Our processes are not designed to duplicate the oversight of regulators' Councils or Boards. We can gain assurance from regulators having their own robust assurance processes. For example, where regulators' internal audit reports are made available to us, this may provide sufficient assurance to us about a particular area so that we do not need to undertake further work ourselves. We will, however, reserve the right to undertake our own audits in these areas.

1.7 We will continue to use these assumptions as the principles we will work to when developing and introducing our detailed processes.

## 2. **Outlining our proposed approach to periodic reviews [Question 2: Do you agree with our proposed approach to periodic reviews? Are there areas that should be looked at as part of every periodic review?]**

### Consultation responses

2.1 We outlined how we plan to approach periodic reviews in our new performance review process within the consultation document. We set out the information we will gather through this process and provided an example timeline of when we will do so in a 12-month period.

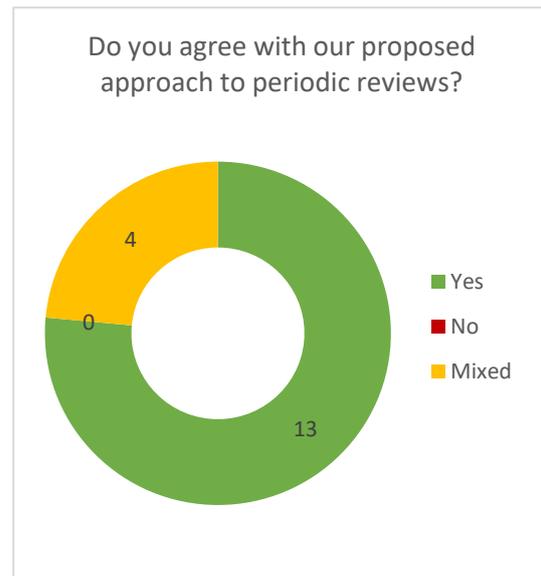
2.2 Periodic reviews will be our regular opportunity to look in depth at a regulator. While the scope will be determined individually for each review, a periodic review will be more intensive than those we carry out in the intervening 'monitoring' years.

2.3 We proposed to undertake more analysis in-year and set up regular contact with all regulators, allowing us to look at performance in the course of the year and address issues as they arise. One respondent considered that this suggested regulators would be required to alter their approach based on a request from the Authority.

2.4 The majority of respondents agreed with our proposed approach, and none disagreed. One noted that the approach should allow a focus on regulators that do not meet all of our Standards while ensuring sufficient oversight of areas critical to patient safety for those that meet all the Standards.

2.5 Respondents expressed conflicting views as to how much of the regulators' work we should look at in periodic reviews. Some respondents argued that the scope of our reviews should be intelligence-led and be limited to those areas where

evidence suggested there may be an issue. Others considered some specific areas, such as fitness to practise, should be covered in every periodic review, or that all aspects of performance should be reviewed during each three-year cycle. One respondent argued that it would undermine the process and create a risk of issues being missed if a periodic review did not look at all aspects of performance.



### Our response

2.6 We recognise the reasons for some respondents suggesting that we should review all aspects of a regulator in detail in every periodic review. However, we maintain that all our processes should be risk-based. One consideration for us is the risk of performance changing over time, which may be faster in some areas (for example fitness to practise) than others (there may be no changes to a regulator's core standards in a three-year period for example). We will determine the scope for each periodic review individually, focusing on key areas of risk identified through our evidence base, including feedback from stakeholders. We do not consider it to be proportionate to look in detail at every aspect of a regulator's performance in every periodic review, unless the risks identified suggested this was necessary.

2.7 Regular contact with regulators will allow us to gain greater information about performance and areas of concerns, so we are able to assure ourselves that regulators are aware of and mitigating risks identified.

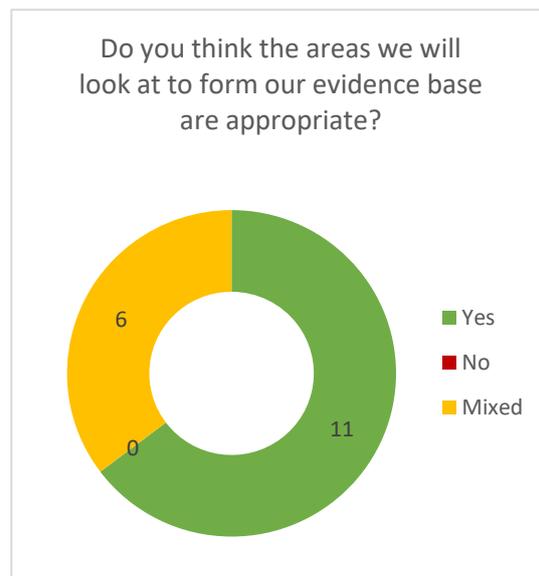
2.8 The concerns about our proposed dialogue with regulators suggest a slight misunderstanding of our proposals. We aim to use the process as a way of raising issues with regulators at an early stage so that we can gain the regulator's perspective and, if appropriate, allow the regulator the opportunity to address the issue at the earliest possible time. Raising issues at the end of the performance review period may delay the regulator in addressing these or reassuring us that it is aware of and managing any risk. A regulator will not be required to alter its approach solely because we raised the issue during the year.

**3. Setting out the evidence we will look at in our reviews [Question 3: Do you think the areas we will look at to form our evidence base are appropriate? Are there any other areas we should explore to enhance the evidence we collect?]**

**Consultation responses**

- 3.1 We proposed to continue to use our current evidence sources,<sup>2</sup> and enhance this with greater stakeholder engagement, regular contact with all regulators and updated audit processes.
- 3.2 By widening our audit process from simply reviewing cases to taking account of additional evidence sources, we expect to gain a more rounded understanding of how the regulators’ processes work. While there was support for broadening our approach to audit, including taking in areas other than fitness to practise, caution was expressed about the potential for this to increase the burden of the process. Some regulators noted that wider audit work, for example observing education and training quality assurance visits, will require the input and assistance of other bodies. It was highlighted that the Authority will need to provide clarity and reassurance as to the purpose of these activities.

3.3 In the consultation document, we indicated that a ‘significant’ change to a process may require us to look in more depth at the impact of the change on that process, which could include an audit. Respondents sought greater clarity on what would constitute a ‘significant’ change resulting in greater scrutiny. Two respondents noted that if a regulator has demonstrated it has introduced change with robust governance and controls in place, this should not of itself require further review.



**Stakeholder engagement**

- 3.4 Enhancing stakeholder engagement will require us to expand the range of individuals and organisations we seek feedback from, be more targeted about the information we seek, and make it easier for them to provide information to us.
- 3.5 Respondents generally supported our intention to obtain greater feedback from stakeholders. Some raised concerns that we should take into account in respect of such feedback:
  - Some stakeholders may be more vocal than others so we will need to weigh different sources of feedback

<sup>2</sup> Council observation and review of papers; register check; publications review; S29 outcomes and learning points; concerns review; dataset review.

- We should be careful to remain independent and not become advocates for stakeholders
- Stakeholder feedback may not provide full details about an issue and more evidence may be needed before any decision is made
- We need to be mindful that we are not a complaints handling body and do not want to imply to stakeholders that we are
- We should make it clear that we will consider concerns whenever stakeholders raise them, not just part of a periodic review. In monitoring years, stakeholder feedback will be of particular importance and may help us identify emerging risks.

## Our response

- 3.6 Enhancing our stakeholder engagement is a key element of our improved approach and we will both proactively seek such engagement and be open to anyone who wishes to provide us with feedback at any time. We understand the caution some respondents have in terms of how we seek and use information.
- 3.7 We agree that we are neither an advocacy nor a complaints handling body. We will assess the information that we receive carefully and will ensure that the regulator has the opportunity to comment on information that suggests there may be a concern. We will be clear to stakeholders about the scope of our role and what we can and cannot do with their evidence.
- 3.8 The key questions in establishing whether changes to a regulator's process require us to carry out a review of that process, will be the likely impact on public protection and how that impact can be assessed. This will vary according to the nature of the change. If a regulator can demonstrate a robust process to monitor the impact of the change, we will take this into account in deciding whether we need to undertake a review ourselves.

## 4. **Outlining how we will monitor performance outside of periodic reviews [Question 4: Do you agree with our proposed approach to monitoring performance in the years between periodic reviews?]**

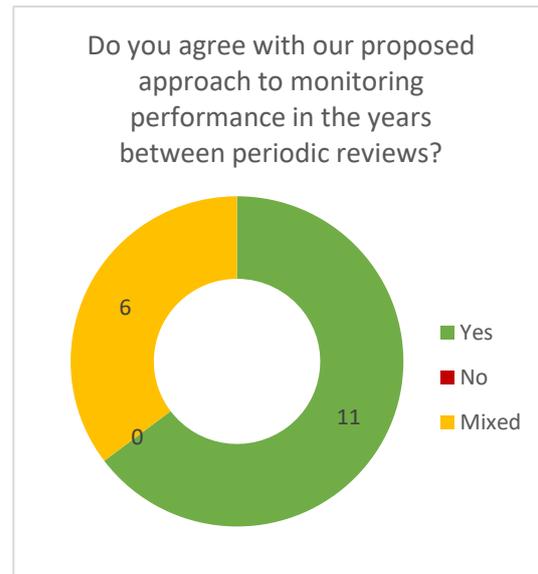
### Consultation responses

- 4.1 We sought feedback on our approach to monitoring reviews, which will take place in the years between a regulator's periodic reviews. We said that we would look at similar information as for periodic reviews, to give us a sufficient picture of a regulator's performance, identify risks and report to Parliament. We expect that a monitoring review would be less intensive than a periodic review.
- 4.2 The process would include monitoring unmet Standards, concerns about performance and major changes. The majority of respondents agreed with our proposed approach.

4.3 As with significant changes outlined under periodic reviews, respondents sought clarity on what would constitute a 'major' change that would trigger further review in a monitoring year. Some also highlighted that we will need to be clear about the reasons for all further reviews undertaken in a monitoring year. It will be key to ensure the process does not pose a disproportionately high resource burden.

4.4 Respondents stressed that monitoring reports should be clear as to the evidence considered and be useful to both regulators and wider stakeholders.

4.5 One respondent said that the approach outlined in the consultation did not sufficiently focus on emerging risks and how the regulators monitor and mitigate these.



### Our response

4.6 As for periodic reviews, the circumstances that will trigger a detailed review of a change of process will vary. We will take into account the extent to which the change will affect public protection, the regulator's processes for monitoring its implementation and impact, feedback from stakeholders and the time before the next periodic review. We will communicate with regulators to explain clearly the scope of a monitoring review, including areas for further review.

4.7 We will be clear in our monitoring reports about the evidence we have considered and the areas that we have looked at in detail. These reports are likely to be more concise than our current annual performance review reports and future periodic review reports.

**5. How we considered the length of review cycle [Question 5: Do you think we have identified the right factors to consider when determining the length of review cycle?]**

### Consultation responses

5.1 The majority of respondents agreed that we had identified the right factors in this area. We expected that monitoring reviews would likely need to be more detailed the longer the period between periodic reviews to ensure our continued effective oversight. The confidence of stakeholders in the process was a key consideration in the length of cycle.

5.2 One respondent did not agree that work in monitoring years would be greater in a longer cycle and or that the Authority would know less about a regulator in this situation. Another respondent agreed with the factors and added that any concerns from stakeholders should be considered.

### Our response

5.3 Our monitoring processes should enable us to maintain effective oversight of the regulators between periodic reviews. However, this process will focus on key areas of risk and headline data. It will not

necessarily focus on all areas of a regulator’s work and may mean that some areas of declining performance may not be detected. We consider that a three-year cycle is likely to reduce the risks of this affecting public protection.

5.4 We will take account of stakeholders’ concerns about performance as part of our overall risk assessment to determine where a regulator sits in the cycle. If, during the first cycle of reviews, we receive information from stakeholders that indicates that a change to the cycle length is warranted, we will consider this.

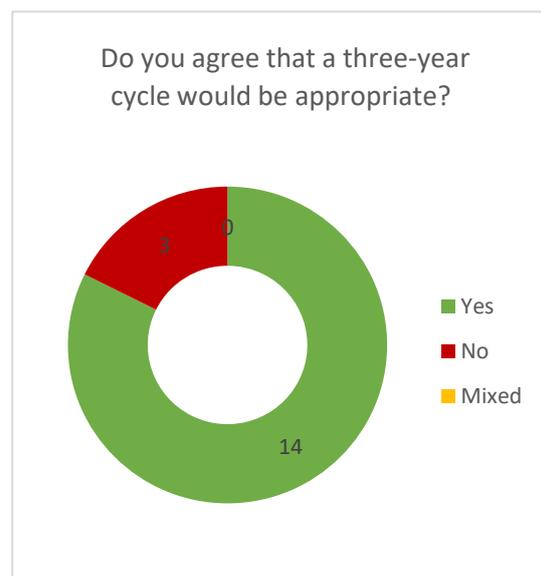
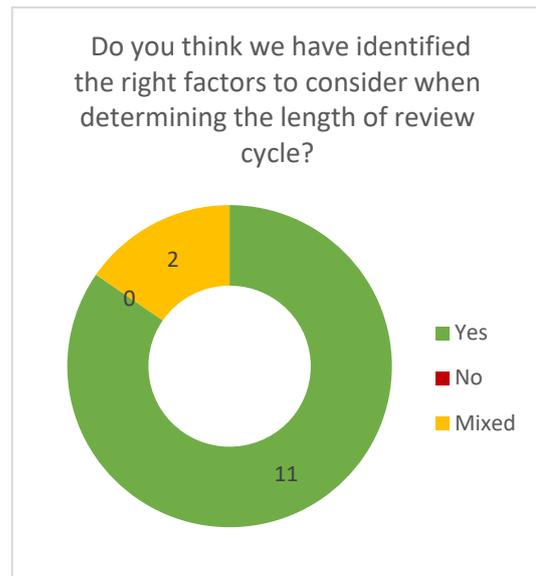
## 6. Proposing a three-year cycle [Question 6: Do you agree that a three-year cycle would be appropriate?]

### Consultation responses

6.1 We argued that a three-year cycle will allow us to continue to oversee the regulators effectively while reducing the burden of oversight. We committed to keep the length of cycle under review.

6.2 The majority of respondents agreed that a three-year cycle is appropriate. Only three did not: one respondent preferred a two-year cycle as this would give greater assurance and reduce the risk of missing an emerging issue; one favoured an annual process and was concerned that a longer cycle would affect timeliness and efficacy of recommendations where a Standard is not met or performance has declined; and one preferred it to be five-yearly.

6.3 Respondents agreed that a three-year cycle strikes a good balance, providing sufficient assurance to external stakeholders and regulators’



Councils and Boards. Some argued that anything beyond three years would risk undermining the Authority’s oversight.

### Our response

6.4 We received overall support for a three-year cycle and will adopt this approach. We will keep the cycle length under review to ensure it provides proportionate oversight which is sufficient for public protection.

7. **Determining the scope of periodic reviews [Question 7: Do you agree that these are the right factors for us to consider when deciding the areas we look at during periodic reviews? Are there any that you would like to see added, removed or amended?]**

### Consultation responses

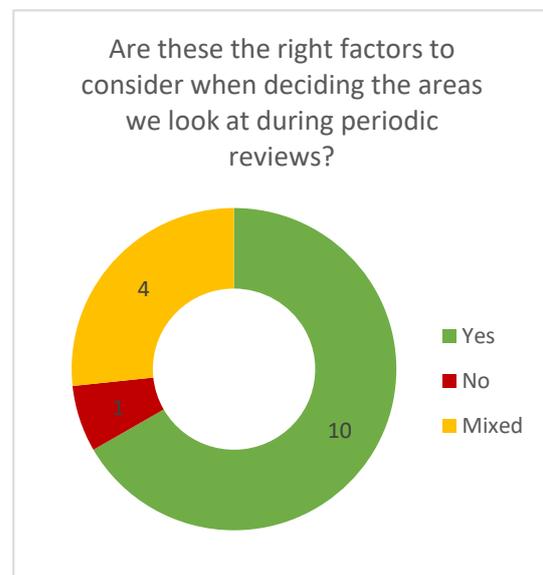
7.1 We proposed to consider the following areas when deciding the scope of periodic reviews:

- Length of time since the regulatory function has been reviewed in detail
- Any gaps in our understanding of how a regulator is performing
- Outcomes of previous performance reviews
- Information that identifies a significant concern which could affect performance against a Standard or amount to a risk to public protection
- Significant change to a process that substantially reduces our understanding of that process
- New or significant risks arising from registrants’ practice or the health and care environment, particularly where these do not appear to be being addressed
- Other significant concerns that may impact public protection.

7.2 Most respondents agreed with the factors, with many providing further comment on specific areas.

7.3 Several respondents emphasised the need for clarity and transparency in the decision-making process when these factors are used. Some respondents also sought clarity on what would represent a ‘significant’ change in practice, and one warned of the potential to disincentivise change if this is considered as a risk factor.

7.4 Two respondents disagreed that the length of time since we had previously reviewed a function in detail on its own was an appropriate factor – arguing that there should be



a rationale in addition to the mere passage of time, particularly if more frequent engagement was working well. It was noted that the factors are relatively broad and, if not used correctly, could lead to a disproportionate amount of further work.

- 7.5 Two respondents specifically highlighted the information obtained through stakeholder engagement as a key consideration when determining the scope of the review.
- 7.6 One respondent disagreed with the factors, saying they would like a much stronger framework for decision making in general, linked to the Authority's duty,<sup>1</sup> and an agreed understanding of risk relating to both the regulator's functions and the risks arising from registrants' practice.

### Our response

- 7.7 The factors set out above will be looked at in the light of risks to public protection and the need to be proportionate. The weight of individual factors will vary according to the circumstances of each case. We agree that the time since we have previously reviewed a function in detail may not, of itself, be sufficient reason for undertaking a further review. We will assess this in conjunction with other areas when determining if we need to look in more detail at a particular area.
- 7.8 We also agree that information from stakeholder feedback is important, and we will include this in relation to all the factors as appropriate.
- 7.9 We were not persuaded by the suggestion that the fear of a review by the Authority might act as a disincentive for change. The Authority has always been able to review processes when changes have taken place, and this has not prevented regulators making such changes. We would engage with a regulator if it had concerns about the impact on its performance of implementing a change.
- 7.10 We consider that the Standards of Good Regulation provide an appropriately flexible framework for us to carry out our duty to report on regulators' performance. We agree that an understanding of the risks is important, and we will build this into our work.

- 8. **Determining the scope of monitoring reviews [Question 8: Do you agree that these are the right factors for us to consider when deciding to look in more depth at particular areas outside of periodic reviews? Are there any that you would like to see added, removed or amended?]**

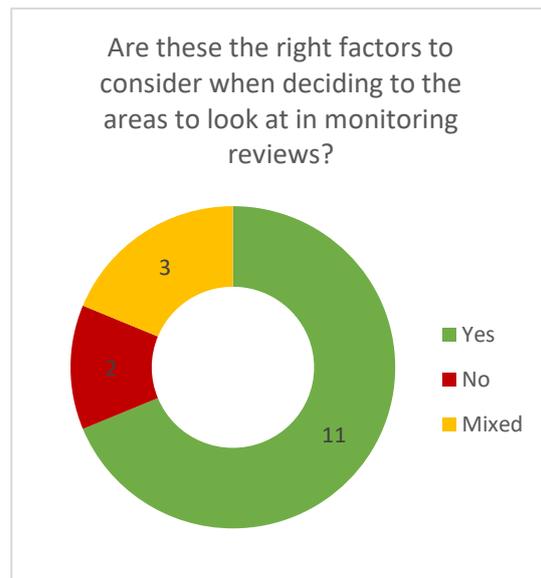
### Consultation responses

- 8.1 As for periodic reviews, we provided a set of factors we proposed to consider when determining whether to undertake further review during monitoring years:
  - The outcome of previous reviews, including unmet Standards that require monitoring
  - Information that identifies a significant issue with a regulator's process that could affect public protection or performance against a Standard

- Major change to a process which we have not had the opportunity to review and which may affect public protection or performance against a Standard
- Request by a regulator to review a Standard that is currently not met to judge whether it may now be met
- Other concerns which suggest a risk to public protection or that a Standard is not met.

8.2 Respondents generally agreed with the factors we had identified for monitoring reviews. As for the factors in relation to periodic reviews, the need for clarity and transparency was highlighted.

8.3 A number argued that the Authority should not, or only in exceptional circumstances, refuse to review an unmet Standard where a regulator had requested it – for example because the regulator felt that they would be able to demonstrate improvement to the extent that they now met a Standard. One respondent noted that it may not be necessary to review unmet Standards each year if it is evident they will remain unmet. The respondent was concerned that doing so could draw resources away from work to meet the Standard.



8.4 Two respondents disagreed. One emphasised the risk of disincentivising change, challenging the notion that change is seen as a risk whereas failure to change is not. The other argued that each factor is somewhat vague. They wanted further clarity on the evidence required to trigger a further review, emphasising the need for clarity and robust decision-making when determining the need to look in depth during a monitoring year.

### Our response

8.5 As stated above, the different factors will have different weight in different circumstances and we will consider both the need for public protection and proportionality when using them.

8.6 We agree that we should normally review an unmet Standard when requested to do so by a regulator. We would expect a regulator to be able to provide evidence about the progress made towards meeting a Standard when it requests our review.

8.7 As suggested above, we do not have sympathy with the view that using changes of processes as a reason for undertaking additional work between full cycles will 'disincentivise' change. We would be very concerned about the overall approach to public protection of a regulator that avoided or delayed necessary change simply because we might review it. We will consider

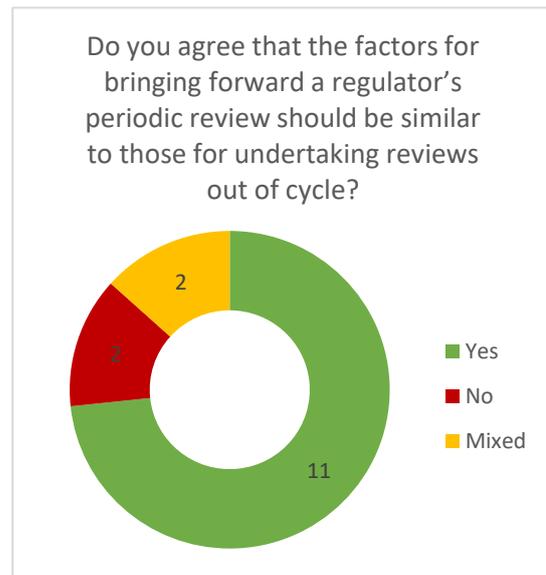
whether a review in a monitoring year is necessary in the light of the risks created by the change and the extent to which we can safely leave reviewing them to the next periodic review.

**9. Determining when we might need to bring forward a periodic review [Question 9: Do you agree that the factors for bringing forward a regulator’s periodic review should be similar to those for undertaking reviews out of cycle? Do you think this is an appropriate threshold? Are there any that you would like to see added, removed or amended?]**

**Consultation responses**

9.1 The majority of respondents agreed that the factors for bringing forward a periodic review should be similar to those for determining to undertake reviews out of cycle, but with a higher threshold. Respondents again stressed the need for clarity and transparency in decision-making.

9.2 One respondent disagreed with our proposed threshold ('multiple factors would need to be identified that went across a range of regulatory functions'), arguing that this should be changed to 'one or more factors'. Another respondent, who agreed with the factors overall, also argued that the threshold should be lowered as significant deterioration of performance in one core function could be an indicator of wider issues. Conversely, another respondent argued that the requirements on the Authority to demonstrate it is necessary to bring forward a periodic review should be much greater than those set out.



**Our response**

9.3 As the majority of respondents agreed with the factors, with two suggesting the threshold is set too high and one suggesting it is too low, we will maintain the same factors and threshold. We will ensure that public protection and proportionality are taken into account when we make these decisions.

**10. Determining the order of regulators’ periodic reviews [Question 10: Do you agree that these are the right factors for determining the order for regulators in the cycle? Are there any that you would like to see added, removed or amended?]**

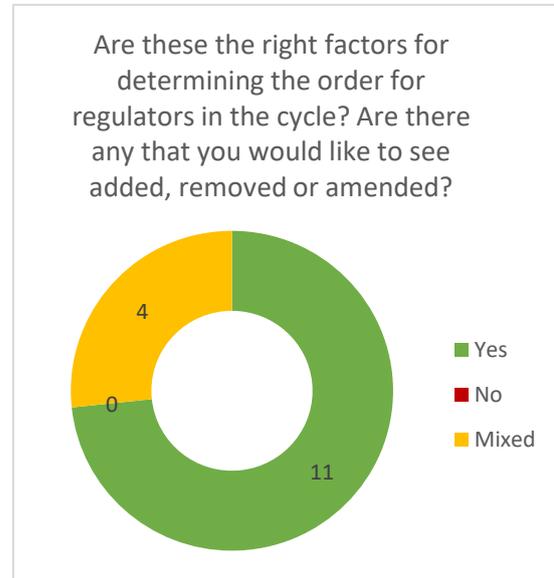
**Consultation responses**

10.1 We set out factors that we planned to consider when determining the order of regulators in the performance review cycle:

- Risk of poor performance, including Standards not met

- Recent further reviews undertaken, to outline amount already known and further work likely to be needed in a full review
- Size of regulator and likely resources for a periodic review
- Current review period and whether this would need to be extended or shortened.

10.2 The majority of respondents agreed with the factors we set out. Three respondents argued that reform (and accompanying major changes) should be considered when determining the order of regulators. One of these respondents noted that the cycle order may need to change in response to the timeframe for reform for each regulator as this becomes apparent. Other responses suggested additional factors for us to consider: public protection risks, including the risk profile of the profession and any recent major incidents; and a regulator’s strategic planning cycle and the length of time since the last review was undertaken.



10.3 Respondents also argued that risk of poor performance and recent further reviews having been necessary should be stronger indicators than the size and resources of the regulator. One respondent was concerned that stakeholders may perceive a regulator’s position in a cycle as an indicator of their performance: communications about the cycle order should not undermine confidence in the relevant regulators.

10.4 Several points were raised about how far the size of the regulator should influence its position in the cycle and how this would be measured (for example, by the size of the register or the resources available to it). Respondents pointed out that we should be able to take action to respond to risks whenever they arise, regardless of the available resource.

### Our response

10.5 We agree that risk is a key factor in determining the order of regulators in the cycle, including the risk of poor performance. In practice, however, there are many matters that will influence the order in which we review the regulators – including recent further reviews and audits, the likely timescale for any improvements and our own resources.

10.6 We also agree that the size of a regulator should not be the main driver for determining the order of regulators in the cycle. However, it does need to be a consideration from a resourcing perspective, as larger regulators require greater performance review resource than smaller regulators performing to a similar level. While taking account of risk as the main focus, we can balance the workload across years, allowing us to effectively respond to emerging risks as they arise.

- 10.7 Based on the feedback we received, we have updated the factors for consideration in determining the order of regulators in the cycle below. This includes more explicit inclusion of regulatory reform:
- Risk to public protection, with current Standards not met an indicator of that risk, but also bearing in mind the likely timescale needed for improvements
  - Our understanding of when changes will be made to regulators' processes as a result of reform – this will likely be most relevant to the GMC in the first cycle, and we will keep this in mind when we have a clearer idea of changes planned for other regulators
  - Recent further reviews and audits undertaken, as this is an indicator of the amount already known about each regulator and the further work likely to be needed in a full review
  - Size of regulator and likely resources for a periodic review, bearing in mind the need to spread the work reviewing the 10 regulators across a three-year cycle
  - Current review period and whether this would need to be extended or shortened.

**11. Impact of our proposals [Question 11: Please set out any impacts that the proposals set out in this paper would be likely to have on your organisation or considerations that we should take into account when assessing the impact of the proposals]**

**Consultation responses**

- 11.1 Respondents set out a number of impacts:
- Respondents recognised that the intention is to reduce the burden on regulators in the course of the cycle. However, some respondents raised concerns that there is the potential for this to increase depending on how the process works in practice
  - Increased, regular engagement with regulators will have operational implications and so careful scheduling is required
  - The impact may be different depending on the resources of each regulator
  - Spreading the work across the year should help to even out the impact on regulators
  - Increases to Authority resources required to manage the process could result in increased fees to the regulators, which would be passed on to registrants
  - Enhancing stakeholder engagement should have a positive impact
  - There is the potential to adversely impact registrants and therefore registrant bodies if a periodic cycle results in a deterioration of regulatory performance due to lower oversight

- Reporting in the new process should be comparable to that currently used to allow stakeholders to compare performance across years
  - It will be important to monitor the impact of the changes.
- 11.2 In addition, some respondents stated that they would like to have seen a regulatory impact assessment for this work.

### Our response

- 11.3 We recognise that engaging with our reviews creates work for regulators. We intend that the new process will, overall, reduce the burden. We will keep the impact of the changes under review and seek feedback from regulators about the overall impact, while being guided by risk and the paramount need for public protection.
- 11.4 We aim to undertake the new process within existing resources and have planned it on the basis that any new approach should require less, rather than more, resource.
- 11.5 We believe a three-year cycle provides a proportionate approach to oversight. Our experience is that it is rare for performance to deteriorate significantly over a single year. Our approach to monitoring will enable us to identify serious deterioration of performance and to step in quickly. We will, however, keep the cycle length under review.
- 11.6 Our reports will be clear and accessible, and allow stakeholders to see how performance of the regulators has changed between years. We will update our report format to achieve this.
- 11.7 We have, throughout the development of our work in this area, considered rationale, resources, finances and impacts on stakeholders in relation to the options we have worked on. We consider that this approach is proportionate for an update and improvement on an existing process as opposed to the introduction of a new regulatory/oversight process. We will monitor the impact of the introduction of the new approach.

**12. Equality assessment [Question 12: Are there any aspects of these proposals that you feel could result in differential treatment of, or impact on, groups or individuals based on the following characteristics as defined under the Equality Act 2010?]**

### Consultation responses

- 12.1 Respondents set out a number of impacts:
- Any failures of the process to identify issues could have differential impacts on individuals who share protected characteristics. For example, those overrepresented in fitness to practise procedures and those affected by differential attainment in education and training
  - It is crucial to ensure the Authority's methodology and approach to stakeholder engagement does not introduce or impose barriers.
- 12.2 Respondents also highlighted that the Authority should continue to prioritise Standard 3 on equality, diversity and inclusion. This should be the case for

monitoring as well as periodic review years to ensure there is no detriment in performance. Engagement with other relevant organisations in this area will be important.

### Our response

- 12.3 Equality, diversity and inclusion is an area of focus for the Authority currently. We are undertaking our own work to further improve our understanding of this area. Standard 3 will remain a key focus for the Authority and we will be reviewing whether it is appropriately targeted. We will take into account the considerations noted above when deciding how closely to review it each year in respect of each regulator.
- 12.4 We recognise that failures in our oversight could lead to further differential impacts on those who share protected characteristics. We expect that by improving how we collect and analyse information, including greater engagement with stakeholders and the regulators, we will minimise the risk of this occurring. As we said in our response to question 11, we do not expect that our oversight will be diminished through a cyclical approach.
- 12.5 In developing our approach to stakeholder engagement, we will ensure that our processes do not limit the ability of individuals to engage with us.
- 12.6 We will publish our equality impact assessment alongside this report and will keep the impact of our new approach on people who share protected characteristics under review.

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## Next steps

The responses to the consultation supported our proposals for a new approach to performance reviews.

We are introducing the new process for the 2021/22 performance review period and have already implemented some changes following our previous consultation that will aid the transition to the new process. We plan to publish the first report by the end of June 2022. We have worked with regulators to update their review cycles and inform the order of regulators in the first cycle of periodic reviews. This can be found at Annex 1.

We will continue to develop our work following our previous consultation as part of the introduction of the new process:

- ▶ Amend our processes so that we do more work in year and engage more regularly with regulators, with the aim of publishing our reports within three months of the end of the period on which we are reporting
- ▶ Engage with a broader range of stakeholders
- ▶ Make our reports clearer, more concise and more helpful in promoting improvements in regulation

- ▶ Develop our understanding of risk including profession-specific risks and use this to inform the scope of our reviews.

## The new process

In the new process, we will undertake a periodic review of each regulator every three years. In between, we will monitor their performance and may request further information or bring forward a periodic review if necessary. In both periodic and monitoring review years, we will gather and analyse information throughout the year. This will aid us in making determinations, and publishing reports, sooner than we currently do.

In periodic reviews, during the first quarter of the year, the performance review team will undertake an analysis of the information we hold, including of any correspondence and complaints we receive, and the outcomes of our Section 29 work. We will consider the decisions taken in previous years, information available publicly, information shared by the regulator<sup>3</sup> and feedback from stakeholders. We will proactively seek such feedback.

We will then identify where we need more information and how we should do so, and this will determine the scope of our review. We expect to carry out most of the detailed work of the periodic review, including any audit and/or formal questions, in the middle two quarters of the year,

The team will then analyse the full information, setting out a recommendation to our decision-making panel at or around month 10 of the review period. We want the new process to be more transparent, so we will share that recommendation with the regulator before the panel meets and provide an opportunity for the regulator to comment on the factual accuracy of the analysis. The panel will make a provisional decision against all Standards at this point, which will be subject to an assessment of performance in the final weeks of the period. The panel will be updated at the end of the performance review period and the final decision confirmed. We will then produce our report, with the expectation that the report will be published within three months of the end of the period. The panel will also provide direction on any matters that should be kept under review during the monitoring period.

We expect that in some cases a periodic review may not be much more intensive than a monitoring review; if we have no concerns or areas where we need more information, we may not need to undertake any significant enquiries. We will use our findings to inform our future work in respect of that regulator, including any areas for focus for the monitoring years following the periodic review. In monitoring years, the overall process will be similar. We will continue to monitor the same sources of information as in a periodic review. However, depending on the findings of the periodic review and what our monitoring tells us about risk, this will likely be a less intensive review than for a periodic review. We will monitor and report on unmet Standards annually until we are satisfied that the Standard is met. We will consider whether the evidence we have indicates that we need to do further work to assess performance, assessing this against the factors that we will publish on our website.

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<sup>3</sup> A feature of the new process will be more regular meetings with the regulators, and we will aim to resolve queries as they arise throughout the year.

As with the periodic review process, the workload will be spread across the year, with an analysis shared with the decision-making panel (and the regulator) towards the end of the year, followed by a final decision and the report. The report will focus on any areas of change in performance in the monitoring year.

## Annex 1: Order of regulators in the three-year cycle

Regulator	Year 1: 21/22		Year 2: 22/23		Year 3: 23/24	
<b>GCC</b>	Monitoring	Apr 21-Jun 22	<b>Periodic review</b>	Jul 22-Jun 23	Monitoring	Jul 23-Jun 24
<b>GDC</b>	<b>Periodic review</b>	Jul 21-Sep 22	Monitoring	Oct 22-Sep 23	Monitoring	Oct 23-Sep 24
<b>GMC</b>	Monitoring	Sep 21-Sep 22	Monitoring	Oct 22-Sep 23	<b>Periodic review</b>	Oct 23-Sep 24
<b>GOC</b>	<b>Periodic review</b>	Oct 21-Dec 22	Monitoring	Jan 23-Dec 23	Monitoring	Jan 24-Dec 24
<b>GOSc</b>	Monitoring	Jan 21-Mar 22	Monitoring	Apr 22-Mar 23	<b>Periodic review</b>	Apr 23-Mar 24
<b>GPhC</b>	Monitoring	Mar 21-Jun 22	<b>Periodic review</b>	Jul 22-Jun 23	Monitoring	Jul 23-Jun 24
<b>HCPC</b>	Monitoring	Jan 21-Mar 22	<b>Periodic review</b>	Apr 22-Mar 23	Monitoring	Apr 23-Mar 24
<b>NMC</b>	Monitoring	Apr 21-Jun 22	Monitoring	Jul 22-Jun 23	<b>Periodic review</b>	Jul 23-Jun 24
<b>PSNI</b>	Monitoring	Nov 21-Dec 22	Monitoring	Jan 23-Dec 23	<b>Periodic review</b>	Jan 24-Dec 24
<b>SWE</b>	Monitoring	Dec 21-Dec 22	<b>Periodic review</b>	Jan 23-Dec 23	Monitoring	Jan 24-Dec 24