Department of Health & Social Care

Regulating healthcare professionals, protecting the public

Consultation response - analysis

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Contents

Consultation analysis

Overview of responses

The Regulating healthcare professionals, protecting the public consultation ran from 24 March 2021 to 16 June 2021. We received 525 responses from individuals, organisations, healthcare professionals and members of the public. The consultation asked 70 questions on the 4 key areas of reform and the introduction of regulation for anaesthesia associates and physician associates. This annex provides quantitative data on the number of responses to each question and detailed analysis of the responses provided. Not all respondents answered every question. Therefore, the number of responses to each question will differ depending on how many respondents answered the question. Where a question asked for an 'agree' or 'disagree' response, we have only included quantitative data for those that clearly stated that they ‘agreed’ or ‘disagreed’ with the question asked.

In terms of the feedback and final policy positions reached, which are set out in detail below, this will serve as the basis for the next stage in the reform process which is to draft and consult on an Order that gives the GMC the powers necessary to regulate anaesthesia associates and physician associates.

Overview of respondents

Below is a breakdown of the types of respondents who submitted responses to the consultation.

Table 1 details the number of individuals and organisations who responded to the consultation.

Table 1 - respondents by type - individuals and organisations

Category	Number of responses	Percentage
Individuals	346	66
Organisation	178	34
Other	1	0
Total	525	100

Note: Percentage figures have been rounded and therefore may not total 100%

Of those individuals that responded, 291 were healthcare professionals. Table 2 shows the types of healthcare professionals who responded.

Table 2 - type of healthcare professional

Category	Number of responses	Percentage
Anaesthesia associate	5	2
Chiropractor, osteopath or physiotherapist	29	10
Dental practitioner	89	31
Healthcare scientist	4	1
Medical practitioner	49	17
Midwife	4	1
Optician or optometrist	3	1
Other allied health professional	9	3
Other regulated healthcare professional	7	2
Other unregulated healthcare professional	6	2
Paramedic	5	2
Pharmacist	2	1
Physician associate	45	15
Physician associate student	4	1
Practitioner psychologist	3	1
Radiographer	3	1
Registered nurse	21	7
Social worker	1	1
Unknown or other	2	1
Total	291	100

Note: Percentage figures have been rounded and therefore may not total 100%

We received responses from 170 organisations. The majority of organisational responses came from regulatory and professional bodies, Royal Colleges, NHS trusts including hospital departments, health teaching boards, GP practices, private healthcare, higher education institutions (HEIs) and medical schools. We also received responses from a number of arm's length bodies (ALBs), charities, patient groups, trade unions and medical

defence organisations. Table 3 shows the geographical location of respondents, where they provided this information.

Table 3 - geographical location of respondents

Location	Number of responses	Percentage
England	301	88
Wales	15	4
Scotland	14	4
Northern Ireland	7	2
Outside the UK	4	1
Total	341	100

Note: Percentage figures have been rounded and therefore may not total 100%

Governance and operating framework

Our proposals covered a range of areas that relate to how regulators should operate and what their governance structure is. Overall, the majority of respondents agreed with each proposal however there was disparity on the level of agreement in some areas and some caveats were included in the comments where agreement was made. These tended to be around regulators being transparent and accountable for the decisions they make, with some of these being monitored externally, for example fee increases.

A high proportion of respondents agreed that regulators should be required to co-operate with certain types of organisations, to operate transparently with a specific set of duties that underpin this, and that regulatory activities are carried out in a proportionate manner.

There is much support for regulators to produce an annual report to the devolved legislatures in Scotland, Wales and Northern Ireland, where applicable, and for the Privy Council's default powers to apply to the 2 regulators (GDC and GPhC) which it currently does not hold. Data sharing powers also had support with the caveat that data is protected and there is clear justification for use of the powers which should be assessed on a case-by-case basis.

The proposed changes to enable regulators to determine their own committee structure and to transition from a two-tier council structure to a unitary board were also welcomed on the basis that regulators are best placed to determine their own structures that are fit for purpose and reduce bureaucracy. Although lay and registrant members would still be able to be appointed to the board, there was concern around removing the requirement for these. We expect the views of registrant and lay members to be taken in to account when board decisions are made and will therefore now propose there is provision for this in legislation, stating that regulators must determine and publish the arrangements for ensuring a registrant and lay voice in board decision-making.

The area which had the lowest level of agreement was for regulators to have the power to delegate a function, or part of a function, to another regulator or third party. The comments reflected that respondents would be more content for powers to exist to delegate to another regulator than beyond this group. Regulators losing expertise and associated higher costs were of particular concern.

Finally, a further area of concern was around powers for regulators to set their own fees, with the option of taking a longer-term approach to fee-setting and charging for services undertaken on a cost recovery basis, that would include for activity outside of its geographical region.

It was unanimously agreed that registrant fees should not be covering costs where regulators are currently unable to charge. The comments were clear that any charging should be not-for-profit and having the power should not lead to regulators exploring further work opportunities to generate income.

Understandably, there was concern, particularly from registrants and the bodies that represent them, about the power for regulators to set their own fees and whether this would result in more regular increased fee costs, although there was more support for regulators setting out a longer-term approach to setting fees. Justification for fee increases and external monitoring of decisions was a key theme in the responses. We recognise this concern and will therefore include in legislation a requirement for regulators to submit, through its annual report, evidence of the likely impact of any fee change in that reporting year, particularly in relation to the workforce of the health service in the UK, the profession(s) it regulates, and the regulator. This is in addition to the requirement to hold a public consultation and any pre-existing legal obligations relevant to fee setting, which would include observing the public sector equality duty.

Detailed analysis of each question and our response can be found below.

Duty to co-operate

Q1: Do you agree or disagree that regulators should be under a duty to co-operate with the organisations set out above?

Proposal

Most regulators are already under a duty to co-operate with other regulators, such as the Care Quality Commission in England, the Regulation and Quality Improvement Authority in Northern Ireland, Healthcare Improvement Scotland and Healthcare Inspectorate Wales. However, this is set out in different ways in legislation. The consultation proposed that regulators have a new duty to co-operate with organisations that are concerned with:

- the regulation of healthcare professionals
- the employment, education and training of healthcare professionals
- the regulation of health and care services
- the provision of health and care services

Table 4 - responses to Q1

Category	Number of responses	Percentage
Agree	464	95
Disagree	22	5
Total	486	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that regulators should have a duty to co-operate with those organisations outlined above.

A large number of respondents who agreed with the proposal cited public protection and organisations working collaboratively to raise standards as the reasons for their agreement. It was also felt the duty would provide some level of consistency across regulators, by requiring them to work with other relevant organisations.

A number of respondents suggested extending the duty to co-operate to other organisations and sectors, such as those concerned with:

- the administration of health and social care services including the NHS and private sector governing bodies
- other relevant regulators and organisations such as those working in social care, education and training and the independent health and care sector
- private funded pathways and organisations representing patients, service users and carers
- membership organisations and other representative bodies including the Royal Colleges and Trade Unions
- non-health related organisations (such as the police or independent public review bodies) as part of regulators meeting their statutory objectives

And other respondents suggested limiting the duty, for example, to:

- those who have statutory responsibilities in the areas listed
- defining the circumstances relating to the employment sector and excluding commercial organisations from the remit

A small number of respondents felt that regulators should be completely independent and, as such, not have any duties imposed on them.

Some respondents asked for clarity on what constitutes effective co-operation and sought criteria or guidance to be published that would make this clear and consistent. A small number of respondents also raised the issue of oversight and suggested a mechanism be put in place (such as the PSA), to ensure compliance.

Some respondents suggested that the duty to co-operate should result in reciprocal obligations with the listed organisations to ensure the duty is as effective as possible.

Comments included:

> Organisation: “Working collaboratively and sharing data between healthcare and systems regulators could help to identify potential harm earlier. Closer collaboration will enable intelligence sharing and a greater understanding of the systemic failings that may affect individual practice. Sharing information will support greater improvements to the services provided and public protection.”

UK and devolved governments’ response

The UK and devolved governments remain of the view that our proposals for a duty of co-operation and the range of organisations to which this will apply are the right ones. However, to reflect the feedback at consultation, the description of the groups will be widened slightly to include broader areas. For example, 'the regulation of health and care services' will be changed to 'the regulation or improvement of health or care services' and 'the provision of health and care services' will be changed to 'the provision, supervision or management of health or care services'. Public protection is at the heart of professional regulation and this duty must ensure regulators co-operate with a wide range of organisations in the field. The list will include key stakeholders that are integral to support regulators in fulfilling their overarching objective of public protection, but we would expect that regulators will co-operate with other organisations or sectors as necessary.

We are conscious that regulators and organisations could view this list in the broadest sense, but we expect regulators to take a pragmatic approach with regard to the extent to how they co-operate. We will encourage regulators to work together on establishing criteria or guidance setting out what constitutes effective co-operation. This will increase regulatory transparency in relation to the duty and how it operates. Although we cannot legally enforce a reciprocal duty, it is hoped recipient organisations would co-operate in the same manner.

Following these changes, we intend to amend the new duty to require regulators to co-operate insofar as is appropriate and practicable, with persons concerned with:

- the regulation of, or co-ordination of, health professionals
- the employment (whether or not under a contract of service), education or training of a person regulated by a healthcare professional or carer, or the services they provide
- the regulation or improvement of health or care services
- the provision, supervision or management of health or care services

Objective of transparency and related duties

Q2: Do you agree or disagree that regulators should have an objective to be transparent when carrying out their functions and should have these related duties?

Proposal

Transparency is key to ensuring that regulators maintain public confidence in the regulation of healthcare professionals. The consultation proposed that regulators should have an objective to be transparent when carrying out their functions and have duties to:

- publish information relating to regulatory functions on an annual basis
- hold open Board meetings (unless confidential matters are being discussed)
- hold hearings in public (unless confidential matters are being discussed)
- make records of board meetings and hearings available to the public (but not in relation to confidential matters)
- consult on significant changes to rules and standards

Table 5 - responses to Q2

Category	Number of responses	Percentage
Agree	471	99
Disagree	4	1

Category	Number of responses	Percentage
Total	475	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

Almost all respondents agreed with the proposal that regulators should be transparent when carrying out their functions, with specific related duties.

The vast majority agreed that transparency helps to provide confidence to professionals, patients and the public and maintains trust in the work the regulator carries out. It forms part of regulators being accountable and open to scrutiny by stakeholders and the public.

Some comments related to how regulators interpret transparency and are accountable for it. Comments sought clarification on what would be deemed “confidential matters” and suggested these should be defined to ensure consistency across the regulators. It was also suggested that regulators keep a record of why an issue is not made public, for audit purposes and external scrutiny.

Other comments included the need to ensure appropriate protections for registrants, for example in relation to tribunal hearings, and that regulators must ensure they are inclusive and make documents and meetings accessible. There were further comments requesting guidance on what constitutes a ‘significant change’ in relation to the duty to consult, and assurance that as a result of any consultation, regulators take account of the views of respondents when reviewing proposals.

Finally, there were some conflicting views from respondents regarding oversight of changes to rules and whether the PSA (or another independent body) should play a role in approving rule changes.

Comments included:

> Organisation: “It is extremely important that regulators maintain the trust of both the public and the professionals they regulate. Being transparent in their work is integral to that. Legislation must recognise the right to confidentiality for those involved in regulators’ processes and regulators must balance this with the need to be transparent and open in their work.”

> Organisation: “Some guidance on what will constitute a significant change would be useful, as would clarity from regulators as early as possible on the kinds of the circumstance in which they would propose to consult.”

UK and devolved governments' response

It is hard to argue that a regulator should not operate transparently. There will, of course, be occasions when confidentiality must be maintained but there should be a clear and auditable justification when this occurs.

Regulators will be required to consult on significant changes to rules and standards and they will determine which groups will be impacted by the change and consult with them. It is acknowledged that a consultation process may not always allow for meaningful input from some patients who may struggle to participate fully in multiple large, complex and detailed consultations on rule changes, and we expect regulators to consider this when patients are affected and ensure the consultation process provides the opportunity for patients to provide input into a consultation. We will also encourage regulators to collaborate on publishing guidance and criteria for carrying out consultations.

We also acknowledge the feedback received on transparency and its link to regulators being accountable and open to scrutiny by stakeholders and the public. In response, we will also be adding a further duty for regulators to determine and publish how they will ensure public engagement with the regulator. This may be linked to their open board meetings or through another route.

Our reforms will enable regulators to make changes to their rules, including those relating to operational procedures, without seeking the approval from the Privy Council (or in the case of the PSNI, the Northern Ireland Assembly). We do not consider it appropriate for the PSA to have a role in approving rules. It would not be proportionate or in line with our reform principles which aim at providing regulators with more flexible powers, balanced with strengthened accountability. We acknowledge the concern from some respondents regarding rule changes no longer requiring Privy Council approval. However, we will continue to monitor these arrangements and if, in the future, it is felt that any of the regulators' rules should be approved by Privy Council, this can be reinstated. The PSA may wish to review rule changes made by regulators as part of their annual reviews.

Transparency is one of the Better Regulation Commission's 5 Principles of Good Regulation, along with being accountable, proportionate, consistent, and for regulatory activity to be targeted only at cases in which action is needed. We will therefore introduce a requirement in legislation for regulators, when discharging their functions, to do so in a way which is transparent, accountable, proportionate and consistent, and that they must have regard to the principle that regulatory activity should be targeted only at cases in which action is needed.

The regulators will also have a duty to:

- publish information relating to regulatory functions on an annual basis

- hold open Board meetings (unless confidential matters are being discussed)
- hold hearings in public (unless confidential matters are being discussed)
- publish its public engagement policy
- make records of board meetings and hearings available to the public (but not in relation to confidential matters)
- consult on significant changes to rules and standards.

To note, discussions are still taking place in some areas relating to this question. More specifically in relation to the unitary board proposals however at this point, we do not expect these duties to change.

Duty to assess the proportionality of changes

Q3: Do you agree that regulators should be required to assess the impact of proposed changes to their rules, processes and systems before they are introduced?

Proposal

Changes to regulators' policies or processes can have a significant impact on patients, service users, registrants, employers, and education and training providers. Regulators should evaluate the impact that changes to their rules, processes and systems will have.

The consultation proposed introducing an explicit duty for regulators to assess the impact of changes to their rules, processes and systems before they are introduced. Regulators will need to assess the impact, including the cost, on:

- patients, service users and the public
- current and prospective health and care professionals
- other relevant stakeholders across the health and care system

Table 6 - responses to Q3

Category	Number of responses	Percentage
Agree	457	98

Category	Number of responses	Percentage
Disagree	11	2
Total	468	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

Almost all respondents agreed with the proposal that regulators should be required to assess the impact of proposed changes to their rules, processes and systems before they are introduced.

The majority agreed that it is good practice to consider the impact a change or a new proposal will have on those it will affect, as well as flag any unintended consequences in the process, so mitigation can be put in place. Regulators should understand the effect the changes will make and give further consideration if appropriate. However, responses also recognised that this assessment needs to be proportionate in itself and not become a bureaucratic exercise that is burdensome and unnecessarily costly. Likewise, in some cases it may need to go further than just assessment and, where necessary, proposals should be consulted on or independently reviewed.

Many responses encouraged impact assessments to consider those with protected characteristics and a risk register for known inequalities to be maintained, and that registrants and professional groups, patient groups, trade unions and membership organisations should be included in the assessment process. It was also felt that impact assessments must consider a broad range of factors, such as caring responsibilities and health impacts as well as financial implications.

Often, respondents linked this assessment to transparency and consultation requirements and asked that regulators ensure that the impact of proposals is published and to consult when necessary.

It was also proposed that the duty states that regulators should still take necessary regulatory action or introduce new rules, systems or processes, if there is an overriding public protection or regulatory objective to do so, even if they have an impact on the groups listed.

Some responses were concerned about independent oversight, and it was also suggested that regulators confer with each other to maintain a level of consistency across the system.

Comments included:

Organisation: “We agree that regulators should undertake an impact assessment on any proposed changes before they are introduced. We do not believe it is acceptable for changes to be made without understanding the economic impact, operational considerations and system wide practice changes.”

UK and devolved governments’ response

Assessing the impact of change is sensible and practical. The extent that this is carried out in relation to the proposed change must be proportionate and regulators will need to have a process that is consistent and takes in to account the groups the change will mostly affect. The extent of engagement with these groups will depend on the proposal, including where an informal or formal consultation is carried out.

Regulators may use independent sources or liaise with other regulators on making assessments. We would expect regulators to keep a record of decisions made through the assessment process and, where appropriate, publish this as part of their requirement to be transparent.

Any impact on equalities should also be included in the assessment. Although cost is just one of the factors to be assessed, it is acknowledged that on occasion there may be an increase in cost or it may not be relevant for every proposed policy or process change and, in some cases, cost impact may be difficult or impossible to quantify. Public safety comes first.

A requirement written in regulator’s legislation needs to build upon the current proportionality requirements contained in law (for example human rights). It will act as a necessary check and balance on regulators' powers, where rules no longer require Privy Council approval. The assessment will form the basis of any decision the regulator may make on whether it consults (and the extent of that consultation) when creating standards, rules, guidance or any other vehicle through which it may communicate information.

As outlined in question 2, proportionality is one of the Better Regulation Commission’s 5 Principles of Good Regulation and we will introduce the requirement that when a regulator is discharging its functions, it must do so in a way which is proportionate.

Unitary board

Q4: Do you agree or disagree with the proposal for the constitution on appointment arrangements to the board of the regulators?

Proposal

The response to the previous consultation, Promoting professionalism, reforming regulation, set out our proposals that the councils of the regulatory bodies would become boards which comprise of executive and non-executive directors, appointed on the basis that they have the skills, knowledge and expertise to ensure the regulator discharges its functions effectively.

This consultation set out proposed details around the appointments to the unitary board and the parameters within which it will operate.

It was proposed that:

- the new unitary board arrangements will be put in place over 2 years following legislative change for each regulator
- the chief executive or Registrar will sit as a board member with immediate effect
- the non-executive chair will continue to be appointed by the Privy Council
- non-executive directors will be appointed by the chair and approved by the Privy Council
- the chair and non-executive directors will appoint the chief executive and other executive members to the board
- there will no longer be a requirement to appoint professional and lay members however regulators will still be able to appoint current or former registrants to their boards

The proposed parameters for the board to operate within are:

- each board must include, as a minimum, a non-executive chair, a chief executive, and a non-executive director and have a maximum of 12 members, with non-executive members forming the majority of the board
- the chair and non-executive directors must not hold office for more than 8 years during any 20-year period for each role they hold

- at least one board member must wholly or mainly work or live in each of Scotland, Wales and Northern Ireland, if the regulator operates there – this requirement may be waived with the written consent of the regulator and the relevant Scotland, Wales or Northern Ireland Minister (and reinstated thereafter)

- current and former registrants may be appointed to the board (as either executive or non-executive directors) but should not make up more than half of the board members at any time

Table 7 - responses to Q4

Category	Number of responses	Percentage
Agree	309	69
Disagree	138	31
Total	447	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposed arrangements regarding appointments to the board and the parameters within the unitary board must operate. As this proposal covered numerous points relating to the board the content of the comments submitted varied considerably.

The majority agreed that appointments to the board should be on merit and that the proposals provided appropriate oversight for challenge and scrutiny. There were some suggestions of variables within the proposals, for example there should not be a limit on current or former registrants being appointed and others suggesting the limit should be reduced to much less than half. Other suggestions were that there should be no limit on the maximum number of board members, that board appointments should be diverse and ensure training is provided and that the Fit and Proper Persons Test should apply to board members.

There were some suggestions regarding the requirement for at least one board member who wholly or mainly works or lives in Scotland, Wales and Northern Ireland, where applicable, to be a ‘professional’ member. Others stated there should be more than one appointment from each of Scotland, Wales and Northern Ireland and others suggested there should be no minimum requirement and that the waiver should not be available.

There were a number of comments relating to the size of the board particularly around the variance on the number of board members each regulator has and the effect if waivers by the devolved legislatures were introduced. It was felt that too small a board could preclude

effective decision making and the board size must be sufficiently large enough to ensure the context of the regulated is considered.

Concern around accountability was also raised, particularly if the chief executive is also appointed as the Registrar and whether this would mean the board would become directly embroiled in any controversial fitness to practise decisions, related to the Registrar review (however the power to revise decisions is no longer a proposed function of the Registrar and has changed to become a regulatory power - see Q61). Comments were also received in relation to the independence of regulatory bodies and the importance of independent decision making, within a statutory framework set by government.

Comments were made in relation to transparency of the recruitment and appointments process of board members and that input should be made from the professions of the regulator. Concern was also raised on the level of influence the chair has on the composition of the board and asked who the chair is accountable to. There were also comments in relation to the involvement by the PSA on the appointments process and seeking clarification that this would continue

The proposal which attracted the most concern was around removing the requirement for registrant and lay professionals to be appointed to the board, although it was acknowledged that such appointments can still be made. This concern was raised by respondents who both stated they agreed and disagreed with the question. It was felt that lay members reflected the wider society and that public protection lay at the heart of lay member input to a board. Although it was recognised by some that not all regulators could appoint registrants from the professions they regulate to their board (for example HCPC who regulates 15 professions), it was felt that professional input at board level was vital to provide insight into the professions they regulate and to fully understand the impact that changes to policy or standards have on registrants and their practice. Some respondents felt that the appointment of registrants to the board being seen as optional would undermine professional and stakeholder confidence in the regulator and its processes, for example without it the regulator may not be able to fully understand the impact that changes to policy or standards have on their practice without input provided by professional expertise.

Some respondents expressed concern that fewer ‘lower-level’ professions would be appointed to the board as the limited roles would be filled by those professions regarded in higher esteem. There were also some comments seeking clarification around the definitions of current and former registrants.

Finally, some respondents who agreed with the proposals suggested a review is carried out following implementation to ensure the boards are operating more effectively and to consider if further changes are required.

Comments included:

> Organisation: “We agree that this simplification and constitution seems to represent a positive way forward but would add that appointments should be made in a transparent way and that due consideration should be given to the diversity of the Boards, beyond purely on geographical grounds. Training of Board members should be enhanced".

UK and devolved governments’ response

Note: discussions are still taking place in relation to this question. The provisions relating to the unitary board are not included in the draft Order. For the GMC, these changes will be included as part of the next Order on GMC reform, which will implement the new regulatory framework for medical professionals.

This question prompted varying responses on the many elements to this question however it was clear the main concern was around the removal of the requirement for registrant and lay members to be appointed even though the proposal still permits this.

A successful board is made up of a diverse group of people who have the necessary skills and experience to effectively run an organisation. It is hard to comprehend a regulator not having some professional and lay input at board level and we would expect the views of both these groups to be taken in to account, however, regulators are best placed to determine how this is best met. To ensure there is provision for this in legislation, we propose to state that regulators must determine and publish the arrangements for ensuring a registrant and lay voice in board decision-making.

We acknowledge concerns around the potential minimum and maximum board size however these are parameters for regulators to work within. The number of professions and size of each regulator varies greatly and there needs to be flexibility with regards to board size. However, to ensure there is sufficient board member roles available we will increase the maximum from 12 to 14 members. In addition, regulators may also appoint non-voting members to the board and invite representatives to meetings for specific discussions.

Accountability was also raised by respondents. There are clear lines of accountability for board members which consists of the chair and non-executive members holding the executive members to account, the chair holding the non-executive members to account and the chair being accountable to the Privy Council. If a chief executive also carries out the role of Registrar it is the responsibility of the regulator to judge whether there is a potential conflict of interest when discussing any particular matters, as is the case with all conflicts of interest. Regarding the appointments process, the PSA will continue to be involved in the process and to provide advice to the Privy Council on the processes used

by the regulators when recommending candidates for appointment and reappointment to the Privy Council.

We are confident that these proposals will provide regulators with the scope to ensure their board is fit for purpose. We also recognise that the proposed parameters provides that unitary boards must have a minimum of 3 members with up to an additional 3 members if any of the mandatory 3 postholders do not wholly live or work in Scotland, Wales and Northern Ireland (where applicable). However, we would not envisage regulators operating in circumstances where the absolute minimum number of board members could be achieved, as regulators will want to fill roles with those who have the right level of expertise and skills to set the strategic direction for the regulator and ensures it operates effectively to meet its statutory objectives and carry out its functions.

Each regulator varies with the number of professions and registrants it regulates and we want to provide a framework for regulators to have sufficient flexibility to determine the size of the board for themselves within the parameters set in legislation. In addition to this, regulators can determine the quorum however it must not be less than half of its members.

As explained earlier in the document and subject to further discussion, the UK and devolved governments will introduce the following requirements for regulators unitary boards:

the new unitary board arrangements will be put in place no later than 2 years following legislative change for each regulator

- the chief executive will sit as a board member with immediate effect
- the non-executive chair will continue to be appointed by the Privy Council and the Privy Council will determine the length of term, in consultation with the regulator
- non-executive directors will be appointed by the chair and approved by the Privy Council
- the chair and non-executive directors will appoint the chief executive and other executive members to the board
- there will no longer be a requirement to appoint professional and lay members however regulators must determine and publish the arrangements for ensuring a registrant and lay voice is present in board decision-making

The parameters for the board to operate within are:

- each board must include, as a minimum, a non-executive chair, a chief executive, and a non-executive director and have up to a maximum of 14 members, with non-executive members forming the majority of the board
- the chair and non-executive directors must not hold office for more than 8 years during any 20-year period for each role they hold
- at least one board member must wholly or mainly work or live in each of Scotland, Wales and Northern Ireland, if the regulator operates – this requirement may be waived with the written consent of the regulator and the relevant Scotland, Wales or Northern Ireland Minister
- current and former registrants may be appointed to the board (as either executive or non-executive directors) but should not make up more than half of the board members at any time

Fees and charging

Q5: Do you agree or disagree that regulators should be able to set their own fees in rules without Privy Council approval?

Proposal

Regulators are funded by fees charged to their registrants. This is central to ensuring their independence from government. Four regulators (the GMC, GDC, GOC and the GPhC) can set registrant fees without any Parliamentary oversight. The remaining regulators can only implement fee changes with the approval of the Privy Council and, in some cases, of the Scottish Parliament.

We proposed that all regulators should be able to set their fees in rules without Parliamentary oversight.

Table 8 - responses to Q5

Category	Number of responses	Percentage
Agree	297	66
Disagree	152	34
Total	449	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that regulators should set their own fees in rules without Privy Council approval. Most respondents felt regulators should set their own fees and that this contributed to their independence from government. There were caveats alongside many of those who agreed which were mainly around regulators being transparent about how fee changes have been set and scrutinised, clarity on how decisions can be challenged and that fee changes should be monitored.

There was some concern regarding the removal of Privy Council approval and the role of MPs in scrutinising and challenging fee proposals. However, the biggest concern expressed by respondents was an increase in fees and these being made on a more regular basis. Some responses suggested that fees should be set by an independent body and for there to be a consistent approach to fee changes across the regulators.

Comments included:

> Organisation: “The regulator itself understands its costs and requirements however it must be able to clearly justify fee increases”
>
> Individual: “There is no competition and therefore no choice for registrants. The fee should be proportionate, and the regulator should be accountable to someone for this.”

UK and devolved governments’ response

Four regulators already have the power to set their fees in rules without Parliamentary oversight and this proposal would make the power consistent across all the regulators. Fee changes have been made through use of the power and has resulted in both increased and decreased fees.

Concern around regulators being transparent regarding fee changes will be addressed through the regulator’s requirements to operate transparently, to publicly consult on all fee changes and any pre-existing legal obligations relevant to fee setting, which would include observing the public sector equality duty. However, we acknowledge this may not be enough to assure registrants and stakeholders. We will therefore include in legislation a requirement for regulators to evidence in their annual report, their assessment of the likely impact of any change made to fees (during the period covered by the report), particularly in relation to the workforce of the health service in the UK, the professionals it regulates, and the regulator itself. There will be no formal clearance of fee changes by Privy Council or devolved legislatures however the regulators, which are accountable to Parliament, may

be called before the Health and Social Care Select Committee[1] at any time to scrutinise the work of the regulator.

We expect regulators to thoroughly review any need for fee changes (including fees charged leading to registration, re-admission and restoration to the register) and be able to justify decisions around them. Public consultations on fee changes will enable registrants, trade unions, professional bodies, the public and other stakeholders to understand why a fee change is being proposed and respond accordingly.

Although regulators carry out similar functions, the funding required by regulators for the work it carries out varies. Likewise, registrant fees differ across the regulators as well as the number of registrants paying them. However, we would encourage regulators to work together to ensure there is a robust and consistent approach to determine fee changes so the principle behind what is charged remains the same or similar.

Finally, annual reviews carried out by the PSA take in to account all regulatory activity through their role on overseeing the regulators. We would expect the PSA to address any concerns they had regarding fee changes, as with any other area of regulatory activity, through their report. We will therefore introduce powers for regulators to be able to set their own fees in rules and a requirement for regulators to evidence in their annual report, their assessment of the likely impact of any change made to fees (during the period covered by the report), particularly in relation to the workforce of the health service in the UK, the professionals it regulates, and the regulator itself.

Q6: Do you agree or disagree that regulators should be able to set a longer-term approach to fees?

Proposal

We proposed that regulators should be able to set a longer-term approach to fees, for example setting out a mechanism for the calculation of fees over a number of years.

Table 9 - responses to Q6

Category	Number of responses	Percentage
Agree	359	81
Disagree	83	19
Total	442	100

[1] or equivalent in the devolved legislatures

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal for regulators to be able to set a longer-term approach to fees.

Although the majority of respondents agreed that regulators should be able to set a longer-term approach to fees, it was clear that there would be an expectation that this should remain flexible where unknown circumstances may prevail. It was also clear from the comments received, that regulators should be transparent in what factors have been taken into account in determining future fee charges, and to provide the opportunity for fees to freeze or decrease within the set timeframe.

Finally, some comments referred to regulators taking in to account the various salary levels of registrants when fee setting and there was some concern that there would be less scrutiny of future changes and that this should be monitored by an external body to ensure they remain appropriate.

Comments included:

> Organisation: “It is reasonable to set a longer-term approach to fees but a process for earlier review as part of this approach would also be appropriate to allow for unanticipated changes in circumstances.”

UK and devolved governments’ response

As question 5 and 6 are closely aligned it is no surprise that there were similarities with the comments received for both questions, which focused on transparency when setting a long-term approach and monitoring of any changes.

As with the response to question 5, transparency will be addressed through the new requirement for regulators to discharge their functions in a way which is transparent, and regulators must evidence in their annual report, their assessment of the likely impact of any change made to fees (during the period covered by the report), particularly in relation to the workforce of the health service in the UK, the professionals it regulates and the regulator itself. Regulators must thoroughly review any need for fee changes and be able to justify decisions around them.

Public consultations will also take place on any proposed framework for future fee charges to enable registrants, the public and other stakeholders to understand what is being proposed within certain circumstances and respond accordingly.

As we know from recent times, we cannot fully predict what lies ahead and regulators must be prepared to adjust or disregard any framework for future fee-setting if what was taken into consideration when it was developed has changed. Regulators must have robust and effective mechanisms in place to review what was consulted on and that it remains relevant.

We will therefore introduce a power for regulators to set a longer-term approach to fees. This will be a discretionary power for regulators and not all may choose to use it.

Committees

Q7: Do you agree or disagree that regulators should be able to establish their own committees rather than this being set out in legislation?

Proposal

Current legislation requires each regulator to have a number of committees with specific functions, such as investigations, education standards, registration and fitness to practise.

There is little consistency in what statutory committees are required across the regulators, and there is no single committee which is common to all regulators.

We proposed to remove the requirement for regulators to set up specific committees, with all regulators having the power to establish their own committee structure.

Table 10 - responses to Q7

Category	Number of responses	Percentage
Agree	322	73
Disagree	121	27
Total	443	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal on the removal of the requirement in legislation for regulators to set up specific committees and have the power to establish their own committee structure.

Comments from respondents included regulators being best placed to determine their own committee requirements and to have the autonomy to manage their own internal structures. Respondents felt that ‘one size fits all’ is the wrong approach and tailoring would be far more suitable in meeting the needs of individual regulators. A theme that runs through various responses to the consultation was prevalent again here regarding transparency.

Respondents stated that regulators must be transparent about what committees are established and their terms of reference, as well as the business they conduct.

However, some respondents acknowledged that while some level of autonomy should be granted, there should be external oversight or for committees with significant powers to remain set in legislation, for example the fitness to practise committee.

There was also some concern around structures being too variable amongst the regulators which could lead to inconsistencies within the professional regulation system. It was also suggested that there is some consistency amongst regulators regarding what committees are called for specific functions.

Respondents sought for diverse committee members to be appointed and appropriate professional involvement from proposals being developed through to decisions implemented.

Finally, respondents sought for regulators to ensure they had a sufficient structure to enable them to remain accountable for the work they carry out.

Comments included:

> Organisation: “As long as regulators' objectives and duties are clearly laid out, and include duties to pursue proportionate, risk-based regulation and value for money, they should be free to develop appropriate structures to best meet those objectives, in consultation with registrants.”
>
> Organisation: “Regulators should have a similar set of committees to carry out similar functions, regardless of which profession they regulate.”

UK and devolved governments’ response

We acknowledge there will be some duplication of the terms of reference for committees across the regulators due to them having the same statutory functions and objectives, however, little consistency exists in legislation and regulators being able to determine their own committee structure will allow greater efficiency and less bureaucracy, by providing

them with flexibility such as amalgamating or establishing smaller committees than previously.

Regulators will still need to have the necessary internal structure to fulfil their statutory functions and be accountable to Parliament. How they do this should be down to the regulators to determine however this must be made clear by regulators publishing their committee structure and their terms of reference. Committee members should be diverse and ensure they operate transparently.

The UK and devolved governments will therefore remove the requirement for regulators to set up specific committees and provide the power for regulators to establish their own committee structure.

Charging for services

Q8: Do you agree or disagree that regulators should be able to charge for services undertaken on a cost recovery basis, and that this should extend to services undertaken outside of the geographical region in which they normally operate?

Proposal

Although regulators are self-funded through the fees paid by registrants, they are not all able to charge for the services they provide to third parties. The cost of assessing these applications is met by the regulator and passed on to registrants. Regulators are also not able to charge overseas education institutions for the assessment, monitoring or approval of that institution and its qualifications.

We proposed to remove such restrictions and enable regulators to set out in rules charges for services they undertake, excluding services in respect of fitness to practise functions. Any fees must only cover the costs of the activity carried out.

Table 11 - responses to Q8

Category	Number of responses	Percentage
Agree	271	64
Disagree	152	36
Total	423	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal to allow regulators to be able to charge for services undertaken on a cost recovery basis, and that this should extend to services undertaken outside of the geographical region in which they normally operate.

From the responses, the consensus was that registrant fees should be kept to a minimum and should not be used as a source of income to cover other regulatory activity.

However, there was some division regarding whether regulators should be carrying out any work that appears to fall outside the scope of what regulators are funded to carry out, particularly outside of their geographical remit.

Concern around regulators focus shifting to income-based activity and working in silos was also raised. Comments were also made regarding limiting this power to overseas and not for commercial gain.

Accountability and transparency was also prominent in responses and a small number stated that regulators should publish the criteria used to determine what and how services will be charged, if they are to be considered on a case-by-case basis and take in to account the impact on those from low-income countries and the challenge of recruiting from overseas.

Comments included:

> Organisation: “The general principle that the cost of regulation should be borne by registrants is sound… However, where third parties' profit from products that require regulatory approval, the cost of this approval should be met by the third party.”

UK and devolved governments’ response

It is unfair to expect registrants to have to cover additional costs for some regulatory activity that could be charged to those recipients of the work carried out. The purpose of this power is for regulators to recoup costs for work currently carried out rather than this being passed on to registrants. It is not intended for regulators to extend their operations into new territory. The core role of a regulator is to protect the public and this will not change. Also, all charges would be based on a not-for-profit basis.

Regulators play a role in ensuring the UK workforce is fit for purpose which includes creating routes for students and professionals from overseas to train and work in the UK. Activity relating to the education and training function is particularly prevalent here and registrants should not bear the brunt of regulatory activity in this area. Enabling regulators

to charge for this activity rather than seeking funding from elsewhere preserves their independence and keeps regulators self-sufficient.

Such a power should be exercised fairly, proportionately and transparently and be underpinned by clear criteria and a methodology for the application of the policy.

We will therefore provide regulators with a power to be able to charge for services undertaken on a cost recovery basis, which includes for services undertaken outside of the regulator's geographical region in which they normally operate.

Power to delegate

Q9: Do you agree or disagree that regulators should have the power to delegate the performance of a function to a third party including another regulator?

Proposal

The regulators deliver similar functions in relation to the professions that they regulate. The extent to which these functions can be delegated to another body varies, as does the extent to which a regulator can carry out functions on behalf of another body.

The consultation proposed that all regulators should be provided with a power to:

- delegate the performance of their functions to any other regulator or third party
- carry out regulatory functions which have been delegated to them

Where a regulator delegates the performance of a function or part of a function to a third party, it will retain responsibility for the delivery of that function

To note, when the consultation was published, the Health Act 1999 prevented a statutory instrument being made under section 60 to allow a regulatory body to delegate the functions of keeping a register, determining standards of education and training, advising about standards of conduct and performance, or administering procedures relating to misconduct and unfitness to practise.

Since the coming into force of the Health and Care Act 2022, the 1999 Act has been amended, so that those functions can be delegated under section 60, however they can

only be delegated to another health and care professional regulatory body[2] or Social Work England.

Table 12 - responses to Q9

Category	Number of responses	Percentage
Agree	237	56
Disagree	190	44
Total	427	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

There was a mixed response to this question regarding regulators having the power to delegate the performance of a function to a third party including another regulator.

Respondents who agreed with the proposal were of the view that the ability to delegate functions provided opportunities for effective partnership working between the regulators which has the potential to drive efficiencies by reducing duplication of effort and costs. It would enable organisations to pool expertise to streamline how functions are delivered, recognising that some may require a multidisciplinary perspective and collaborative approach, in order to strengthen public protection.

Several respondents stated that certain safeguards would have to be in place to ensure the benefits of proposed delegation are accurate, that appropriate due diligence is carried out on the receiving person or organisation and that they can be carried out in line with relevant legal requirements. In addition, respondents highlighted that some regulators, for example, the NMC and the GOsC are already able to delegate operation of their quality assurance of education and training to third parties and this appears to work well.

Respondents who disagreed with the proposal were of the view that the regulators should undertake all of their own functions as they have the required expertise in the professions they regulate to be able to do this efficiently and effectively. Some respondents raised concerns around accountability and responsibility if functions are outsourced to other regulators or third parties. In addition, some respondents were of the view that the proposal may lead to increased costs or a lack of value for money for regulators if functions are not carried out in line with the regulator and the public's expectations.

[2] As referenced in section 60(2) of the Health Act 1999

The biggest concern from respondents related to the view that regulators should only be able to delegate the performance of their functions to another regulator and not a third party. A number of respondents stated that the consultation should have clarified what was meant by ‘third party’ so they could have provided a more informed response to this question. Some respondents were of the view that there were risks involved with delegating to third parties such as the loss of organisational memory and possible adverse impacts on regulators meeting their statutory objectives and public confidence if the delegated body does not deliver the function to a high-quality standard.

Finally, some respondents highlighted that there may be tax implications for some regulators which may challenge the application of the proposal.

Comments included:

> Organisation: "Agree providing this will result in improved efficiencies and eliminating duplication and importantly that there is no deviation from the processes that professionals would have expected had the function been undertaken by their own regulator. We would appreciate a greater understanding and clarity of the `third party' providers.”
>
> Individual: “The regulator should have internal expertise to perform all the functions required of it and should not need to do this.”

UK and devolved governments’ response

Providing regulators with such a power increases flexibility and does not necessarily mean regulators will choose to use it. However, it will provide greater opportunities for effective collaborative working between the regulators. Regulators would need to determine if delegating a function, or part of a function, would lead to potential efficiencies and be beneficial to the regulator.

Any due diligence and implications of delegating a function, or indeed taking on a delegated function, would need to be assessed by each regulator. Where a regulator delegates the performance of a function to another regulator or third party, it will retain responsibility and be accountable for the delivery of that function.

With regards to delegating to a third party, we acknowledge the concerns raised however we know that in practice, for those regulators who already have the power and have used it, it can work well. We do not want to restrict the flexibility that can be provided to regulators to operate a more efficient function and any delegation is always with the caveat that the delegating regulator remains accountable for its continuing performance.

We remain of the view that, subject to the position outlined above following the coming into force of the Health and Care Act 2022, all regulators should be provided with a power to:

- delegate the performance of their functions to any other regulator or third party
- carry out regulatory functions which have been delegated to them

Data handling, sharing and collection

Q10: Do you agree or disagree that regulators should be able to require data from and share data with those groups listed above?

Proposal

Regulators have a variety of powers and duties relating to receiving and sharing information. Where they share or receive information, this must be done in accordance with data protection legislation.

Regulators generally already have the power to require information relating to fitness to practise cases. However, these powers do not extend to their other functions. For example, the GMC has been unable to obtain information about the progress of medical students. Information about the progress of medical students would allow research into undergraduate education.

Providing the regulators with a power to require other regulators and external bodies to share data, and for regulators to share information with other bodies, will enable them to better fulfil their public protection role.

We proposed to provide regulators with the power to obtain, process and disclose information to or from any organisation or person where it is required to fulfil their statutory objectives. This will include:

- another regulator (including health and care system regulators) and the Professional Standards Authority
- education and course commissioning bodies and providers
- professional bodies
- bodies representing students and registrants
- employers and contractors of services

- law enforcement bodies
- government agencies including those in Wales, Scotland and Northern Ireland where appropriate

Table 13 - responses to Q10

Category	Number of responses	Percentage
Agree	360	81
Disagree	84	19
Total	444	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal for regulators to be able to require data from and share data with those groups listed above.

The majority of respondents who agreed felt the proposed powers were necessary for regulators to fulfil their role particularly in terms of public protection. It was felt that this could lead to supporting more interagency collaboration and improve safeguarding through openness and transparency.

However, the response also provoked a number of concerns. Some respondents felt that the powers were too broad, particularly around “employers” who may use this power to seek inappropriate information and there was some concern around data protection.

Where comments related to concerns around sharing data these understandably mostly related to registrants and sought confirmation that the powers will not lead to invasions of privacy, particularly in relation to registrant’s health information or relating to fitness to practise cases. They sought confirmation that regulators will continue to run a fair process with data being shared at an appropriate time for example when investigations have concluded. Respondents also raised that registrants must be able to share information and experiences confidentially with their representative organisations and professional bodies without fear it may be handed over to a regulator and used in processes against them.

Other comments suggested that anonymised data sharing must be the standard approach and only personal information used in relation to fitness to practise. It was also raised that on occasion where a body has shared intelligence with a regulator, there had been no feedback on whether the concern was justified or addressed which was unhelpful. Respondents also felt that some data should be protected for learning purposes and that

regulators need to bear in mind the impact on cost for organisations having to supply data to them before requesting it.

Some respondents also felt that when sharing data on registrants, it must be governed by parameters that are clearly communicated to and agreed with registrants. It was also suggested the terms used for the list of bodies is made clearer as they can be interpreted differently, and that the circumstances in which data is requested from any of the listed bodies be set out in statutory guidance, following a full consultation with those involved and be regularly reviewed.

Other respondents asked whether the duty to co-operate would link to data powers and if reciprocal powers would exist. The role of the PSA was also raised and sought clarification on whether there is an expectation that they will oversee regulator's compliance in this area or if this will be carried out by the Information Commissioner's Office.

There was a clear expectation from respondents who both agreed and disagreed that any request should be considered on a case-by-case basis with clear justification assessed against a set of criteria for requesting or providing information.

Finally, some respondents felt there was not sufficient detail particularly around the safeguarding of registrants for them to respond fully to the question.

Comments included:

> Organisation: "We agree that regulators should be able to require data from and share data with those groups listed above to protect the public, maintain public confidence in the profession, and uphold the standards of the profession providing the parameters of the data sharing is clearly set out, proportionate and for a legitimate means which does not detriment or prejudice the registrant."

UK and devolved governments' response

Regulators must abide by data protection and UK GDPR (General Data Protection Regulation) legislation. This proposal does not replace or duplicate any part of this legislation.

Although the PSA's role is to oversee the regulators it will not have a specific role to monitor compliance in this area. The Information Commissioner's Office (ICO) has the legislative competence for liaising with organisations who do not comply with data law. We are engaging with the ICO on the data powers in the APPAO and will continue to do so during the consultation period and for each regulator as we progress through the reform programme.

Having data powers that are pitched at the right level is important to enable regulators to operate effectively and carry out their role of protecting the public. Regulators must have a clear auditable justification for collating and sharing data and must ensure data is stored safely. The duty to co-operate does not necessarily mean sharing information freely between the listed organisations – there has to be a clear reason that links to powers set in legislation.

It is acknowledged that the majority of personal data sharing relates to fitness to practise which is restricted to matters that the regulator considers to be in the public interest. However, there are occasions when regulators may need to request or share other data and we will ensure only the necessary evidence gathering, notifications publication and data powers are provided for regulators in legislation.

Regulators would only provide non-anonymised information in a strict and controlled set of circumstances. When sharing information about identifiable individuals, we expect regulators already perform careful balancing exercises their public protection functions and the data and privacy rights of individuals. We would encourage regulators to work together to develop a consistent set of principles. Regulators must also be transparent and publish details of how they manage personal data and keep it safe.

We will therefore liaise with the ICO and provide regulators with the necessary powers to obtain, process and disclose information.

Q11: Do you agree or disagree that regulators should produce an annual report to the Parliament of each UK country in which they operate?

Proposal

It is important that regulators are accountable to all areas of the UK in which they operate. Currently:

- the UK Parliament is responsible for the regulation of health and care professions in England and Wales
- Regulation of health and care professionals is a devolved (‘transferred’) matter in Northern Ireland
- Regulation is devolved to Scottish Parliament for health professionals which entered regulation after the passing of the Scotland Act 1998

All of the regulators (other than PSNI) have to present an annual report to the Privy Council setting out how they carry out their statutory functions. We propose that regulators

should also be required to provide an annual report to the devolved legislatures in Scotland, Wales and Northern Ireland, where applicable.

The consultation proposed that regulators should produce an annual report to the devolved legislatures in Scotland, Wales and Northern Ireland, where applicable.

Table 14 - responses to Q11

Category	Number of responses	Percentage
Agree	415	94
Disagree	2	6
Total	441	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal for the requirement for regulators to produce an annual report to the devolved legislatures in Scotland, Wales and Northern Ireland, where applicable.

The majority of respondents who agreed felt this process would contribute to regulators being held accountable for the work they carry out across the UK (where they operate) and allows the report to be scrutinised by the devolved legislatures in Scotland, Wales and Northern Ireland. Some comments referred to this process being part of regulators operating transparently and that the content of the reports should be consistent across the UK so comparisons can be made.

However, some respondents felt that this process would be overly bureaucratic, and that one report should be sufficient to cover the whole of the UK. Other comments received included that such a report should be at the specific request of the devolved legislatures in Scotland, Wales and Northern Ireland rather than a matter of routinely producing a report each year.

Comments included:

> Individual: “Each country needs to know what is occurring within the professions. Important as they have devolved parliaments.”

UK and devolved governments’ response

Professional regulation is a mix of transferred, devolved and reserved powers and it is only right that health and care regulators are held accountable to the devolved legislatures in

Scotland, Wales and Northern Ireland (where they operate). Regulator's accountability takes various forms and the requirement to submit an annual report ensures a consistent and continuous reporting mechanism that regulators can present on their work in Scotland, Wales and Northern Ireland, which is open to scrutiny by the devolved legislatures in Scotland, Wales and Northern Ireland.

We will therefore require each regulator to produce an annual report to the devolved legislatures in Scotland, Wales and Northern Ireland, where applicable.

Powers of the Privy Council

Q12: Do you agree or disagree that the Privy Council's default powers should apply to the GDC and GPhC?

Proposal

The Privy Council has a power to direct most of the regulators where they have failed to carry out their statutory functions, using what are called 'default powers'. While these powers have never been used, they provide a mechanism to ensure public protection. These default powers do not apply to the GDC and GPhC.

The consultation proposed to include the GDC and GPhC within Privy Council's default powers remit to direct a regulator where it has failed to carry out its statutory functions.

Table 15 - responses to Q12

Category	Number of responses	Percentage
Agree	397	95
Disagree	21	5
Total	418	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that the Privy Council should have default powers for the GDC and GPhC. The majority of respondents who agreed felt there should be consistency amongst the regulators and having equivalent default powers for these regulators is in the best interests of the public and helps to promote accountability. Some comments suggested there should be stricter Privy Council oversight.

From those that disagreed, the comments related to whether there was a need for the default powers at all given they have never been used, that oversight existed through the PSA's annual reviews and that default powers should fall within their remit, and one respondent commented that regulators should be completely independent.

Comments included:

> Organisation: "We agree that the Privy Council's default powers should apply to the GDC and GPhC to ensure consistency and the maximum public protection."

UK and devolved governments' response

The Privy Council's default powers to step in and direct a regulator where it has failed to carry out its statutory functions provide a safeguard that goes further than the oversight carried out by the PSA. While these powers have never been used, they provide a mechanism to ensure public protection and should continue to exist.

The powers should be available to the Privy Council for all the regulators as there is no justification for exclusion and this is in line with the drive towards a more unified approach to regulation.

We will therefore extend the Privy Council's default powers to direct a regulator where it has failed to carry out its statutory functions to the GDC and GPhC.

Education and training

The consultation set out proposals to give regulators greater flexibility to determine how they set standards for, and quality assure, education and training. Other proposals included broadening regulators' education and training approval powers and granting corresponding powers to issue warnings and attach conditions to approvals.

This increased flexibility will allow regulators to adapt to changes in the healthcare environment and to the changing needs of service users more quickly, providing ongoing assurance that newly qualified professionals are equipped to offer safe and effective care. We proposed to balance these extended powers with a right for education and training providers to appeal approval decisions.

On the whole, the education and training proposals received high levels of support from respondents. However, there were some areas where the majority of respondents who agreed was smaller, or where agreement was frequently caveated.

Proposals to provide the regulators with broad standards setting and approval powers, the power to issue warnings, and the power to attach conditions to approval were all met with high levels of agreement. Concerns and caveats often focused on the need for appropriate oversight or on the regulators' expertise to carry out these functions.

The proposal that decisions to attach conditions to approvals should not be appealable was flagged as being unfair for education and training providers. We recognise these concerns, and in response propose to extend the right of appeal to cover conditions. The suggestion that some variations in regulators' approval powers should continue was also flagged as problematic. It would be preferable for regulators to have uniform broad and flexible powers. In light of this, we now propose to provide all regulators with uniform education and training powers.

Other key areas which raised concerns were our proposal to grant broad exam setting powers to the regulators, and our proposal to replace the GMC's power to issue Certificates of Completion of Training (CCTs). Although we have not changed our position in these areas, we have investigated concerns carefully and address some of those concerns below.

Detailed analysis of each question and our response can be found below.

Standards

Q13: Do you agree or disagree that all regulators should have the power to set:

a. standards for the outcomes of education and training which leads to registration or annotation of the register for individual learners

b. standards for providers who deliver courses or programmes of training which lead to registration

c. standards for specific courses or programmes of training which lead to registration

d. additional standards for providers who deliver post-registration courses or programmes of training which lead to annotation of the register; and

e. additional standards for specific courses or programmes of training which lead to annotation of the register?

Proposal

Healthcare professionals must complete relevant courses or programmes of training before gaining registration. Education and training standards are therefore central to ensuring that registered healthcare professionals are equipped to deliver safe and effective care.

All regulators have the power to set standards which providers of education and training must meet. However, there is variation in the regulators' powers to set further education and training standards.

The consultation proposed that all regulators should have the power to set:

- standards for the outcomes of education and training which leads to registration or annotation on the register
- standards for providers who deliver courses or programmes of training which lead to registration
- standards for specific courses or programmes of training which lead to registration

- additional standards for providers who deliver post-registration courses or programmes of training which lead to annotation of the register
- additional standards for specific courses or programmes of training which lead to annotation

Table 16 - responses to Q13a

Category	Number of responses	Percentage
Agree	426	93
Disagree	31	7
Total	457	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 17 - responses to Q13b

Category	Number of responses	Percentage
Agree	427	94
Disagree	29	6
Total	456	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 18 - responses to Q13c

Category	Number of responses	Percentage
Agree	417	92
Disagree	36	8
Total	453	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 19 - responses to Q13d

Category	Number of responses	Percentage
Agree	415	91
Disagree	39	9
Total	454	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 20 - responses to Q13e

Category	Number of responses	Percentage
Agree	414	91
Disagree	39	9
Total	453	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that regulators should have broad powers to set education and training standards.

Respondents who agreed with this proposal suggested that these powers would ensure that appropriate education and training standards are set. It was stated that the powers would support public protection and public confidence in the registers.

A number of respondents emphasised the need for collaboration between regulators and other bodies when developing and reviewing standards. Others stressed the need for consultation and oversight, as well as stating that standards should be outcome focused.

Respondents who disagreed with the proposal suggested that setting education and training standards should not be the regulators' role. A number of respondents stated that regulators lack the expertise to set education and training standards.

Comments included:

> Individual: "This provides the regulator, the public, healthcare providers, individuals, education providers assurance that standards are set for all aspects of performance and training"
>
> Organisation: "On education and training it is vital that these regulators work with Educational Providers."

UK and devolved governments' response

Setting education and training standards is an essential part of the regulators' public protection role, as gatekeepers to the regulated professions. We propose that all regulators should be able to use their broad standards powers to set curricula.

The GMC will use these powers to continue setting specialist medical curricula and to set national curricula for AA and PA training (see question 65). Regulators will be required to collaborate with education and training providers and other relevant bodies when developing standards and to consult on new and revised standards.

We remain of the view that all regulators should have broad education and training standards-setting powers.

Approvals, warnings and conditions

Q14: Do you agree or disagree that all regulators should have the power to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses or programmes of training which lead to registration or annotation of the register?

Proposal

The consultation proposed that regulators should have broad powers to approve, refuse and withdraw approval of education and training. In particular, it proposed that regulators should have the power to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses or programmes of training which lead to registration or annotation of the register.

Table 20 - responses to Q14

Category	Number of responses	Percentage
Agree	405	90
Disagree	43	10
Total	448	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

Most respondents agreed with the proposal that regulators should have broad powers to approve, refuse, re-approve and withdraw approval of education and training.

Respondents who agreed with the proposal were of the view that the proposed powers would ensure that regulators have appropriate oversight of education and training and that

consistent standards are maintained. Respondents commented that such oversight is essential for maintaining public protection.

Several respondents who disagreed with the proposal believed that it would result in regulators having too much power, which they may not use proportionately. It was suggested that regulators should determine learning outcomes, but not approve specific courses or programmes of training. Some also questioned whether the regulators' have the expertise needed to quality assure education and training.

Comments included:

> Individual: "Ensures regulators have oversight and standardisation of education"
>
> Organisation: "Regulators should determine the learning outcomes but should not approve courses"

UK and devolved governments' response

The UK and devolved governments remain of the view that regulators should have the power to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses or programmes of training.

We have taken the view that regulators should have broad and flexible powers to approve any education and training and that these powers should not, therefore, be limited to education or training which leads to registration or annotation on the register. Regulators already set education and training standards and have a proven track record of assuring the quality of education and training. These powers will be balanced by the regulators' duties to act proportionately, to consult on changes, to consider the impact of changes, and to cooperate with other relevant bodies.

Q15: Do you agree that all regulators should have the power to issue warnings and impose conditions?

Proposal

The consultation proposed that regulators should be able to issue warnings to education and training providers and attach conditions to approvals of education and training.

Table 21 - responses to Q15

Category	Number of responses	Percentage
Agree	422	95
Disagree	22	5
Total	444	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that regulators should be able issue warnings to education and training providers and attach conditions to approvals of education and training.

Respondents who agreed were of the view that the proposed powers would mean that regulators are able to effectively maintain standards and ensure public protection. Several emphasised the need for regulators to work collaboratively with providers to drive improvements.

A number of respondents emphasised the need for regulators to be accountable for their decisions when imposing conditions or issuing warnings.

Of respondents who disagreed, several questioned whether regulators have the expertise to quality assure education and training.

Comments included:

- Organisation: “conditions must be fair and consistent.”

- Organisation: “any decision by a regulator to withdraw approval for courses founded in workplace-based learning by post-graduate or post-registration trainees in particular can have profound consequences ... It is important, therefore, that any such powers include appropriate checks and balances, and that regulators be put in the position of being held accountable by the relevant parliamentary body.”

UK and devolved governments’ response

The UK and devolved governments remain of the view that regulators should be able issue warnings to education and training providers and attach conditions to approvals of education and training.

This will ensure that regulators have a broad suite of measures available, which can be used to incentivise targeted improvement and ensure that necessary safeguards are in place when education and training falls short of regulator standards. Regulators will continue to collaborate with education and training providers to address issues and drive improvement.

Appeals

Q16: Do you agree or disagree with the proposal that education and training providers have a right to submit observations and that this should be taken into account in the decision-making process?

Proposal

The consultation proposed that education and training providers should have the right to submit observations as part of the regulators' quality assurance process. This would be to ensure that quality assurance is conducted fairly and effectively and that all relevant evidence is considered.

Table 22 - responses to Q16

Category	Number of responses	Percentage
Agree	409	96
Disagree	18	4
Total	427	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that education and training providers should have the right to submit observations as part of the regulators' quality assurance process.

Respondents who agreed with the proposal suggested that it would ensure that quality assurance processes are fair, transparent and take account of all relevant evidence.

Respondents who disagreed with the proposal expressed concern that considering observations in relation to all education and training approval decisions could be overly burdensome for regulators. Several respondents emphasised the importance of collaboration and dialogue between regulators and education and training providers.

Comments included:

> Organisation: “As set out, this will simply ensure that regulators' decisions are taken fairly and effectively.”

UK and devolved governments’ response

The UK and devolved governments remain of the view that education and training providers should have the right to submit observations as part of the regulators’ quality assurance process. This will ensure that the processes are fair, effective and take all relevant evidence into account.

Regulators will continue to collaborate with education and training providers throughout the quality assurance processes and will be required to ensure that their quality assurance processes are proportionate.

Q17: Do you agree that:

a. education and training providers should have the right to appeal approval decisions

b. that this appeal right should not apply when conditions are attached to an approval

c. that regulators should be required to set out the grounds for appeals and appeals processes in rules?

Proposal

The consultation proposed that education and training providers should have a right to appeal against regulator approval decisions. It proposed that this appeal right should not apply when conditions are attached to an approval.

Table 23 - responses to Q17a

Category	Number of responses	Percentage
Agree	414	96
Disagree	17	4
Total	431	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 24 - responses to Q17b

Category	Number of responses	Percentage
Agree	263	62
Disagree	160	38
Total	423	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 25 - responses to Q17c

Category	Number of responses	Percentage
Agree	368	86
Disagree	58	14
Total	426	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposals on appeals against education and training approval decisions. However, a significant percentage of respondents disagreed with the proposal that the appeal right should not apply when conditions are attached to approvals.

Respondents who agreed with the proposals were of the view that it is essential that education and training providers have a right to appeal approval decisions, to ensure that the quality assurance process is fair. It was emphasised that it is important for regulators to be transparent and ensure that appeals processes are set out clearly.

Several respondents objected to the suggestion that appeals should be handled by regulators, rather than by some further independent body. There was also concern that regulators might specify ground for appeal which are too restrictive.

Of those who disagreed with proposals, some were of the view that an appeals process would waste regulator time. Several respondents insisted that it would be unfair if conditions are not appealable, especially given that they could have significant financial and reputational impacts for education and training providers.

Comments included:

Individual: “Ability to appeal needs to be available to ensure fairness and understanding”

Organisation: “the right to appeal shouldn’t apply when conditions are attached to an approval. This is because setting conditions will allow courses to continue to be approved while steps are taken to make them safe.”

UK and devolved governments’ response

The UK and devolved governments remain of the view that education and training providers should have a right to appeal approval decisions. Given the potential impact of conditions for education and training providers, the UK and devolved governments have taken the view that this appeal right should also apply in relation to conditions attached to approvals. There will be a further right of appeal to the courts.

Regulators will be able to set out appeals processes in rules. The regulators’ duties to cooperate, consult and consider the impacts of changes will ensure that the regulators’ appeals processes are fair and proportionate.

Variations in regulators’ approval and standard setting powers

Q18: Do you agree or disagree that regulators should retain all existing approval and standard setting powers?

Proposal

The consultation proposed that regulators should retain any existing powers they have to approve and set standards for the education and training of healthcare professionals. Some regulators have more extensive powers than others, for example:

- the GMC currently has the power to approve specific postgraduate curricula to be followed in general practice and in other recognised medical specialties
- the GMC has the power to approve individuals to provide training in general practice
- some regulators set standards for continued participation in education and training which leads to registration
- some regulators set standards specifying which assessments must be completed by learners on courses or programmes of training

The consultation did not propose that such powers be made more widely available.

Table 26 - responses to Q18

Category	Number of responses	Percentage
Agree	335	79
Disagree	89	21
Total	424	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that regulators should retain existing approval and standard setting powers.

Respondents who agreed with the proposal were of the view that retaining such approval powers would ensure continuity in the quality assurance of education and training. Several respondents also noted that there is no need to revise regulators' powers where there are not problems to resolve.

Some respondents asked for more clarity on which powers regulators will be retaining. Several suggested that the regulators' varying approval and standard setting powers should be reviewed and reconsidered as part of the reform of professional regulation.

Respondents who disagreed with the proposal emphasised the need for the regulators to have consistent powers where possible. Some suggested that providing all regulators with uniform flexible powers would be preferable to retaining specific regulator variations.

Comments included:

> Organisation: "Where regulators have additional powers that are helpful, there is no need to remove them simply for the sake of consistency."
>
> Organisation: "we would suggest that a more pragmatic way forward would be to provide generic powers which allowed the current activities described in the examples to carry on but provided regulators with the opportunity to adapt as practice and healthcare services change."

UK and devolved governments' response

The UK and devolved governments have taken the view that providing all regulators with uniform flexible powers would be preferable to retaining specific regulator variations. This approach will provide a consistent regulatory framework.

The regulators broad powers will ensure that all regulators can:

- approve individual trainers (this power will no longer be limited to general practice trainers for the GMC)
- set standards for continuing participation in education and training
- set or approve specific curricula
- set assessment requirements for learners on approved courses or programmes of training

In general, the regulators' broad powers will ensure that they can quality assure and set standards for all aspects of education and training, if they judge that doing so will serve public protection. Regulators will be required to collaborate with relevant bodies when developing standards and to consult on any new or revised standards.

Exam and assessment powers

Q19: Do you agree or disagree that all regulators should have the power to set and administer exams or other assessments for applications to join the register or to have annotations on the register?

Q20: Do you agree or disagree that this power to set and administer exams or other assessments should not apply to approved courses or programmes of training which lead to registration or annotation of the register?

Proposal

Regulators specify the knowledge, skills and experience required of registrants. On our proposals, regulators will also be able to specify the knowledge, skills and experience required for annotations on the register (see question 13 and 28).

The consultation proposed that regulators should be able to set and administer exams or other assessments, to ensure that these requirements are met. The consultation also proposed that this power should not apply to approved courses or programmes of training. That is, we proposed that regulators should not have the power to set and administer exams which feature within approved courses or programmes of training.

Table 27 - responses to Q19

Category	Number of responses	Percentage
Agree	277	75
Disagree	91	25
Total	368	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 28 - responses to Q20

Category	Number of responses	Percentage
Agree	305	74
Disagree	106	26
Total	411	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question 19 analysis

The majority of respondents agreed that regulators should have the power to set and administer exams or other assessments.

Respondents who agreed with this proposal highlighted that exams, and other assessments effectively ensure that registrants meet standards. A number of respondents noted that regulators already set and administer exams or other assessments. For example, the GPhC sets and administers the registration assessment and the GDC sets and administers the Overseas Registration Exam (ORE). Several respondents also highlighted the need for collaboration between regulators and other bodies when developing exams or other assessments.

Respondents who disagreed with the proposal suggested that regulators do not have the expertise for setting and administering exams or other assessments. A number of respondents stated that this should be a role for education and training providers.

Question 20 analysis

The majority of respondents agreed that the power to set and administer exams or other assessments should not apply to approved courses or programmes of training.

Respondents who agreed with this proposal suggested that having regulators set exams or other assessments which feature within approved courses or programmes of training would not add value to the regulators' quality assurance processes. The regulators' expertise to play this role was questioned. In addition, there was concern that if regulators were to set or administer exams within courses or programmes of training which they approve the effect would be a duplication of regulatory activity.

Respondents who disagreed with the proposal highlighted that there may be cases where it would be appropriate for regulators to set exams or other assessments which feature within approved courses. One example cited was the granting of prescribing rights. It was suggested that granting regulators this power would future proof their legislation, such that they can always ensure that education and training meets high and uniform standards.

Q19 comments included:

> Organisation: "several regulators, including the GMC, already set and administer exams … It is appropriate that these powers be maintained and standardised, so that regulators have the flexibility to ensure registrants meet requirements."
>
> Individual: "Education providers would seem better placed to set and administer examinations and assessments."

Q20 comments included:

> Organisation: "The initial assurance process provided by education and training providers should give satisfactory reassurance to the registering bodies as long as the process is robust."
>
> Individual: "ensure a uniform standard comprised of identical assessments for all candidates"

UK and devolved governments' response

The UK and devolved governments remain of the view that all regulators should have the power to set and administer exams or other assessments. This should not be limited to exams for the purpose of registration or annotation.

We have also taken the view that the power to set and administer exams or other assessments should apply to approved courses or programmes of training. This will ensure regulators have the broad and flexible powers needed to maintain uniform and high standards in education and training.

The regulators' flexible powers will ensure that there is no unnecessary duplication of quality assurance. When developing and delivering exams, regulators will continue to collaborate with education and training providers and other relevant bodies.

Delegation and methods of assessment

Q21: Do you agree or disagree that regulators should be able to assess education and training providers, courses or programmes of training conducted in a range of ways?

Proposal

The consultation proposed that all regulators should have the power to assess education and training providers, courses or programmes of training in a variety of ways. This might include desktop-based or remote assessments, in addition to or instead of in-person visits.

Table 29 - responses to Q21

Category	Number of responses	Percentage
Agree	279	92
Disagree	24	8
Total	303	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that regulators should have the power to assess education and training in a variety of ways.

Respondents who agreed with the proposal were of the view that the proposed powers would give regulators the flexibility to quality assure education and training in the most proportionate way. The need for regulator transparency and for regulators to cooperate with education and training providers was emphasised.

Respondents who disagreed with the proposal expressed concern that it could lead to higher costs or to quality assurance processes which are overly burdensome for education and training providers. Some questioned the regulators' expertise to quality assure education and training. Several respondents requested further clarity on the proposed powers.

Comments included:

> Individual: "As long as applied consistently otherwise this would not be transparent"
>
> Organisation: "Regulation must be proportionate to risk. A range of regulatory tools should be available to provide assurance without being too heavy handed or intrusive."

UK and devolved governments' response

The UK and devolved governments remain of the view that regulators should have the power to assess education and training in a variety of ways.

Regulators should have the flexibility to determine the most appropriate means of quality assuring education and training. When appropriate, regulators may conduct desktop-based or remote assessments, instead of or in addition to visiting locations. This will help to ensure that regulators' quality assurance of education and training is always proportionate, efficient and effective.

Certificates of completion of training (CCTs)

Q22: Do you agree or disagree that the GMC's duty to award CCTs should be replaced with a power to make rules setting out the procedure in relation to, and evidence required in support of, CCTs?

Proposal

The Medical Act requires the GMC to award CCTs to confirm that doctors have completed approved UK specialist or GP training programmes. We proposed to remove this duty and instead grant the GMC a power to make rules setting out the procedure to be followed in relation to, and evidence required in support of, CCTs.

Table 30 - responses to Q22

Category	Number of responses	Percentage
Agree	219	70
Disagree	93	30
Total	312	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that the GMC's duty to award CCTs should be replaced with a power to make relevant rules. Respondents who agreed suggested that this would provide the GMC with helpful flexibility, however it was also noted that they should cooperate with other relevant bodies and consult, before taking forward any changes.

Respondents who disagreed with the proposal suggested that the current system is unproblematic and questioned the need for change. Others expressed concern that the flexibility provided may result in the GMC lowering standards relating to specialist and GP status. Some suggested that the duty to award CCTs should remain in legislation, such that parliamentary oversight is required for any changes.

A number of respondents also requested further details on the proposal, in particular querying who will award CCTs going forward.

Comments included:

> Organisation: "this is a very fundamental change, and we do not feel comfortable that the matter be placed entirely in the hands of the regulator at this point based on the limited information set out in this consultation. As a minimum, when proposing any changes to the existing position the GMC should be required to consult with employers and other key stakeholders"
>
> Individual: "This gives the GMC the ability to adapt to the changing needs of its registrants and professions"

UK and devolved governments' response

The UK and devolved governments remain of the view that the GMC's duty to award CCTs should be removed. We propose to grant the GMC broad rule-making powers, such that it

can determine relevant processes in relation to CCTs or other certificates in rules. On this proposal, the GMC will continue being able to issue CCTs and other certificates.

These flexible powers will ensure that the processes by which doctors' status is recognised on the register best serve the needs of service users, the public, the healthcare environment and the regulated professions. Before taking forward any changes, the GMC will be required to cooperate with relevant bodies and consult on proposals. The government will consult further on this change in a future section 60 Order consultation.

Continuing professional development and revalidation

Q23: Do you agree or disagree that regulators should be able to set out in rules and guidance their CPD and revalidation requirements?

Proposal

The consultation proposed that the legislation should include a new power for regulators to require registrants to undertake CPD and/or revalidation, with the detailed requirements set by individual regulators in rules and guidance.

Table 31- responses to Q23

Category	Number of responses	Percentage
Agree	382	88
Disagree	42	12
Total	435	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents supported the proposal for the reformed legislation to allow regulators to require revalidation or set CPD requirements for continued registration.

There was strong support for a system of revalidation or CPD as an essential component of regulation to assure the on-going competency and development of professionals and uphold public protection. Some respondents felt that current systems of revalidation were ineffective and that any new processes introduced by regulators would need to improve accountability.

Many respondents felt that allowing regulators to set standards in rules and guidance rather than in legislation would create a more flexible system that could better respond to changing workforce needs and professional practice.

Many respondents emphasised that regulators needed clear and transparent rules and guidance and emphasised that regulators must consult closely with appropriate stakeholders such as Royal Colleges when devising standards and requirements. Several respondents felt it was not the role of a regulator to set standards of CPD and/or revalidation, and suggested that employers, registrants and other professional associations were better placed to determine the requirements for each profession.

Although the majority of respondents supported a flexible approach enabling regulators to determine the standards and requirements for each profession, there were some respondents who felt that there should be consistent baseline requirements set in legislation to encourage parity across professions, or that regulators should be encouraged to work together and ensure standards were largely consistent.

Comments included:

> Organisation: "Regulators are best placed to determine what registrants need to demonstrate to prove that they remain safe to practise".
>
> Organisation: "We agree that by allowing regulators to set out detailed requirements to CPD and revalidation in rules and guidance this will give them flexibility to make changes to processes as and when required. We agree that there should be a requirement for regulators to consult on proposed changes with stakeholders and suggest appropriate internal oversight".

UK and devolved governments' response

The government believes that regulators have a key role in assuring the competency and development of registered healthcare professionals to ensure they continue to meet the standards required to safely practise in the UK.

Given the strength of feeling that revalidation and/or CPD was an essential component of regulation to uphold public protection we have decided to mandate that all regulators establish processes and set standards and/or requirements for the on-going assurance of professionals on their register.

Regulators will have the discretion to determine the appropriate standards and procedural requirements for each profession. They should consult with relevant stakeholders as part of this process. We recognise that this approach will result in variation in the standards

and procedures across regulators and professions but are satisfied that the regulators are best placed to consider the needs, context and scope of practice for each profession they regulate.

Registration

The government believes that regulators hold the necessary expertise to determine the specific standards required to practise safely in a regulated healthcare profession. As such, the reformed legislation will enable regulators to set out many of the detailed requirements for registration in their own rules. The provision of more flexible powers to set the requirements for registration and manage the procedural aspects of the registration system received strong support in the consultation and will enable regulators to deliver a more streamlined and efficient model of registration. This will support regulators to deliver value for money for registrants, whose fees fund the professional regulatory system.

As well as analysing the consultation responses in respect of the regulator's role in registering healthcare professionals, we have also worked closely with the regulators and stakeholders to ensure that reforms deliver the government's policy intent and so that we can better understand how the legislative reforms proposed can be translated into operational processes.

Following consultation and further engagement with stakeholders, some specific registration requirements, such as the need for registrants to hold adequate indemnity cover and/or insurance to ensure patients have access to appropriate levels of redress and compensation, will be retained in legislation. We believe that this approach strikes the right balance between autonomy for regulators and maintaining public confidence in the integrity of each register of healthcare professionals.

The government welcomes the valuable contribution that overseas trained healthcare professionals make to the UK workforce. The reformed legislation will remove much of the prescriptive details setting out overseas registration requirements from the current legislation. This will provide regulators with the greater flexibility to determine how they assess applications from candidates who trained overseas to ensure that they meet the standards required to practise in the UK. Regulators will continue to have a legislative duty to set standards of English language proficiency and will be provided with powers to require candidates to undertake assessments to confirm they meet registration standards.

We are working with the Department for Business and Trade to understand the impact of any mutual recognition obligations from international trade agreements on our reforms to regulators' legislation. Overall, our reforms will support regulators to be more responsive to changing workforce and public protection needs, including the registration of overseas trained professionals, which was highlighted by consultation respondents as necessary to ensure that the healthcare workforce is able to meet the current and future care needs of patients.

In relation to removal from the register, we have listened carefully to the feedback received in the consultation responses and additional engagement with regulators to check that our policy proposals are proportionate and ultimately secure the best public protection outcomes. Under our revised proposals, the legislation will set out the circumstances where regulators are required to remove someone from the register and provides discretionary powers of removal in other circumstances. In most cases, registrants have a right to remove themselves from the register, such as where they are retiring or moving overseas. However, where fitness to practise concerns have been raised or are in the process of being investigated, regulators will be able to decide whether to retain a registrant on the register so that they can complete any investigation and make a finding on whether their fitness to practise is impaired.

Our reforms strengthen the regulators powers in relation to the gathering, processing and sharing of data, and enable them to require information to be provided about prospective, current and former registrants, where it is necessary for the protection of the public.

Regulators will have a duty to remove a person from the register where they are convicted of certain serious criminal offences which will be listed in the legislation.

For readmittance to the register, our policy focusses on ensuring there are requirements for applicants to demonstrate that they meet the regulator’s registration standards and that their fitness to practise is not impaired. Regulators may set out in rules the detailed requirements for readmittance in different circumstances, any limits on the timeframe for applying for reinstatement after being removed as a result of a fitness to practise measure, and the number of applications an applicant may make.

The reforms include a power to periodically review registrants' adherence with certain standards, to provide assurance that registered healthcare professionals continue to develop their skills and competencies and acquire any new knowledge required to deliver safe and effective care. The enhanced data powers provided in the legislation will enable regulators to effectively undertake this process, and regulators will be able to remove a registrant who fails to provide the necessary information. Regulators can also take appropriate action under relevant powers where assurance processes highlight a concern that a registrant is not meeting the standards for continued registration. We are aware that some regulators operate a model of registration that includes a renewal of registration process, and we want to provide regulators with powers that enable them to implement a process that is proportionate to the risks each profession poses to public safety.

Another key area where feedback from the consultation and further engagement with stakeholders has resulted in a shift in policy is in respect of annotations. We are of the view that the annotations model that we consulted on, which proposed a broad power for regulators to annotate the register with additional information and impose restrictions or enhancements to scope of practise, was not proportionate and had the potential to exceed

the powers in section 60 of the Health Act 1999. In response to feedback from the consultation we have revised the core information that every regulator must include and publish in the register to protect the public and uphold the integrity of the register. Regulators will also have powers to determine when it is appropriate to include and publish additional information on their register where they assess its inclusion is necessary for the protection of the public. We also intend to provide regulators with limited powers to determine different forms, or categories, of registration. Regulators will be able to set parameters on the scope of registration for people in these registration categories, such as restricting their practice to particular activities.

As we reform the legal framework for each profession, we will consider whether there is a case to vary the application of this policy.

Following feedback from the consultation responses and the regulators, we intend to provide an appeals framework that will facilitate regulators to revise some registration decisions where there has been a material change in circumstances, or the regulator has identified the decision was based on an error of fact or law. The legislation will also set out which decisions attract a right of appeal. We believe this will enable a more efficient use of regulator resources, provide a better experience for registrants, and promote and maintain public confidence in the regulatory system.

Detailed analysis of each question and our response can be found below.

A single register

Q24: Do you agree or disagree that the regulators should hold a single register which can be divided into parts for each profession they regulate?

Proposal

All regulators have a duty to hold a register (or registers) of professionals they regulate and to make this available to the public. The GPhC and the PSNI are also required to hold registers of pharmacy premises and the GOC is required to hold a register of optical businesses. A robust register is central to how regulators meet their core objective of public protection.

Regulators currently hold their registers in different ways. Some regulators hold a single register of the profession they regulate, some hold a single register divided into parts for the different professions they regulate, whereas other regulators hold multiple registers. In addition, some regulators such as the GDC and GOC, hold separate specialist lists to indicate professionals with specific skills or qualifications.

The consultation proposed that all regulators should have a duty to hold and publish a single register of professions which can be divided into parts for each profession they regulate.

Table 32 - responses to Q24

Category	Number of responses	Percentage
Agree	377	72
Disagree	42	8
Total	525	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question Analysis

The majority of respondents agreed that all regulators should hold a single register.

Respondents who agreed with the proposal highlighted that this would introduce consistency across the regulators. It was stated that the single register model would introduce simplicity and could potentially increase the public's understanding of registers.

A number of respondents commented that the HCPC already holds one register which is divided into parts for each profession it regulates, and this works well. In addition, respondents were of the view that the proposal would allow any new professions which may be brought into statutory regulation in the future to be easily and proportionately included as a new part within a regulator's register.

Some respondents also highlighted their support for the removal of specialist lists on the proviso that the skills and qualifications that would have been registered on these lists can be annotated on a registrant's register entry.

Respondents who disagreed with the proposal stated that no evidence had been presented to show that moving to a single register will increase public protection. These respondents were of the view that the different register models approach currently worked well and there was no need to introduce a change.

In addition, respondents highlighted that those regulators who hold multiple registers will incur costs with moving to a single register model. It was stated that if the proposal is introduced those regulators who hold multiple registers should have a transitional period set out in legislation to allow them sufficient time to move to the new register model. Some respondents commented that dual registration had not been addressed in the consultation. It was requested that consideration should be given to how any measures, on a registrant's practise should be reflected on a regulator's register when a registrant is

registered in more than one part of the register. Some respondents also stated they would have liked to have seen more detail on how the proposal would affect the registration of pharmacy premises and optical businesses in the future.

Comments included:

> Organisation: “it will allow any new professions which may be brought into statutory regulation in the future to be easily added as a new part of the register".
>
> Organisation: "It is simpler and creates greater transparency".

UK and devolved governments’ response

The UK and devolved governments remain of the view that all regulators should hold and publish a register of the professionals they regulate. However, this should be a duty to hold and publish a single register of professions which can be divided into parts for each profession a regulator regulates. We will remove from legislation any duties on regulators to hold multiple registers.

A single register model will ensure that current practice is reflected within a regulator’s register, and it will allow any new professions which may be brought into statutory regulation in the future to be easily included as a new part within a regulator’s register. Where dual or multiple registration is held, we will ensure the legislation is flexible enough to allow information relating to a registrant's registration and scope of practice to be held and/or published in the relevant part of the register. Further detail on our proposals in relation to the registration of pharmacy premises and optical businesses will be set out when we develop legislation to reform the legal frameworks for the GPhC, PSNI and GOC.

Publication of registration details

Q25: Do you agree or disagree that all regulators should be required to publish the following information about their registrants:

Name

Profession

Qualification (this will only be published if the regulator holds this information. For historical reasons not all regulators hold this information about all of their registrants

Registration number or personal identification number (PIN)

Registration status (any measures in relation to fitness to practise on a registrant's registration should be published in accordance with the rules or policy made by a regulator)

Registration history

Proposal

The consultation proposed a duty on regulators to publish a consistent set of 6 data points for registrants.

Table 33 - responses to Q25 - name

Category	Number of responses	Percentage
Agree	414	97
Disagree	13	3
Total	427	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 34 - responses to Q25 - profession

Category	Number of responses	Percentage
Agree	424	99.75

Category	Number of responses	Percentage
Disagree	10	0.25
Total	434	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 35 - responses to Q25 - qualification

Category	Number of responses	Percentage
Agree	387	91
Disagree	38	9
Total	425	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 36 - responses to Q25 - registration number

Category	Number of responses	Percentage
Agree	389	91
Disagree	42	9
Total	431	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 37 - responses to Q25 - registration status

Category	Number of responses	Percentage
Agree	396	93
Disagree	32	7
Total	428	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 38 - responses to Q25 - registration history

Category	Number of responses	Percentage
Agree	345	80
Disagree	81	20
Total	426	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that it would be helpful for regulators to publish a consistent set of data about registrants. Some information is necessary for transparency and public protection purposes and helps members of the public to make an informed choice about who is treating and caring for them. There was significant support from respondents for the publication of name and profession, but there was less consensus on responses to the other proposed data sets.

Some respondents objected to the publication of PIN numbers, citing concerns about the potential for this information to be used for fraudulent purposes or misrepresentation.

Some respondents questioned the value of publishing qualifications, noting it could be confusing for the public due to varying routes of entry into some healthcare professions. It was also suggested that this could undermine the clarity that professionals who are on a regulator's register possess the knowledge, skill and experience needed to practise, and could result in the public making unfounded presumptions and assessments about practitioner competence and experience. Some respondents noted that there was potential for the publication of qualifications to have a disproportionate impact on some registrants with particular protected characteristics, such as age, or ethnic minority registrants who may have completed training overseas.

On registration history, some respondents felt that publishing this is unnecessary and risks undermining the public's confidence in, or discriminating against, healthcare professionals who may have historically had conditions placed on their practice which are now resolved, those who have been subject to malicious allegations, or in instances where fitness to practise investigations have concluded there was no impairment.

Several respondents cited concerns about privacy and the potential for registration history to be used by the public to decipher an individual's protected characteristics, such as health or age. Some respondents noted that employers could request access to registration history as part of pre-employment or due diligence checks, offering the necessary public safeguards. Other respondents felt it was essential for transparency and public protection to have this information on public record, to ensure accountability and maintain public confidence in the system of regulation.

Some respondents also noted that whatever data was published, it was essential that a robust assessment is conducted by both the department and regulators relating to relevant privacy laws, UK General Data Protection Regulations (GDPR) and the impact of publication on Equality, Diversity and Inclusion (EDI) considerations.

Comments included:

> Individual: "Registration history is overly intrusive and means that registrants will never be able to move on from past mistakes…. This would have a disproportionate impact on [ethnic minorities], who are more likely to be the subject of an investigation".
>
> Organisation: "Care would need to be taken to ensure that registrants' age or other personal (including protected) characteristics are not inadvertently available by virtue of piecing together information published, for example, registration history, periods not on the Register etc, so as to protect against a potential risk of discrimination".
>
> Individual: "It should not be necessary to publish qualifications. The presumption should be that they are qualified if they are registered".
>
> Organisation: "Providing clear information about healthcare professionals' registration status will make it easier for members of the public to make informed choices for securing services to meet their healthcare needs."

UK and devolved governments' response

The UK and devolved governments remain of the view that regulators should have a duty to publish the name, profession and part of the register they are registered in, PIN number, registration history, and registration status of registrants.

On registration history, the intention of this duty is that regulators will only be required to publish the most recent, or last, date of last registration, and any current fitness to practise measures. This means that regulators will not be required to publish historical background information to an individual's registration and interactions with the regulator, although the legislation will provide regulators with flexibility to determine any additional information for publication about an entry, where they consider it will aid the protection of the public.

Despite an overall majority of respondents agreeing to the principles of the proposed data set, the government recognises that there were significant and compelling concerns raised about the proposal to include a duty for regulators to publish qualifications. As a result, we have amended our proposals for the publication of data so that there will no longer be a duty on regulators to publish the primary qualification of registrants. We accept the concerns that publishing qualification details could result in members of the public drawing inferences about the protected characteristics of an individual which could result in discrimination of a healthcare professional, undermining public confidence in their ability, or placing them at an increased risk of harm. Some healthcare professions have very diverse training and qualification routes so there is potential that publishing qualifications

may be misleading or confusing to the public. A core function of the regulators is to assess the skills, knowledge and experience of registrants, and registration provides clarity and assurance to the public that a healthcare professional is competent to practise.

We recognise that some regulators currently publish a registrant's primary qualification and may wish to continue with this approach and regulators will have a power to publish additional information about an entry

Power to collect, hold and process registration data

Q26: Do you agree or disagree that all regulators, in line with their statutory objectives, should be given a power allowing them to collect, hold and process data?

Proposal

The consultation proposed providing regulators with a power to request and process information on registrants. The power was proposed to apply where the collection of this data was consistent with a regulator’s statutory objectives. Regulators would be given a power to remove registrants who declined to provide this information, as a last resort.

Table 39 - responses to Q26

Category	Number of responses	Percentage
Agree	387	89
Disagree	43	11
Total	436	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal to give regulators a power to collect, process information where it feels it is necessary to uphold its statutory duties.

Many respondents felt the powers were essential to enable regulators to perform their statutory functions effectively, and that their objectives would be hindered without this ability. Others noted the powers would support transparent regulation and that the information could be a useful source of data to inform healthcare workforce planning.

Many respondents cautioned that strict compliance by the regulators with data and privacy regulations was required to ensure data security and trust, and some respondents felt that powers should be relatively limited and clearly defined in legislation to ensure their use remained proportionate. This was in line with some respondents who commented on the data sharing powers at question 10 of the consultation.

A small number of respondents disagreed with the proposals, citing lack of transparency and trust in the regulators. Some were also concerned about the accountability of the regulators when using the powers.

Comments included:

> Organisation: "Care would need to be taken to ensure that registrants' age or other personal (including protected) characteristics are not inadvertently available by virtue of piecing together information published, for example, registration history, periods not on the Register etc, so as to protect against a potential risk of discrimination"
>
> Individual: "This helps to keep a check on their registration but there needs to be limits."
>
> Organisation: "Regulators should be able to request specific information from registrants which may be published on a public register. However, there must be clear statutory objectives outlining the circumstances in which this power can be used. These should be outlined in guidance, including examples for regulators to refer to if considering using the power in practice. Generally, the power to request information should be in the interests of the public and proportionate to the stated aims or objectives given. Explicit and informed consent must be acquired, and measures should be in place to ensure adherence to UK GDPR 2018."

UK and devolved governments' response

The UK and devolved governments remain of the view that regulators should have the power to collect, process and publish data where this is consistent with their statutory functions. The government considers holding information about healthcare professionals practising in the UK is a core function of the regulators and that data collection and processing powers are necessary to facilitate this.

We intend to provide regulators with a power to take regulatory action, which may include the removal or refusal of registration, with a right of appeal in some circumstances, where a resolution cannot be reached between a registrant who declines to provide information

and where the regulator deems this data to be essential to uphold its statutory duties and ensure public protection.

To carry out their regulatory functions effectively, regulators need to request and share data. In some instances, regulators' existing powers in relation to data sharing are overly restrictive, which can make investigating concerns about a registrant challenging. Under our proposals, regulators will have consistent broader powers in relation to data processing. However, these powers will not be unlimited. Having data powers that are pitched at the right level is important for regulators to operate effectively and carry out their role of protecting the public. Regulators must have a clear auditable justification for collating, processing data and publishing data, and must ensure data is stored safely.

We will ensure that all due legal and Parliamentary process is undertaken so that any legislation and regulations are compliant with data and privacy laws.

Publication of additional registration data

Q27: Should regulators be given a discretionary power allowing them to publish specific data about their registrants?

Proposal

The consultation proposed providing regulators with a power to publish additional information about a person’s registration, over and above the minimum mandatory published data set outlined at question 25.

It was proposed that this power would apply where a regulator considers its use is necessary to uphold its statutory duties and support public protection. The consultation document provided examples of the types of information, which was proposed this power could be used for, including a registrant’s scope of practice, insurance and indemnity cover, revalidation and/or continuing professional development requirements.

Table 40 - responses to Q27

Category	Number of responses	Percentage
Agree	215	53
Disagree	189	47
Total	404	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question Analysis

The majority of respondents agreed with the proposal to provide the regulators with a discretionary power to publish additional information about registrants outside of the mandated list of registrant data listed at question 25.

A significant number of respondents felt that the level of detail provided in the consultation was insufficient to enable them to make an informed judgement on the question. Of those, some felt that the principle of a flexible power could assist regulators where they assessed that the information would help them fulfil their primary functions for the professions they regulate.

Some respondents supported the principle of a discretionary power but cautioned against it being too open-ended and felt there should be centrally defined parameters to encourage a more consistent approach between regulators and ensure proportionate use of the power.

Some respondents felt that any additional powers should be subject public consultation and should include clearly defined rules setting out exactly what information would be published and how the regulator has demonstrated compliance with data and privacy regulations.

Some respondents felt that regulators should only publish additional information where they had obtained the consent of registrants or suggested that as an alternative to open access online, additional information could instead be disclosed to the public or employers on request where they had justified it was necessary for public protection.

Many respondents felt that the level of detail provided in the consultation was insufficient to be able to support an informed response to the question. They requested further clarity on what types of information could fall under this power, and how its publication would benefit the regulators to uphold their statutory duties or be in the public interests.

Comments included:

> Organisation: "Absolute clarity is required about the type of information which may or may not be published - there must be a sound public interest reason for doing so".
>
> Organisation: "No clear case is made that this proposal is in line with a regulator's statutory objectives nor is in the public interest. It will be important to balance the legitimate need of the public for access to information about registered professionals with the right of registered professionals to privacy. needs to be treated with caution and should only

be allowed if it can be demonstrated that it is line with the regulator fulfilling their primary objectives".

UK and devolved governments' response

The UK and devolved governments remain of the view that regulators should be able to publish additional information about a registration record, beyond the mandated dataset for publication set out at question 25 of this consultation.

While the majority of respondents supported this approach, a significant minority did not. Further analysis of the comments from respondents indicates that a significant proportion felt they had insufficient information to make an informed judgement on the policy being proposed. There was no consistency in how respondents who commented to this effect then answered as to whether they did, or did not agree, with the proposal.

Under our proposals, regulators will need to determine whether the publication of any additional information about a registration record will aid public protection, how they have assessed any impact on equality, diversity, and inclusion factors, and how they will comply with data and privacy regulations. Where regulators determine that information recorded against a registration will aid the protection of the public, they will have a corresponding duty to publish it. The government remains of the view that these safeguards will support proportionate and transparent use of the power by the regulators.

See also question 28 relating to annotations.

Annotations

Q28: Do you agree or disagree that all regulators should be able to annotate their register and that annotations should only be made where they are necessary for the purpose of public protection?

Proposal

The consultation proposed providing regulators with a power to use annotations to provide additional information, over and above that required for basic registration, relating to a person's registration, including specifying their scope of practice, an area of expertise or restrictions on their practice or registration. The consultation document clarified that these annotations to the register were intended to be distinct and separate to fitness to practise measures.

Table 41 - responses to Q28

Category	Number of responses	Percentage
Agree	**380**	**91**
Disagree	**36**	**9**
Total	**416**	**100**

Note: Percentage figures have been rounded and therefore may not total 100%

Question Analysis

The majority of respondents agreed with the proposal to give regulators a power to use annotations.

Of those in support, many commented that using annotations was in the public interest and a valuable means of upholding public protection, as they will provide a transparent and clear means for the public and employers to see restrictions to practise, or any specialist skills or knowledge a registrant holds.

Many respondents felt that to ensure a fair and proportionate system of regulation, regulators must ensure that the scope of annotations is limited to a specific public protection remit, and the processes for adding, amending and removing them is clearly set out in rules or guidance.

The consultation proposed that regulators should have the power to charge a fee for making an annotation to a register entry. Several respondents who supported the principle of annotations did not agree with the regulators being able to charge a fee, or noted that if a fee was applicable, regulators should be able to demonstrate this is fair and proportionate and on a cost recovery basis.

Of the small proportion of respondents who disagreed with the proposal, reasons given included that they needed further information to be able to make an informed assessment of the policy, that annotations were too limited in scope, that other mechanisms for highlighting this information would be more beneficial or expressed mistrust in the regulators to manage an annotations system fairly.

Comments included:

> Organisation: "Annotation of registers is an important tool, which allows for clarity on the scope of practice of individual clinicians".

Organisation: "Any annotations that are going to be made should be made within the framework of an annotations policy which should be subject to full consultation with stakeholders".

UK and devolved governments' response

Following engagement with stakeholders and further legal analysis, we have revised our policy proposals. The government now believes that regulators should have limited powers to determine different forms, or categories, of registration. Any conditions on registration should apply only to a group or class of registrants who meet pre-determined criteria set by regulators, rather than be based on individuated circumstances. Regulators will be able to set parameters on the scope of registration for people in these categories, such as by restricting their practice to particular activities.

Regulators will be required to set rules around the criteria for each category, and the process for adding, reviewing, amending, removing, or charging a fee relating to these categories of registration. The register should make clear where a registrant has been placed into a particular category of registration.

The policy proposed in the consultation would have provided regulators with a broad, general power to determine and impose limits on the practice of individual registrants. While the objective of reform is to provide regulators with greater flexibility and freedom to determine the appropriate standards and processes for registration, a policy that gave regulators such a broad power to impose conditions on an individual's registration without any supporting legislative framework, such as for fitness to practise measures, would reach further than the policy intention. On reflection, we believe that this would not be proportionate.

In respect of including and publishing additional information in respect of registrants, such as highlighting any post-graduate qualifications, as per the response to question 27, it will be for regulators to determine when it will serve public protection for this information to be included and published in the register.

We recognise there may be particular factors that will need further consideration in relation to particular professions, such as the arrangements relating to the current specialist and GP registers for doctors. Further detail on any specific variations to this policy will be set out when we bring forward legislation to reform the legal frameworks for each regulator in turn.

Emergency registration powers

Q29: Do you agree or disagree that all of the regulators should be given a permanent emergency registration power?

Proposal

Emergency registration enables healthcare regulators to temporarily register healthcare professionals during times of crisis. The aim is to increase the capacity of the health and social care workforce to ensure that services can meet demand and patient care needs during emergency periods.

The GMC and GPhC already have emergency registration powers within their governing legislation, which was triggered during the COVID-19 pandemic. In addition, the Coronavirus Act 2020 provided the Registrars of the NMC, the HCPC and the PSNI with temporary, time-limited, emergency powers to be able to temporarily register any individual or group of individuals.

The consultation proposed that all regulators should be given emergency registration powers. In line with current legislation, the Secretary of State for Health and Social Care will notify the Registrars of the regulators that an emergency is about to occur, is occurring or has occurred. In Northern Ireland, it will be the role of the Department of Health Northern Ireland to notify the PSNI's Registrar that an emergency is about to occur, is occurring or has occurred.

Table 42 - responses to Q29

Category	Number of responses	Percentage
Agree	311	59
Disagree	95	18
Total	525	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question Analysis

The majority of respondents agreed that emergency registration powers should be extended to all regulators so that they could be used, if needed, in any future emergency without the need for further new legislation to be made.

Several respondents highlighted that emergency registration powers have been used effectively during the recent COVID-19 emergency period. Respondents felt that

standardising this power across all regulators would ensure that they are fully prepared to respond flexibly and rapidly to future emergencies.

Respondents agreed that it should be the role of the Secretary of State for Health and Social Care to turn the powers on in England, Scotland and Wales, and in Northern Ireland it should be the role of the Department of Health Northern Ireland. Respondents were of the view that this would prevent abuse of the emergency registration powers and would ensure that the powers are only used in very rare circumstances, such as pandemics. One respondent proposed that the legislation should include a notice period to close the temporary registers held by regulators, throughout the emergency period. It was stated that this would give regulators sufficient time to contact those temporary registrants whose roles and registration will be coming to an end.

Respondents who disagreed with the proposal had concerns that emergency registration powers could be misused, for example to fill staff vacancies or to address winter pressures on the NHS. Respondents suggested that if there is another emergency situation, Parliament could bring forward legislation allowing regulators to temporarily register people throughout the emergency period. Some respondents raised concerns about the competence of the professionals that may be temporarily registered by the regulators, who may not have worked in their profession for a long time and would not be subject to continuing professional development requirements.

A small number of respondents felt this may put public protection at risk. Other respondents felt that this could be negated by the regulators introducing consistency on emergency registration, such as by only registering those former registrants in good standing and those who had left the register within an agreed set period of time. It was suggested that the time period should be consistent across regulators.

Several respondents stated that it would have been helpful if the consultation document had defined the terminology of an emergency and some other respondents suggested it would be helpful if a review is carried out to see how beneficial the emergency registration powers were during the COVID-19 emergency. It was also proposed that an analysis of the value of emergency registration powers for the different professions could be undertaken as it was highlighted that not all regulated professionals are working on the NHS frontline.

Comments included:

> Individual: "There will be further pandemics, and this greatly assisted during COVID-19".
>
> Organisation: "Emergency registration should be used infrequently so there is no need for there to be a permanent emergency registration".

UK and devolved governments' response

The UK and devolved governments are of the view that emergency registration powers should be extended to all regulators so that they could be used, if needed, in any future emergency without the need for further new legislation to be made. As highlighted by the recent COVID-19 emergency, these powers can support a rapid increase to the capacity of the health and social care workforce during emergency periods to ensure that services can meet demand and patient care needs.

In accordance with current legislation, the definition of emergency will align with the definition contained in the Civil Contingencies Act 2004 and it will be the role of the Secretary of State for Health and Social Care to notify the Registrars of the regulators that an emergency is about to occur, is occurring or has occurred. In Northern Ireland, it will be the role of the Department of Health Northern Ireland, to advise the PSNI's Registrar that an emergency is about to occur, is occurring or has occurred.

During emergency periods we encourage regulators to work together to ensure there is a consistent response to the emergency circumstances. We recognise that when an emergency is coming to an end the Registrars of the regulators will require sufficient notice ahead of closing their temporary registers and are committed to providing the Registrars with timely notice this will ensure that the regulators have sufficient time to contact temporary registrants whose roles and registration will be coming to an end.

Protection of title offences

Q30: Do you agree or disagree that all regulators should have the same offences in relation to protection of title and registration within their governing legislation?

Proposal

The consultation proposed that the same set of offences on protection of title and registration should apply to all regulators.

Table 43 - responses to Q30

Category	Number of responses	Percentage
Agree	372	91
Disagree	38	9
Total	410	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that al regulators should have a standardised set of offences relating to the protection of titles for the professions they regulate.

There were very few additional comments from respondents. Of those who did comment, there were diverging views about the benefits of a consistent set of offences. Of those who supported the proposal, respondents felt this gave parity of protection across all professions, while a small number of respondents made the case for tailored offences relating to dentistry.

Comments included:

> Individual: "There needs to be parity for all offences across the professions to protect the public."

UK and devolved governments' response

The UK and devolved governments strongly believe that the offences relating to the protection of professional titles are a key component into ensuring the integrity of the register and in delivering public protection.

All regulators legislation will include offences in relation to falsely claiming to be registered, for falsely claiming to hold an approved qualification and for falsely claiming to hold a specified protected title. There will also be offences relating to false representations in respect of the content of the register or attempting to procure the inclusion or exclusion of additional information to the register. These latter offences are important because regulators will have a limited power to include and publish additional information on the register which may include information about a person's scope of registration, or any fitness to practise measures imposed historically.

While we believe that that there is a case for greater consistency, we also recognise that for some of the professional regulators there may be a legitimate need for variation in the offences set out in their legislation to recognise variation in the functions they perform (for example regulation of businesses or premises), or to restrict activity that can only be performed by specific regulated professionals.

We will consider the case for any variation in the protected title and related offences for each regulator when preparing the legislation to reform its regulatory framework and will seek views at consultation.

Protection of title offences: intent

Q31: Do you agree or disagree that the protection of title offences should be intent offences, or do you think some offences should be non-intent offences (these are offences where an intent to commit the offence does not have to be proven or demonstrated)?

Proposal

The consultation proposed that in the regulators' legislation protection of title offences should require some intent to deceive others.

Table 44 - responses to Q31

Category	Number of responses	Percentage
Agree	256	66
Disagree	131	34
Total	387	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that the uniform set of protection of title offences proposed for all the regulators should require intent to deceive as one of the elements of the offence.

Those in agreement felt this was the proportionate approach, and that individual circumstances should be considered to protect the public interest.

Of those who disagreed, there were concerns that the proposed blanket approach of non-intent offences for all professions and offences had the potential to reduce public protection by making the offences less likely to succeed at prosecution stage, which could be exploited by individuals willing to take a risk. Others expressed an opinion that having to prove intent could undermine public confidence in protected titles and their use. Some felt that there was a case for variation by profession or each offence, taking into account the extent of the potential harm that may result.

A small number of respondents also suggested other legal thresholds such as 'recklessness' could be explored.

Comments included:

Individual: "There are cases of status being misrepresented for example, in social media, beyond the control of the registrant".

Organisation: "We feel strongly that protection of title is enforced. It is very difficult to prove intent - most people would just be able to say oh I didn't know - as a business owner it is your responsibility to research and find out what you are or aren't allowed advertise yourself to the public as".

UK and devolved governments' response

The UK and devolved governments remain of the view that the protection of title offences proposed under the new legislation should involve the intent to deceive as one of the elements of the offence. The government acknowledges the importance of upholding public confidence in the regulated professions and the purpose that protected titles serve towards this aim and in ensuring public protection.

We consider that it is proportionate that prosecutions relating to the new offences will need to demonstrate that there was an intentional misuse of a protected title, with the intent to deceive others. This will offer the right level of public protection and maintain the integrity of the professions, while avoiding criminal liability for individuals where they, or an agent acting on their behalf, has inadvertently misused a professional title or represented themselves as being of a profession, without knowing that a title is protected in law.

Appointment of deputy and assistant registrar

Q32: Do you agree or disagree with our proposal that regulators should be able to appoint a deputy registrar and/or assistant registrar, where this power does not already exist?

Proposal

All regulators have a duty to appoint a Registrar, who is usually the chief executive. The Registrar has statutory responsibility for keeping a register and other duties, as directed by the Council, including the governance of the regulator. Some regulators can also appoint deputy or assistant registrars whereas other regulators are unable to do so.

Having the ability to appoint deputy or assistant registrars ensures that the required personnel are in place for delegation of duties purposes and when the Registrar is on annual leave or absent due to ill health. Deputy and assistant registrars play a key role in the day to day running of operations by a regulator.

To ensure that all regulators have the required personnel in place to be able to meet their statutory duties the consultation proposed that all regulators should be able to appoint a deputy registrar and/or assistant registrars.

Table 45 - responses to Q32

Category	Number of responses	Percentage
Agree	357	90
Disagree	40	10
Total	397	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question Analysis

The majority of respondents agreed that regulators should be able to appoint a deputy registrar and/or assistant registrar.

Respondents who agreed with the proposal were of the view that the appointment of a deputy registrar and/or assistant registrar would help to ensure the role is able to be carried out by the required personnel in order for the regulator to meet its statutory duties as well as continuation of activities and operations in the absence of the Registrar.

Several respondents highlighted that some of the regulators already have a power to appoint deputy or assistant registrars and stated that the current process works well. Respondents were of the view that the power should be extended to all regulators for this reason. In addition, it was stated that this would introduce consistency across regulators. However, some respondents stated they could only support the proposal if there is a transparent appointments process in place, the deputy or assistant registrars are fully trained in the activities they are to undertake, there are clear lines of accountability and there is oversight in place of the deputy or assistant registrars' decision making.

Respondents who disagreed with the proposal were concerned that the proposal may lead to increased costs for the regulators. In addition, some respondents felt that regulators should only have a Registrar and some respondents had concerns with the proposal giving more autonomy to regulators.

Comments included:

> Organisation: "By having deputy and/or assistant registrars, regulators can be more flexible and equally, the regulator's decision-making abilities can be spread over more than one staff member enabling a regulator to act

more quickly and/or to have more specialist knowledge in a particular area for example, registration, Hearings, Investigations etc".

Organisation: “The cost benefit must always be considered, where possible we would suggest looking at alternatives to avoid regulators become 'top heavy' with their leadership structure".

UK and devolved governments’ response

The UK and devolved governments remain of the view that all regulators should be able to appoint a deputy registrar and/or assistant registrar.

This will ensure that all regulators have the required personnel in place to be able to meet their statutory duties. It will also introduce consistency across regulators. Delegation powers will exist for the Registrar to delegate to the deputy registrar and/or assistant registrars to act on his or her behalf in any matter and who may delegate work onwards to other suitable regulator employees.

Registration processes

Q33: Do you agree or disagree with our proposal that regulators should be able to set out their registration processes in rules and guidance?

Proposal

The consultation proposed that legislation should set out the basic criteria for the regulator’s registration processes and regulators, as experts in registering the professions they have oversight for, should be required to set out in rules and guidance specific standards and their processes for considering applications.

Table 46 - responses to Q33

Category	Number of responses	Percentage
Agree	392	96
Disagree	16	4
Total	408	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that regulators should be able to set out their registration process in rules and guidance.

Many respondents agreed that this approach will give regulators greater flexibility, and decision making may become more efficient. A number of respondents highlighted that the recent pandemic has shown the importance of flexibility and expressed confidence in the regulators' decision-making capabilities.

Respondents felt that regulators were best placed to specify their own detailed requirements for registration, and felt it was an advantage for regulators to be able to update and adapt their registration processes in response to workforce or public protection developments, without the need for legislative change. Some commented this approach could streamline and simplify existing complex registration requirements, providing clarity for registrants and the public.

Respondents that disagreed with the proposal had concerns about the resulting inconsistency in standards across the healthcare professions. Respondents suggested that baseline principles should be put in place across all regulators, and that regulators should be required to consult with stakeholders before changing their rules or guidance. Comments voiced concerns about fairness and equitability in the process of setting and applying bespoke rules.

Additionally, in relation to doctors, some respondents believed that changing the process negatively impacts public protection, by removing restrictions on the scope of practice for newly qualified doctors. Some also expressed concerns that the policy shifted focus away from safeguarding and onto streamlining the process.

Comments included:

> Organisation: "Regulators are the experts and gatekeepers to each regulated profession and are therefore best placed to set out their detailed requirements for registration".
>
> Organisation: "The regulator is aware of the necessary requirements. However, this should be a fair and transparent process for all applications who are applying for registration".

UK and devolved governments' response

The UK and devolved governments are of the view that the existing prescribed routes to registration should be removed from legislation and replaced with a baseline of registration requirements, consistent across all regulators.

To ensure standards of public protection we propose that there will be a requirement for regulators to set and assess registrants against standards of skills, knowledge and experience relevant to each profession, including English language proficiency. Regulators should also have a duty to check a registrant's identity, and that they have appropriate and adequate indemnity or insurance arrangements in place. Regulators will additionally have the freedom to assess candidates against any additional requirements they set out in rules.

Discretionary registration powers

Q34: Should all Registrars be given a discretion to turn down an applicant for registration or should applicants be only turned down because they have failed to meet the new criteria for registration?

Proposal

The consultation asked respondents for their views on whether the existing unique power held by the GMC in the Medical Act 1983 which provides discretion for the Registrar to register applicants should be expanded to all regulators. It also proposed that the GMC's different routes to registration should be removed from legislation and replaced with standardised registration criteria.

Table 47 - responses to Q34

Category	Number of responses	Percentage
Agree	196	49
Disagree	200	51
Total	396	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

Several respondents commented that the phrasing of the question made it difficult to respond with only an agree or disagree answer and wished to clarify their response in comments.

The majority of respondents disagreed that all regulators should have new powers of discretion when considering applications for registration, although a very significant proportion agreed with the proposal.

Respondents who agreed with such a discretionary power stated that it provides a certain flexibility for dealing with diverse circumstances which may be difficult to anticipate and account for in rules and guidance. Some commented that on occasion it was proportionate to take a case-by-case approach to assessing registration applications. Respondents emphasised that any such power should be underpinned by monitoring and reporting on its use, and there should be a right of appeal against the Registrar's decision, assessed by an independent panel.

Of those who disagreed with the proposal comments noted that registration criteria and how registrants will be assessed against them must be transparent and fit for the needs of the profession and public protection. Respondents gave the view that if the registration criteria, rules and guidance is fit for purpose and clearly set out, that a discretionary power is unnecessary. Some comments added that monitoring of a discretionary power may be challenging, and that the power could be a conduit for prejudice and unconscious bias.

Respondents commented that the new criteria for registration appeared to provide a fairer process for applicants. Of those who disagreed with a discretionary power, many also commented that there was not a strong case for varying the GMC's legislation to retain this power, and that it should be consistent across all regulators.

Comments included:

> Organisation: "Registrars should be bound by criteria that are clear to applicants".
>
> Organisation: "Registrars should only be able to turn down an applicant if they fail to meet the criteria for registration. We cannot see any good rationale for registrars to refuse to register an applicant who meets the criteria for registration criteria, and a discretionary power to do so could easily lead to inconsistency".

UK and devolved governments' response

In response to the feedback and further development of the reformed registration requirements following the consultation, the UK and devolved governments are of the view that a discretionary power on who should be registered does not align with our approach of creating a transparent, proportionate system of regulation.

The GMC's reformed legislation will not retain the existing discretionary registration powers in the Medical Act 1983, and we will not provide such a discretion to other regulators.

As outlined in our response to question 33, the different prescribed routes to registration will be removed from legislation and all the regulators' legislation will be replaced with a high level, consistent framework of essential registration requirements. Regulators will determine in rules and guidance the specific standards and requirements that professionals must meet. Regulators will be provided with a discretionary power to set out any additional registration requirements in rules. If the Registrar is satisfied that the criteria for registration are met, then they must register the applicant.

The reformed legislation will include a power for regulators to revise registration decisions where there has been an error of fact or law or a material change in circumstances, and registration decisions will also attract a right of appeal.

We consider the reformed registration framework that will be set out in legislation provides a more proportionate system that gives regulators flexibility and control over their registration function so that they can carry out their duties in respect of public protection, while providing a clear, transparent framework for candidates, the public and employers to refer to.

Licence to practise

Q35: Do you agree or disagree that the GMC's provisions relating to the licence to practise should be removed from primary legislation and that any requirements to hold a licence to practise and the procedure for granting or refusing a licence to practise should instead be set out in rules and guidance?

Proposal

Under current provisions, to practise medicine, medical practitioners in the UK need to hold a licence to practise along with registration with the GMC. The question asked respondents if they agreed that the GMC’s licence to practise should be managed as an annotation, with the details set out in rules by the GMC. This aligns with the government's proposals for a single register for all regulators.

Table 48 - responses to Q35

Category	Number of responses	Percentage
Agree	227	73
Disagree	86	27

Category	Number of responses	Percentage
Total	313	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that the GMC's provisions relating to the licence to practise should be removed from legislation with requirements devolved to rules and guidance.

Respondents who agreed with the proposal felt that having the licence to practise set out legislation is inflexible and does not support the GMC to respond to changing workforce or regulation needs in a timely way.

Some respondents felt that the licence to practice was a duplication of registration, that there wasn't evidence to support the GMC having bespoke arrangements for doctors' regulation, and that reform was an opportunity to bring parity and consistency across regulators. Some respondents were of the view that it was appropriate for the licence to practise to be managed as an annotation, as doctors will still be able to relinquish their licence if they don't need it and restore it if they're returning to clinical practice.

Many respondents stressed that this proposal must be supported by transparent and detailed rules and guidance from the GMC. One respondent suggested that doctors who currently hold a licence should have the right to automatic conversion to the licence annotation.

Respondents who disagreed with the proposal expressed concerns that removing the licence to practise from legislation removes necessary Parliamentary and public scrutiny of the GMC's processes and the regulation of medical practice. Some respondents expressed concern about the GMC's accountability and ability to set and apply transparent, fair and proportionate rules in relation to the licence to practise. As the foundation of medical regulation, some respondents felt it was inappropriate to devolve the management of the licence to practise to the GMC and lose government oversight.

Comments Included:

> Organisation: "The provisions should be made more flexible and set out in rules and guidance. This enables the GMC to be more rapidly responsive to changing circumstances".
>
> Organisation: "This could be removed from primary legislation, but the setting of such rules and procedures will have a major and long-lasting

impact on the healthcare workforce. Therefore, the framework for the consideration and consultation around such changes is critical".

UK and devolved governments' response

We remain of the view that the GMC's licence to practise in relation to medical practitioners should be removed from its legislation to bring arrangements in line with the regulatory framework's operated by other healthcare regulators, and our proposed single register model.

As per the response to question 28, regulators will be given powers to determine requirements for different forms of registration which may be subject to certain conditions. We will ensure these powers are flexible enough to enable the GMC to operate a licence to practise system. Devolving this function to the GMC will enable it to respond more effectively and quickly to emerging workforce and regulatory challenges.

Suspension from the register

Q36: Do you agree or disagree that in specific circumstances regulators should be able to suspend registrants from their registers rather than remove them?

Proposal

The consultation document set out the circumstances when it was proposed that regulators could suspend a registration, including due to non-payment of fees, failure to maintain an effective means of contact with the regulator, failure to provide any information reasonably requested by the regulator pursuant to its statutory functions, and failure to meet revalidation or renewal requirements. The consultation proposed that the legislation would provide a right of appeal against these decisions.

Table 49 - responses to Q36

Category	Number of responses	Percentage
Agree	397	96
Disagree	18	4
Total	415	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question Analysis

The majority of respondents agreed that all regulators should be able to suspend registrants from their register in certain circumstances, rather than remove them.

Respondents who agreed with the proposal stated it was a proportionate and reasonable approach that would give regulators flexibility while maintaining public protection. Some respondents stated that suspension may be appropriate during an investigation into whether someone has failed to meet a procedural requirement, but where the risk to public protection was minimal. It was felt that the power would support more proportionate and efficient system for managing cases of non-engagement or situations where the process of removing someone for an administrative reason, then reinstating them, seemed an inefficient use of regulator resources.

There was support for imposing a suspension on registrants while regulators investigate a concern linked to their registration status, particularly where the concern may have an impact on public protection but may not necessarily be directly linked to their fitness to practise. A proportion of comments emphasised the importance of having a range of appropriate powers to better deal with individual cases and circumstances.

Several respondents recognised the importance of the use of suspension by regulators but felt there should be clear limits on the timeframe within which suspension can be used, given the impact it has on a registrant’s livelihood and the emotional strain on registrants during a period of investigation.

Many respondents commented on the importance of providing a right of appeal against an Interim Measure being imposed.

Some respondents questioned the purpose of a suspension and cautioned against it being used disproportionately as a tool for regulators to ease their administrative responsibilities, for example by simply suspending people who fail to pay a renewal fee, rather than having a procedure in place to remind registrants their fee is due in advance.

It was noted that some respondents appeared to be responding from the perspective of a fitness to practise concern being raised, rather than in the context of the examples provided in the question around administrative reasons and failure to engage with procedural requirements.

Many of the comments suggested that suspension could be used as a period of reflection or re-training in respect of less serious fitness to practise concerns. Others felt that more information was needed on how regulators would determine when this power was appropriate.

Comments included:

Individual: "The use of suspension is common practise within all other industries. I strongly agree that the purpose behind it, time to gather facts and evidence, is essential in providing a fair approach in dealing with allegations".

Individual: "For some circumstances a suspension pending further investigation might be in the public interest for safety, and confidence in the profession".

Organisation: "Suspension should be time limited and clear conditions stated which would allow the registrant to reinstated onto the register".

UK and devolved governments' response

The proposal outlined in the consultation was that regulators should have a power to suspend registrants due to administrative reasons linked to their registration, such as failure to comply with revalidation and/or renewal requirements. Following analysis of the consultation results and further consultation with regulators, we have decided to provide regulators with a mechanism for imposing 'Interim Measures' that place temporary restrictions on a registrant's practice where the regulator considers it is in the interests of public protection.

This power is flexible enough to be used while an investigation into matters impacting a person's registration is conducted, in the same way the power can be used during a fitness to practise investigation.

The policy intent behind this power is to ensure public protection while a matter is under investigation. In the consultation document it was proposed that regulators would have temporary suspension powers for decisions relating to non-payment of fees. Due to the requirement for regulators to undertake a public interests test before imposing an Interim Measure, we do not think that suspension for non-payment of fees would be a proportionate use of this power, given the resource implications. As a result, regulators will be provided with a discretionary power to remove an entry for non-payment of fees.

The reformed legislation will also provide regulators with new, broad investigative powers (see also response to question 10) to check whether standards are met or fitness to practise is impaired. Regulators are also being provided with new powers to revise certain registration decisions, including for some of the decisions provided as examples in the consultation document in relation to this question.

We consider that the powers outlined above will provide a more proportionate, streamlined and efficient system of regulation, that enables regulators to safeguard the public while they reach an outcome on any investigation in a timely manner. This achieves the policy

intent that the consultation proposal in respect of powers to suspend registrants for administrative reasons was aiming to provide.

Removal, suspension and readmission to the register

Q37: Do you agree or disagree that the regulators should be able to set out their removals and readmittance processes to the register for administrative reasons in rules, rather than having these set out in primary legislation?

Proposal

The consultation proposed that regulators should continue to be able to remove registrants for specific reasons from their registers and re-admit them. In line with our approach of providing regulators with greater freedom to set their own operating procedures, the consultation proposed that regulators should be given increased powers to set out their removal and readmission criteria and processes in rules.

In addition, the consultation proposed that regulators should set out in rules:

- their approaches to removing a registrant from the register or restricting the practise of a registrant due to health or English language concerns where they are no longer safe to practise, or there is agreement to restrict their practise (but where the concern does not meet the threshold for the fitness to practise process)

- their approach for dealing with voluntary removal requests from the register during a fitness to practise investigation (regulators should be given a power enabling them to determine whether this is permitted, and if so, their process for dealing with requests for removal)

Table 50 - responses to Q37

Category	Number of responses	Percentage
Agree	328	79
Disagree	77	21
Total	417	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposals to provide powers for regulators to determine and set out the criteria and processes for removal and readmittance to the register in rules and guidance.

Of those who agreed, it was suggested that devolving removal and readmittance processes into rules would create a more flexible and responsive regulation system without the constraints of needing to effect legislative change in future. Some respondents, while agreeing with the overall principle of devolving removal criteria into rules, expressed a desire for regulators to ensure that guidance and rules are subject to consultation, then clearly and transparently published and applied.

Several respondents felt that while it seemed proportionate for rules to cover procedural or administrative processes such as for non-payment of fees, that any removal or readmittance that rested on an assessment of a registrant's practice or conduct should remain in legislation. Many organisations who responded in support of the proposals suggested there was some value in rules being aligned across regulators for consistency between professions.

Several respondents did not support the expansion of administrative removal to include regulators developing rules on removal due to health or English language concerns (where the concern does not meet the threshold for the fitness to practise process). Respondents were of the view that health and English language concerns should only be considered as part of fitness to practise proceedings. Respondents stated that this would ensure fairness to registrants as due process will have been followed.

Of those who disagreed with the proposals, many felt that the implications of removal and readmittance procedures for a registrant's career and wider public protection were so significant that processes and criteria should be clearly and consistently defined in legislation across all the regulators. Many expressed concerns that allowing regulators to have control over these procedures could result in a risk of regulators not being accountable, consistent, or transparent in their decision-making and that the proposed approach was unfair.

Respondents welcomed the proposal that voluntary removal will continue to be available but highlighted that it should only be used in limited circumstances, such as where a registrant is seriously ill and can no longer practise. Respondents stated that voluntary removal should not be used to allow registrants to bypass fitness to practise proceedings as this is not in the public interest and could lead to public protection concerns.

Respondents were of the view that it was appropriate for voluntary removal processes to be set out in rules. However, to ensure consistency across regulators some respondents

stated that legislation should also set out certain aspects of the procedure such as the limitations of voluntary removal.

In addition, the PSA requested that consideration is given to developing a policy on the lapsing of a registrant's registration. Currently some of the regulators' legislation allows registration to lapse if a registrant has not paid the necessary registration fees. However, this can cause an issue if a registrant's registration is due to lapse during or before the PSA is able to lodge an appeal under its section 29 powers.

Comments included:

> Organisation: "Rules rather than primary legislation would ensure flexibility and the ability to adapt as practice and other circumstances change. Dependence on primary legislation runs the risk that regulators many years from now will be stuck with today's legislation. Provisions should be made more flexible and set out in rules and guidance. This enables the GMC to be more rapidly responsive to changing circumstances".
>
> Individual: "This is such a potentially significant process that it needs to be overseen by legislation".

UK and devolved governments' response

The UK and devolved governments remain of the position that the detailed processes relating to removal and readmittance procedures should be removed from legislation and devolved to regulators. This is in line with our approach of providing regulators with greater freedom to set their own operating procedures, giving regulators greater flexibility to amend their procedures over time. The overarching requirements for removal and readmittance as listed in the consultation will be incorporated into legislation.

For English language, regulators will be required to set standards for and make rules setting out the procedure for an assessment of a registrant's language competency for first registration and readmittance to the register. We have given further consideration to whether regulators should be able to set out in rules their approaches to removing a registrant from the register or restricting the practise of a registrant due to health or English language concerns (where the concern does not meet the threshold for the fitness to practise process). On reflection, taking into account the feedback we have received, we have decided against allowing regulators to set rules on this and agree that concerns around and health and English language should only be considered as part of fitness to practise proceedings.

Where a registrant seeks removal from a regulator's register, regulators will have discretion on whether to grant this. This will enable regulators to commence or continue

fitness to practise proceedings where there are new or on-going concerns against the registrant before allowing their removal from the register. Regulators will also have a duty to publish fitness to practise decisions relating to registrants.

Registration appealable decisions

Q38: Do you think any additional appealable decisions should be included within legislation?

Proposal

Registration appeal processes are set out in the legislation of the regulators. The consultation contained a list of registration decisions which it proposed should be appealable. Where regulators, such as the GPhC, also have decisions in relation to premises which can be appealed it was proposed that such appeal rights should continue to be set out in legislation.

In addition, the consultation proposed some specific registration decisions that should not attract a right of appeal. The consultation also asked whether there were any additional decisions made by regulators in respect of the registration process that respondents wished to propose as being subject to a right of appeal.

Table 51 - responses to Q38

Category	Number of responses	Percentage
Yes	242	64%
No	139	36%
Total	381	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question Analysis

The majority of respondents responded affirmatively that they thought there should be other decisions made by regulators in respect of registration that should be subject to a right of appeal.

On analysis, it was noted that although the majority of respondents had replied affirmatively that other registration decisions should be appealable, only a small proportion of respondents provided specific examples. A number of respondents stated that from a

natural justice, accountability and fairness perspective it is important that registrants can appeal all registration decisions. Other discussion points included:

- some respondents raised concerns around the proposal that non-payment of a registration fee will not be an appealable decision

- one respondent proposed that consideration should be given to including a right of appeal against a regulator's refusal to agree a registrant's request to amend their name, gender or other personal information

- some respondents raised that, specific decisions in relation to optical businesses and pharmacy premises should continue to be appealable

- one respondent proposed that applicants should have the right to request that the regulator undertake an internal review of a decision to improve accountability and efficiency of the regulatory system

- several respondents raised concerns around the inclusion of an appeal right against a decision not to grant a person voluntary removal from a regulator's register. Respondents suggested that this decision should not be appealable as it has the potential to delay fitness to practise outcomes

- one respondent proposed that the PSA should have its powers expanded so that any decision made by regulators could be reviewed by the PSA where it was suspected to be irrational or leaves patients at risk

- many respondents were of the view that no additional registration appealable decisions were required and confirmed that the list provided in the consultation document was comprehensive and captured all the appropriate registration decisions

- there was a mixed response from respondents as to whether the appealable decisions should be set out in legislation or rules. Some respondents felt that the appealable decisions should continue to be set out in legislation to ensure consistency across regulators. Other respondents were of the view that appealable decisions should be set out in rules as this would give regulators flexibility to adapt their appealable decisions to changing circumstances

It was noted that there were a significant proportion of respondents who commented they were unable to respond as they did not understand the question, were not well informed enough to comment, or suggested that the consultation document could have expanded with given examples of other determination points for consideration

Comments included:

Organisation: "Whilst the list of appealable decisions is comprehensive, it would be preferable to future proof the legislation and allow for any decision of suspension or removal from the register should be appealable".

Individual: "It takes too long to change legislation and would be better in rules".

UK and devolved governments' response

The UK and devolved governments remain of the view that appealable decisions should be set out in legislation rather than devolved to regulators to determine in rules, and we do not intend to give regulators a discretionary power to set out in rules any additional decisions that should attract a right of appeal This ensures there is a proportionate, transparent appeals system in place that offers the correct level of protection for registrants and upholds public protection.

In response to the feedback from the consultation and further engagement with regulators, we have reviewed the overarching approach to appeals set out in the consultation document. We recognise there were some concerns that our proposed approach varied between across the different functions of regulators. We agree that regulators should have the opportunity to revise some decisions at an early stage where a decision was based on an error of fact or law, or there has been a material change in circumstances. We believe that providing regulators with the power to undertake an internal review and overturn or issue a new decision is a more efficient use of regulator resources, provides a better experience for registrants and providers of training and education, and will promote and maintain public confidence in the regulatory system. Registration decisions which attract a right of appeal to the County Court are as follows:

- first registration - including where the Registrar is not satisfied of an applicant's identity, that they have in place appropriate and adequate indemnity cover and/or insurance, that they meet the standards set by the regulator required to practise, and that they meet any other requirements the regulator may have specified in rules.

- restoration to the register – where the applicant has not satisfied the Registrar that they meet the standards of registration

- conditions of registration – in relation to conditions on registration which are not related to emergency registration

- removal from the register – including where registration or an annotation was procured fraudulently or made incorrectly, a registrant has not complied with rules relating to an assessment of their fitness to practise, has not got in force appropriate and adequate

indemnity cover and/or insurance, has not maintained an effective means of contact with the Registrar, has not provided information in accordance with a requirement under the Order.

In respect of removal from the register, an applicant may not appeal to the County Court in respect of a decision to remove them due to:

- a Final Measure imposed as part of fitness to practise proceedings – the decision to award a Final Measure is appealable under fitness to practise provisions, or

- where the Registrar is satisfied that the person has died – it is proposed this can be dealt with under general data powers by the Registrar, or through a revision of the original decision

- where a person has been removed following conviction, or has received a custodial sentence, in respect of a listed offence – a separate process will be specified for automatic removal due to a listed offence, including a right of appeal to the High Court

Registration decisions which attract a right of appeal to the High Court are:

- a decision made by a panel in relation to fitness to practise linked to an application for restoration to the register where:

- the applicant was previously removed by a Final Measure, or

- a person prescribed in rules has had a determination about their fitness to practise made by a panel as part of a restoration application

Decisions to remove an associate's registration for the following reasons will not attract a right of appeal:

- failure to pay a relevant fee in accordance with rules

- not applied for registration in accordance with rules

We have given further consideration as to whether a decision not to grant a person voluntary removal from a regulator's register should be an appealable decision. We acknowledge that feedback we received to the consultation raised concerns about an appeal against the refusal to grant voluntary removal having the potential to delay the fitness to practise process. However, we also note the feedback in the consultation about regulator accountability and their use of voluntary removal powers where there are also fitness to practise concerns. On balance, we consider it is proportionate to allow an appeal

against the refusal to remove someone from the register, with the intention that this is also supported by powers for regulators to revise and review voluntary removal.

Further detail on our proposals in relation to appealable decisions in respect of optical businesses and pharmacy premises will be available when we develop legislation to reform the legal frameworks for the GPhC, PSNI, GDC and GOC.

Procedural rules: registration appeals

Q39: Do you agree or disagree that regulators should set out their registration appeals procedures in rules or should these be set out in their governing legislation?

Proposal

The consultation document proposed that regulators should have the power to set out aspects of their internal appeals processes in rules. This will include detail on who should hear the initial appeal, the timeline for determining the outcome of the registration appeal and what should happen if an appellant's registration appeal needs to be postponed.

Table 52 - responses to Q39

Category	Number of responses	Percentage
Agree	266	73
Disagree	98	27
Total	364	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

It is noted that many respondents commented that the phrasing of the question meant it was difficult to state a yes or no response, and others commented that it was unclear what the question was asking respondents to comment on.

Overall, respondents agreed that regulators should set out procedural details of their registration appeals process in rules, rather than this detail being specified in legislation.

Of those who agreed, the majority of comments focussed on the perceived benefit that having procedures in rules rather than legislation was more flexible and would enable regulators to make changes more easily and quickly. Some respondents felt that this

policy should be underpinned by a requirement for regulators to set out their procedures clearly in rules, to ensure transparency.

Of those who disagreed, some respondents felt that the overarching procedural rules should be set out in legislation, to provide some consistency between regulators. It was noted that procedural details are not subject to frequent changes, so there was no need to provide the level of flexibility the proposal suggested. Others expressed concerns about the regulators' accountability and proportionate use of these powers and felt there was a risk they may set unreasonable requirements, such as short appeal windows, or charge a high appeal fee, in order to discourage applications.

Comments included:

> Organisation: "Given the desire for consistency, the appeal process should be uniform across all the regulators and thus should be set in legislation rather than rules. The appeal process is not a process that is subject to frequent change and thus would be better suited in a legislative framework".
>
> Individual: "I agree that regulators should have the ability to set out their registration appeals procedure in their rules. Each regulator will have specific situations relevant to the individual professions which it governs, these are hard to give blanket rules for in legislation and allow for a profession specific appeals procedure".

UK and devolved governments' response

The UK and devolved governments remain of the view that regulators should have the power to set out the procedural requirements for registration appeals in rules, rather than having the detailed requirements set out in legislation. In line with the overarching aim of reform, the government believes that regulators should have the freedom to determine their own procedural rules, as this will enable each regulator to manage the operation of its functions more efficiently, providing value for money in respect of their use of registrant fees. The reformed legislation will mandate the overarching requirements that regulators must make rules on in respect of their appeals procedures.

We expect regulators to adhere to the established principles of public law and consider the proportionality of any procedural rules they set in respect of appeals, to ensure that appellants have fair access to redress and justice.

Student registers

Q40: Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish student registers?

Proposal

The consultation proposed to remove existing powers and duties for regulators to hold a separate register of students who have been accepted onto relevant approved UK Higher Education Institution (HEI) education and training programmes.

Table 53 - responses to Q40

Category	Number of responses	Percentage
Agree	289	76
Disagree	91	24
Total	380	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that existing powers and duties on regulators to hold a separate student register should be repealed.

Several respondents noted that HEIs are experienced in, and have clear processes, for monitoring and taking appropriate action in relation to the conduct and competence of students enrolled on approved education programmes. As a result, many felt that HEIs were the appropriate body to manage any concerns about students' fitness to practise.

Around a quarter of respondents disagreed with the proposal, raising concerns about accountability and public protection if students were to move between courses or HEIs, with no centralised public framework to record fitness to practise concerns. A small number also raised concerns about the effectiveness of the safeguards and processes operated by HEIs. A small proportion of respondents commented that it could be appropriate for regulators to have oversight when students do clinical placements, as at that point students may only be receiving limited supervision.

A small number of respondents who agreed with the proposal overall, noted the potential loss of data from student registers that could inform future workforce and education planning.

There were diverging views from respondents about whether a discretionary power should be provided to allow regulators the flexibility to establish student registers, with some expressing a desire for a standardised approach, and others highlighting the perceived benefits of a discretionary power for some regulators.

Comments included:

> Individual: "A formal process to keep track of those students who have left undergraduate training (for example, fitness to practise issues) should be maintained, and the logical people to hold this information would be the regulator of the profession".
>
> Individual: "Higher education institutes are required to establish standards for students and hold them to account within their internal mechanisms, so therefore providing the necessary public protection".

UK and devolved governments' response

The UK and devolved governments remain of the view that regulators should not be able hold a separate register for students. This approach is in line with our wider aim for all regulators to hold and publish a single register of professions.

Accordingly, while regulators won't be able to establish a separate register for students, a regulator would be able to register students where it assesses that they meet its standards of registration, if it considers there are grounds to do so for public protection and subject to any conditions it considers necessary.

Registration of non-practising professionals

Q41: Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish non-practising registers?

Proposal

The consultation proposed that none of the healthcare regulators would be provided the power to hold separate registers of non-practising professionals.

Table 54 - responses to Q41

Category	Number of responses	Percentage
Agree	317	80
Disagree	78	20
Total	395	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that regulators should not have powers to establish a separate register for professionals who are not currently practising.

Many respondents felt that there was no public protection value in holding a register for non-practising professionals, and it had the potential to be confusing for the public.

Respondents who disagreed with the proposals noted that a register of non-practising professionals entitles retired professionals to continue to use a protected title, giving recognition of services to their profession. Some professionals perform non-clinical functions, such as teaching, or acting as medical experts, and respondents felt the non-practising registers provide assurance that those professionals' knowledge and training remain current and gives a simpler route to return to clinical practice. Some respondents felt retaining a list of professionals who were no longer practising but held some relevant qualifications and recent experience and could be called back into practice may help with public health emergency planning.

There were equality, diversity and inclusion concerns raised, with respondents noting that some form of lapsed registration status may be appropriate and inclusive for registrants taking career breaks for caring, family or health related reasons. It was suggested by some respondents that this could be addressed through a form of recording this information on the single register.

Comments included:

> Organisation: "The aim of the register is to keep an up to date list of HCPs [healthcare professionals] who are deemed by the regulator as currently practising or meet the requirements to practise. There is no benefit to having a register which lists names who do not meet that criteria".
>
> Individual: "It would be nice after retirement to still be called a dentist and be on the register as 'retired', otherwise it is technically illegal to call myself a dentist".

UK and devolved governments' response

The UK and devolved governments remain of the view that regulators should not have discretionary powers to hold a register for non-practising professionals. The primary purpose of professional regulation is to protect patients and the public from harm by ensuring those professionals providing healthcare are doing so safely.

The role of the regulators is to maintain a publicly available register of professionals who meet the regulator's standards of safe practice. The registration of non-practising professionals could lead to confusion about whether an individual's skills, knowledge and experience are up to date and if they are eligible to practise or take employment in their profession.

The exception to this policy is in relation to doctors and the licence to practise. We consider that the discretionary power we intend to provide for regulators to create forms of registration, which can involve regulators setting conditions on the scope of registration of all those entered into that category of registration will enable the GMC to continue to operate a licence to practise policy. However, this will be addressed when we reform the GMC's legislation in respect of doctors.

International registration

Q42: Do you agree or disagree that the prescriptive detail on international registration requirements should be removed from legislation?

Proposal

The consultation proposed to remove prescriptive requirements relating to the registration of healthcare professionals who trained overseas and provide regulators with a more flexible registration framework.

Table 55 - responses to Q42

Category	Number of responses	Percentage
Agree	224	58
Disagree	162	42
Total	386	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents supported the proposal to remove prescriptive detail on internationally qualified professionals and devolve standards and requirements into rules to be determined by the regulators.

Some respondents noted the potential for equality, diversity and inclusion concerns if regulators have the freedom to determine the standards and registration criteria for overseas healthcare professionals.

Of those who agreed, many noted that devolving standards and processes into rules would allow regulators to take a more proportionate and flexible approach to registering international applicants, which would help to support UK workforce needs.

There were split views from respondents on whether it was desirable to have a baseline, prescriptive framework in legislation for public protection reasons and to support public confidence in the professions. Some respondents felt this approach would provide assurance and consistency between professions, given the variation in overseas qualifications and standards. Conversely, other respondents felt that a consistent legislative framework wasn't flexible enough to account for the inevitable variation in training and standards of professionals trained overseas, and the proposed approach for regulators to determine what is appropriate would better enable regulators to respond to this challenge.

Many respondents noted that regulators should be required to consult and collaborate with bodies such as professional associations, trade unions and Royal Colleges to ensure their standards are proportionate and still maintain the necessary public protection standards.

Several respondents made the case for the department to review arrangements for the registration of overseas qualified dentists and dental practitioners when the GDC's legislation is reformed.

Many respondents commented that they didn't feel enough information was provided in the consultation to take an informed view.

Comments included:

> Organisation: "We agree that the prescriptive detail on international registration requirements should be removed from legislation to allow for flexibility in the registration processes to consider appropriate equivalent qualifications, experience, and practice for those seeking to work in the UK…. Post Brexit there is an opportunity to allow greater international movement in healthcare professionals whilst at the same time

appropriately protecting the public and having regards for the ethical concerns that come with this issue".

Individual: "Some of the existing practises of regulators are in effect almost too lengthy and tend to exclude genuine applications".

UK and devolved governments' response

The government recognises the important contribution overseas trained professionals make to the UK's healthcare workforce. Following the UK's departure from the European Union, the UK has greater autonomy to determine the standards that should apply to overseas trained professionals.

We believe it is appropriate that independent regulators set the standards and processes for overseas professionals seeking to join the UK registered workforce. Regulators hold the necessary expertise and experience to set the registration standards and processes for the professions they regulate in accordance with their statutory duty to maintain public protection. We are assured that regulators will continue to maintain a proportionate route for overseas qualified professionals to register in the UK and collaborate with relevant government departments to respond to changing workforce needs. The reformed legislation will provide regulators with a high degree of flexibility to determine these standards and processes in rules, which they have a duty to consult on and consider any equality and diversity impacts.

To maintain public confidence in the professions and ensure public protection we have taken the decision to retain a minimum duty for regulators to set standards for, and assess, English language competency in legislation. This was favoured in responses from the regulators who welcomed the legal clarity on their role in setting and assessing registrants against those standards.

We are working with the Department for Business and Trade to understand the impact of any mutual recognition obligations from international trade agreements on our reforms to regulators' legislation. Overall, our reforms will support regulators to be more responsive to changing workforce and public protection needs, including the registration of overseas trained professionals, which was highlighted by consultation respondents as necessary to ensure that the healthcare workforce is able to meet the current and future care needs of patients.

Fitness to practise

Currently there is considerable variation in the fitness to practise powers available to the regulators. Our consultation proposed that all regulators should have broadly consistent fitness to practise arrangements.

The majority of respondents to the consultation agreed that all regulators should have a 3-stage fitness to practise process.

Grounds for action set out the reasons why regulators might need to investigate and take action where there is a concern about a registrant's fitness to practise. Respondents agreed that all regulators should have the same grounds for action. However, there was a mixed response on whether there should only be 2 grounds for action, as set out in the consultation document, or whether there should be separate and distinct grounds for action on English language skills, health concerns and convictions.

Currently there is inconsistency in the range of measures that regulators can apply, issue and impose on a registrant. The consultation proposed that the regulatory bodies should all have the same measures. A number of respondents agreed with this proposal and were of the view that the availability of all measures to both case examiners and Fitness to Practise Panels would provide a more efficient and responsive fitness to practise process while protecting the public. In addition, several respondents agreed or partly agreed that case examiners should have the full suite of measures available to them as this would ensure that the accepted outcomes process, as set out in the consultation document would work effectively.

There was strong support for our proposals that regulators should have a duty to inform the person or persons who raised the concern at key points throughout the fitness to practise process, including whenever a substantive decision has been made, unless the person(s) who raised the concern does not wish to receive these updates.

Several regulators cannot currently consider fitness to practise concerns which are more than 5 years old expect in extreme circumstances. A number of respondents agreed with the proposal that that the current restrictions on regulators being able to consider concerns more than 5 years after they came to light should be removed. Respondents were of the view that the 5-year rule was arbitrary and needed to be removed for public protection. However, several other respondents disagreed with the removal of the 5-year rule and stated that they felt that 5 years was sufficient time for a person to raise a complaint.

The consultation proposed that all regulators should be provided with a consistent set of powers relating to Interim Measures. The majority of respondents who agreed or partly agreed with the proposal on Interim Measures were of the view that Interim Measures

panels or Fitness to Practise Panels need to have the ability to be able to impose Interim Measures during fitness to practise investigations as these are critical for public protection.

Registrants must have a right to appeal decisions made by a case examiner, Fitness to Practise panel or Interim Measures panel. The consultation proposed that direct appeal rights to the Courts should apply where:

- a case examiner has found a registrant's fitness to practise to be impaired and has imposed a measure due to a non- responding registrant
- a case examiner has found a registrant's fitness to practise to be impaired, and a registrant has accepted the proposed outcome and measure
- a Fitness to Practise Panel has found a registrant's fitness to practise to be impaired and has imposed a measure
- an Interim Measures panel has imposed a measure

The majority of respondents agreed that a registrant should have a right of appeal against a fitness to practise decision to the Courts. However, some respondents raised concern regarding the cost of a direct appeal to the Courts and the length of time an appeal may take. In addition, there was a mixed response as to whether there should be a direct right of appeal against a decision by a case examiner to the Courts, several respondents did not agree that a registrant should have a right of appeal to the courts where a case examiner has found the registrant's fitness to practise to be impaired, and the registrant has accepted the proposed outcome. These respondents felt that these decisions should be challenged through internal processes rather than the Courts.

3-stage fitness to practise process

Q43: Do you agree or disagree with our proposal that regulators should be given powers to operate a 3-step fitness to practise process, covering:

initial assessment

case examiner stage

Fitness to Practise Panel stage

Proposal

The consultation proposed that there should be a 3-stage fitness to practise process for all regulators.

The first stage is initial assessment, which determines whether a concern received about a registrant, with reference to the regulator's own criteria and the grounds for action, meets the threshold for onward referral in the fitness to practise process. Cases that do not meet the criteria for onward referral in the fitness to practise process will be closed at this stage.

The second stage is the case examiner stage. Case examiners will carry out a detailed assessment of the case from the written information and evidence available and, where possible, make a decision on impairment and whether action is needed to protect the public. Case examiners will be able to conclude a case through an accepted outcomes process, where the registrant accepts both the findings (including impairment) and the proposed measure. If the registrant does not accept the findings and/or the proposed measure, the case will proceed to the Fitness to Practise Panel stage.

The third stage is the Fitness to Practise Panel stage. If a case is referred to a Fitness to Practise Panel, the panel is required to make a determination as to whether a registrant's fitness to practise is impaired.

Table 56 - responses to Q43 - initial assessment

Category	Number of responses	Percentage
Agree	392	96
Disagree	18	4
Total	410	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 57 - responses to Q43 - case examiner stage

Category	Number of responses	Percentage
Agree	387	94
Disagree	23	6
Total	410	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 58 - responses to Q43 - Fitness to Practise Panel stage

Category	Number of responses	Percentage
Agree	381	93
Disagree	30	7
Total	411	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that there should be a 3-stage fitness to practise process for all regulators.

Respondents who agreed with the proposal were of the view that a 3-stage fitness to practise process would allow regulators to respond more rapidly to protect the public where there concerns and would be less adversarial. It was stated that a 3-stage process would provide clarity for people who raise concerns and for registrants. Some respondents also felt that the new process would help to promote a culture of reflection and learning amongst registrants. In addition, it was highlighted by several respondents that a number of the regulators already have a 3-stage fitness to practise process which works well. Respondents welcomed the consistency that a 3-stage fitness to practise process would bring across regulators.

Several respondents welcomed the proposed introduction of an initial assessment stage as they felt it would enable regulators to quickly determine what complaints they needed to act on to protect the public. It was also suggested that this stage would help identify false and vexatious claims earlier. However, some respondents highlighted that it would have been helpful to have received further detail in the consultation document on the initial assessment stage including detail on whose role it would be to assess or investigate a

claim against a registrant, the thresholds that would apply and the level of engagement people who raise concerns can expect from regulators during this stage.

Some respondents had concerns regarding the introduction of a case examiner stage. These concerns centred around the training, expertise, capability, the impartiality of case examiners and the transparency of the decision-making processes of case examiners.

Several respondents highlighted that it may be helpful to have defined timescales for each of the fitness to practise stages in legislation or guidance. However, it was acknowledged that every case is different and complex cases may need additional time so that a case can be investigated thoroughly.

Respondents who disagreed with the proposed 3-stage fitness to practise process suggested that there needed to be an additional investigation stage before or as part of the case examiner stage. It was stated that this additional stage would help to ensure that case examiners had sufficient information to be able to make an informed decision on a case.

In addition, concerns were raised about the process for requesting a review of a decision made by a case examiner and the appeals process that would be open to a person that has raised a concern. These concerns are set out in further detail in our analysis to question 62.

Comments included:

> Individual: “A more expeditious fitness to practise process will be beneficial for all concerned parties”.
>
> Individual: “Multi stage should weed out trivial and vexatious issues early on, allowing resources to be concentrated where they can provide most public protection”.
>
> Organisation: “We agree that this ensures a fair and equitable process, by promoting a consistent approach across all regulators. It will help with public confidence to know that this process is followed”.
>
> Organisation: “Disagree. This list excludes the crucial investigation stage that should be undertaken to ensure Case Examiners have the necessary information to make an informed decision as to next steps. Unless the requirement for a regulator to undertake their own proper and thorough investigation at stage 2 is made explicit, this situation will not be properly addressed”.

UK and devolved governments' response

The UK and devolved governments remain of the view that there should be a 3-stage fitness to practise process for all regulators. The introduction of a 3-stage fitness to practise process will strengthen consistency across the regulators and support the swifter resolution of many cases to ensure public protection more quickly. The 3-stage fitness to practise process will have an initial assessment stage, a case examiner stage and a panel stage. Following consideration of the responses to the consultation we are no longer of the view that regulators should have separate Fitness to Practise and Interim Measures panels. We will bring forward legislation allowing regulators to appoint a panel whose role it will be to make determinations on both fitness to practise and Interim Measures cases. A panel must consist of a least one person who is registered or has been registered by a regulator and has an approved qualification and a person who hasn't been registered by the regulator and doesn't have an approved qualification.

We have considered whether defined timescales for each of the fitness to practise stages should be set out in legislation but are of the view that this would be counterproductive. Each fitness to practise case is different and regulators need to be afforded the time and flexibility to investigate the case as necessary.

Regulators will be able to set out the details of their initial assessment stages in rules. This will provide them with flexibility so that they are able to amend their initial assessment stages to take account of changing circumstances over time. The higher-level parameters of the case examiner and panel stage will be set out in legislation with the details set out in rules.

In addition, we will provide all regulators with an extensive range of evidence gathering powers so that they are able to investigate fitness to practise complaints comprehensively. This will include powers to request information from any person, including the professional being investigated. Regulators may also seek an order of the County Court or Sherriff in Scotland if a person fails to supply the required information or document within 14 days.

Grounds for action

Q44: Do you agree or disagree that:

all regulators should be provided with 2 grounds for action – lack of competence, and misconduct

lack of competence and misconduct are the most appropriate terminology for these grounds for action

any separate grounds for action relating to health and English language should be removed from the legislation, and concerns of this kind investigated under the ground of lack of competence

this proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection

Proposal

Grounds for action set out the reasons why regulators might need to investigate and take action where there is a concern about a registrant's fitness to practise. The consultation proposed that the grounds for action should be consistent across all regulators in order to provide clarity to the public, registrants and regulator on the circumstances in which action can be taken. The proposed grounds of action were:

- lack of competence, by which meant that a registrant is either unable to or has failed to provide care to a sufficient standard. This would include a lack of the necessary knowledge of English, or a health condition which affects a registrant's ability to practise safely. However, we acknowledge that the term "Lack of competence" is emotive, especially when considered in relation a matter of health and have revised our proposal in this area as discussed below

- misconduct which is behaviour that may or may not be related to the exercise of professional skills, but which is serious or persistent and represents a significant departure from the required professional standards of conduct, for example, serious dishonesty. This would include, but is not limited to, a conviction or caution for a criminal offence in the UK (other than a listed offence, which would result in automatic removal from the register) and convictions or cautions falling outside of UK, which if committed in the UK would constitute a criminal offence. Determinations by another UK regulatory body to the effect that the registrant's practise is impaired, or a

determination by a regulatory body elsewhere to the same effect, may also be evidence of misconduct

A number of regulators currently have separate grounds for action in relation to English language skills and health concerns. The consultation proposed that these should no longer be separate or distinct grounds for action.

Table 59 - responses to Q44 - all regulators should be provided with 2 grounds for action – lack of competence and misconduct

Category	Number of responses	Percentage
Agree	315	77
Disagree	95	23
Total	410	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 60 - responses to Q44 - lack of competence and misconduct are the most appropriate terminology for these grounds for action

Category	Number of responses	Percentage
Agree	305	75
Disagree	100	25
Total	405	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 61 - responses to Q44 - any separate grounds for action relating to health and English language should be removed from the legislation, and concerns of this kind investigated under the ground of lack of competence

Category	Number of responses	Percentage
Agree	248	62
Disagree	154	38
Total	402	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 62 - responses to Q44 - this proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection

Category	Number of responses	Percentage
Agree	284	71
Disagree	115	29
Total	399	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

There was a mixed response to this question. A number of respondents agreed that all regulators should have the same grounds for action. Respondents stated that introducing the same grounds for action across all regulators would make it clearer for both registrants and the public as to the reasons why a regulator may need to investigate a registrant and possibly take action where there is a concern about a registrant's fitness to practise. Many professionals work in multi-disciplinary teams and respondents stressed that consistency across regulators on the grounds for action is needed, so that all regulated professionals are working under the same fitness to practise procedures.

A number of respondents agreed that there should only be 2 grounds for action. Respondents agreed that concerns relating to a registrant's knowledge of English language or health could effectively be investigated under the grounds for action of lack of competence and misconduct. It was highlighted that this would simplify the fitness to practise process.

Respondents who disagreed with the proposal stated that they would have liked to have seen the evidence base for reducing the grounds for action. Some respondents had concerns that reducing the grounds for action would mean that regulators will need demonstrate that concerns relating to lack of necessary knowledge of English or health constituted either lack of competence or misconduct. Currently regulators simply have to demonstrate that a registrant fails to meet the requirements relating to knowledge of English language or health and these respondents felt this was sufficient to help to ensure public safety.

Several respondents questioned whether the terminology for the grounds for action were correct and clear enough for registrants and the public to understand what they covered and what constituted a breach of each of them.

Misconduct

Some respondents stated that the terminology of misconduct is acceptable because it is clear and a currently accepted term. However, it was highlighted that misconduct could

cover several scenarios and examples should be provided by the regulators as to when action will be taken for breach of this ground for action.

A number of respondents highlighted that misconduct could also apply in some health cases, for example, addiction issues where a registrant is working under the influence of drugs or alcohol. Respondents stated that if the grounds for action are reduced to just 2 grounds for action these types of health cases should not solely be covered by the lack of competency ground for action but should also include misconduct. It was also suggested that there could be a separate ground for action entitled conviction. It was felt that the possible introduction of automatic removal from the register for a listed offence would mean that an additional ground for action was required.

Lack of competence

In addition, a number of respondents stated that the terminology ‘lack of competence’ was not the correct term to encompass both a lack of necessary knowledge of English and a health condition. Several respondents suggested alternative terminology which they felt would better encompass these concerns. Suggestions included: insufficient competence, unsatisfactory competence, lack of competence and capability, inadequate performance, inability to practise safely and effectively and being unable to provide safe care.

Several respondents agreed that lack of necessary knowledge of English could be included within the ground for action of lack of competence. However, they disagreed that health should be included in this ground for action as a registrant is not to blame if they are no longer able to practise safely due to a health condition. It was also stated that the phrase 'lack of competence' had negative connotations and therefore could affect the employment and career prospects of a registrant with a health condition who is able to safely continue to work.

Health and lack of necessary knowledge of English

A significant minority of respondents responded to state that health should be a separate or distinct ground for action.

Respondents stated that having health as a separate ground for action could be respectful and compassionate to those registrants who can no longer practise safely due to a health condition. Several respondents stated that regulators currently handle health cases sympathetically and compassionately. It was stated that having health as a separate and distinct ground for action allows cases to be taken forward in a way which is proportionate and less stressful for affected registrants, especially since these registrants may be unwell or coming to terms with having a long-term condition. Some respondents stated that handling cases this way enhances patient protection and encourages registrants with health conditions to actively come forward to regulators.

In addition, in response to question 70, several respondents highlighted concerns that the removal of health as a separate ground for action could impact negatively on people with protected characteristics, such as people with disabilities.

In relation to ‘lack of necessary knowledge of English’, some concerns were raised that the current proposal would require a regulator to demonstrate that a registrant’s English language difficulties meant they were impaired due to lack of competence. It was stated that this approach could limit a regulator’s ability to investigate concerns to only those where incompetence has already occurred because of a registrant’s English language knowledge. It was stated that if ‘lack of necessary knowledge of English’ is to be included within the ground for action of lack of competence it must include cases where a registrant’s unrestricted practice poses a real risk of harm.

Currently the regulators have a limited range of measures available to them when taking action in relation to health and English language concerns. Some respondents questioned the range of measures that would be available to regulators if they are able to take action against a registrant with a health condition or English language concern under the proposed ground for action of lack of competence.

In addition, some respondents stated that regulators should still be able request that registrants undertake health or language assessments if this appears to be the cause behind the concerns raised about their fitness to practise.

Comments included:

> Individual: “Health and English language issues don't seem part of competence tests.”
>
> Individual: “Impaired competence is a better term. Lack of competence gives the impression that it wasn't there in the first place, whereas in fact it may well be but is then lost due to health reasons.”
>
> Organisation: “We believe that the grounds relating to health should be retained. Whilst we recognise that inability to perform because of ill health could be classified as lack of competence, it has unfortunate and unnecessarily pejorative connotations. For a registrant unfortunate enough not to able to continue to practise through ill-health it seems unduly harsh for them to be classified as lacking in competence. To maintain a degree of dignity, and for more accurate reflection of reason for suspension or erasure on the record for the registrant we believe the grounds for action relating to health should be maintained.”

Organisation: “These proposals should make it clearer for registrants and ensure that the focus of fitness to practise process is reserved for cases where it is proportionate and necessary. Cases involving health or language requirements should be covered by competence where necessary.”

UK and devolved governments’ response

The UK and devolved governments have considered all of the feedback we received to this question and remain of the view that there should only be 2 grounds for action. Misconduct will remain a ground for action and will include convictions and cautions for criminal offences.

The ground for action of lack of competence will be changed. On reflection, following analysis of the consultation responses we acknowledge that the terminology of lack of competence does not adequately encompass health and English language concerns. We considered the alternative terminology proposed by respondents to the consultation and following further policy development work with the healthcare regulators and other key stakeholders we are now of the view that, ‘inability to provide care to a sufficient standard’ is a more appropriate term, which sufficiently covers concerns relating to lack of competence, health matters and insufficient English language ability.

We recognise and acknowledge the concerns from some respondents that health should be a separate ground for action. However, we remain of the view that where a registrant’s fitness to practise is called into question, it should always be on the basis that they do not meet the required standards of conduct, and/or they have an inability to provide care to a sufficient standard. A separate ground for action on health concerns will therefore not be included in our proposed legislation. We expect all regulators to continue to handle health cases sympathetically and compassionately. In addition, to address concerns in relation to Final Measures in health cases, specifically immediate removal orders which will be available to both case examiners and panels, we propose that regulators should set out their approaches to removal from the register due to health and/or English language concerns in guidance.

Measures

Q45: Do you agree or disagree that:

all measures (warnings, conditions, suspension orders and removal orders) should be made available to both case examiners and Fitness to Practise Panels; and

automatic removal orders should be made available to a regulator following conviction for a listed offence.

Proposal

Currently there is inconsistency in the range of measures that regulators can apply, issue and impose on a registrant. The consultation proposed that the following measures should be available to all regulators:

Measures for registrants whose fitness to practise is not found to be impaired:

- warnings: Regulators will be required to publish warnings for a period of 2 years

Measures for registrants whose fitness to practise is found to be impaired:

- conditions: the maximum period for which a condition could be applied would be 12 months, although this could be extended by review
- suspension order: the maximum period for a suspension order would be 12 months although this could be extended by review
- removal order: a removal order removes the registrant's name from the register ensuring they can no longer practise in that profession

Measures for registrants who have been convicted of a listed offence:

- automatic removal order: The consultation proposed that where a registrant is convicted of a listed offence (based on the list in Schedule 3 of the Social Workers Regulations 2018), the regulator should be able to remove a registrant from the register automatically. This would be the only measure the regulator could impose without an initial assessment. The process for automatic removal would be set out in rules made by the regulator

Table 63 - responses to Q45 - all measures should be made available to both case examiners and Fitness to Practise Panels

Category	Number of responses	Percentage
Agree	344	86
Disagree	57	14
Total	401	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that all measures should be made available to both case examiners and Fitness to Practise Panels.

Respondents were broadly of the view that the availability of all measures to both case examiners and Fitness to Practise Panels would provide a more efficient and responsive fitness to practise process while protecting the public.

However, a number of respondents highlighted that they could only support the proposal if the safeguards detailed in the consultation document remained in place, such as case examiners only being able to conclude cases through an accepted outcome where the registrant accepts both the findings and the proposed measure. Respondents also stated that case examiners should ensure that registrants have considered taking legal advice or advice from a representative body or defence association before a case is concluded through an accepted outcome. In addition, some respondents proposed that there could be more than one case examiner. Proposals ranged from 2 case examiners (a lay case examiner and a registrant case examiner with expertise in the same profession as the registrant) to a panel of case examiners.

Respondents who disagreed with the proposal raised concerns around allowing case examiners to be able to suspend or remove registrants from a regulator's register. It was highlighted that these 2 measures have serious consequences for a registrant's employment. Respondents were of the view that suspension and removal orders should not be available to case examiners since they will not undertake in-person hearings and will make decisions on the written information and available evidence only. Some respondents also stated that case examiners should not be able to suspend or remove non-responding registrants from a regulator's register with a proposal that, where a registrant does not respond, the case should be referred to a Fitness to Practise Panel for a hearing.

In addition, several respondents raised concerns around the training, expertise, capability and impartiality of case examiners. It was highlighted that Fitness to Practise Panel

members are independent of the regulator and are skilled in complex decision making whereas case examiners may not be.

Comments included:

> Organisation: “Allowing case examiners and Fitness to Practise Panels to apply these measures should be sufficiently expeditious and proportionate to enable regulators to protect the public”.
>
> Individual: “This will help protect the public and make for swifter yet fair justice”.
>
> Organisation: “Agree because of the proviso that case examiners can only apply sanctions where the registrant is in agreement and accepts their lack of competence or misconduct”.
>
> Organisation: “It is not appropriate for just 1 person (case examiner) to have access to all these measures as it would result in an increase in appeals”.

UK and devolved governments’ response

The UK and devolved governments remain of the view that all measures should be made available to both case examiners and panels. Providing case examiners and panels with the availability of all measures will provide for a more responsive fitness to practise process that can deliver public protection more quickly.

The introduction of an accepted outcomes process will leave panels to consider cases where an outcome is not accepted, or where the case examiner is not able to make a decision on impairment. This could include, for example, where the evidence needs to be tested at a hearing. Providing both case examiners and panels with the same measures will ensure that serious cases are not routinely referred to a panel based on the available measures to the panel if a registrant’s fitness to practise is found to be impaired.

Regulators must provide case examiners with appropriate training to undertake the role and they should have standards and processes in place to ensure that case examiners are competent, capable and impartial. We have considered the proposal made by several respondents that one or more case examiners should be able to make a decision on a case. We agree with this proposal and will ensure that the legislation provides regulators with the flexibility to appoint more than one case examiner to consider a fitness to practise concern.

Measures

Although we did not ask a specific question on the different measures available to case examiners and Fitness to Practise Panels several respondents commented on our proposals.

Measures in relation to registrants whose fitness to practise is not found to be impaired:

Warnings

The consultation sets out that all regulators will be able to issue warnings to registrants whose fitness to practise is not found to be impaired and these will be required to be published for a period of 2 years. Several respondents agreed that case examiners and Fitness to Practise Panels should be able to impose a warning where a registrant's fitness to practise is not found to be impaired. However, some respondents felt that this measure should not be available where a registrant’s fitness to practise is found not to be impaired.

In addition, several respondents were of the view that warnings should also be an available measure when a registrant’s fitness to practise is found to be impaired. It was stated that this measure should be available where misconduct is serious enough to warrant action but, due to an insufficient risk to the public, a measure such as suspension or removal from the register would be disproportionate. Respondents stated that several regulators already have this measure available and were concerned that under our proposals this measure is to be removed.

Measures in relation to registrants whose fitness to practise is found to be impaired:

Conditions

The consultation set out that the maximum period for which a condition could be applied would be 12 months, although this could be extended by review. It was highlighted that several regulators currently have a maximum period of 3 years for conditions of practice orders and in rare circumstances the 3-year period is required. Respondents who agreed with the proposal stated that the change would help to ensure that a registrant does not have conditions on their practice for longer than is required. One respondent queried how the appeal process would work for conditions orders or suspension from the register if these are able to be extended by review.

Respondents who disagreed with the proposal stated they did not support this proposal because they felt that the current maximum period was sufficient, and it was unclear from the consultation document why a change had been proposed.

Additional measures

It was proposed that additional measures could be made available to case examiners and Fitness to Practise Panels. These included recommendations for further training or supervision, agreement of undertakings, letters of advice and the option of taking no action where there is a finding of impairment (it was noted that this measure would apply in very rare circumstances).

Publication of measures

Some respondents welcomed the proposal that all decisions and measures should be published. It was stated that the proposal would provide accountability, transparency and public confidence in the regulated professions. In addition, a respondent proposed that regulators should be under a duty to publish indicative sanctions guidance, applicable to both case examiner and Fitness to Practise Panel decisions, to ensure transparency, consistency and public protection.

However, several respondents raised concerns with the proposal that regulators should be required to publish warnings for a period of 2 years and stated that further information on the proposal was required such as whether 2 years is a standard term. Several respondents stated that this policy was unfair to registrants who receive a warning as these registrants will not have met the threshold for impaired fitness to practise.

UK and devolved governments' response

The UK and devolved governments have considered the comments that we received on measures.

On warnings, we are of the view that regulators should be able to issue warnings to registrants whose fitness to practise is not found to be impaired. However, after considering the comments on publication of warnings, we agree that regulators should maintain a discretion as to how long they publish warnings for.

On suspension orders we consider that a maximum period of 12 months for which a suspension can be applied to a registrant's registration is sufficient. Regulators will be able to extend this following a review. This will ensure that a registrant does not have restrictions on their practice for longer than is required but will also provide regulators with the opportunity to extend orders where there are public safety concerns about a registrant's practise.

We remain of the view that case examiners and/or Fitness to Practise Panels will not require any additional measures to those set out in the consultation. Measures such as conditions, suspension orders or removal from the register are appropriate measures

where a registrant's fitness to practise is found to be impaired. In addition, regulators will continue to be able to provide advice to registrants through the use of incidental powers.

Automatic removal

Table 64 - responses to Q45 - automatic removal orders should be made available to a regulator following conviction for a listed offence

Category	Number of responses	Percentage
Agree	323	81
Disagree	74	19
Total	397	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that where a registrant is convicted of a listed offence, the regulator should be able to remove a registrant from the register automatically.

Respondents who agreed with this proposal stated that the proposal would help ensure public protection and uphold public confidence in the regulated professions. It was also highlighted that this proposal could be cost effective for regulators as timely and costly hearings will no longer be required to take place to remove registrants who would more than likely be removed from a regulator's register due to a conviction for a serious criminal offence. However, a number of respondents set out that a regulator should only be able to remove a registrant from its register when a registrant's conviction is confirmed and is not subject to an appeal.

Respondents were also of the view that registrants who are automatically removed from a regulator's register should have a right of appeal either to a Fitness to Practise Panel or to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland. In addition, several respondents stated that the list of offences should only be amended by the government after extensive consultation with stakeholders.

Respondents who disagreed with the proposal were of the view that Fitness to Practise Panels should be the only bodies that are able to remove registrants from a regulator's register.

A small number of respondents queried whether the listed offences, included within the Schedule, should be revised. It was highlighted that the list of offences appeared to be variable across the UK. In addition, some respondents questioned the approach to lower-level offending offences included in the list, for example offences where a person may not receive a custodial sentence. An example given by respondents included offences under section 3 of the Sexual Offences Act. This section of the Sexual Offences Act includes a range of actions, some of which may be referred to a regulator as a complaint without a conviction if at the lower end of the seriousness scale.

One respondent suggested it might be more helpful to allow for some discretion for lower-level section 3 offences, so that they can be considered on a case by case basis. Whereas another respondent suggested that offences 6-13, contained within the list of offences, should either be removed, or a second class of automatic removal should be introduced where representations are allowed before a decision is made on automatic removal.

Comments included:

> Individual: “Will help protect the profession and the public”.
>
> Individual: “I feel a panel should review offences prior to removal orders being made”.
>
> Organisation: “Automatic removal orders should be available following conviction of a listed offence. This allows a speedy response and does not place unnecessary demands on the regulator to go through a process when the outcome is inevitable given the nature of the offence. This approach supports public protection”.

UK and devolved governments’ response

The UK and devolved governments remain of the view that automatic removal orders should be made available to regulators following conviction for a listed offence. The introduction of automatic removal orders will deliver public protection more quickly. Registrants will have a right of appeal to the courts against a decision by a regulator to automatically remove them from their register.

We have reviewed the small number of comments we received on the inclusion of additional offences within the list of listed offences. To address the comments received on the listed offences being variable across the UK we undertook an exercise to compare the legislation on offences in each of England, Scotland, Wales and Northern Ireland. While there are not always directly equivalent offences across the different judicial systems within the UK, we have undertaken a further mapping exercise to consider which offences in the legislation covering England, Scotland, Wales and Northern Ireland should be

covered. Following our review, we are in agreement with respondents that additional offences should be included within the list of listed offences.

As part of the UK government's consultation, Changes to Social Work England's regulatory framework, which ran from 23 March 2022 to 11 May 2022, we proposed that the listed offences within the Social Workers Regulations 2018 should be extended to include the offences within section 1 and section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. These 2 additional offences were identified as part of the government's review.

In August 2022, we published Changes to the regulatory framework for Social Work England: government consultation response which set out that there was a high level of support for the inclusion of these 2 offences within the listed offences within the Social Workers Regulations 2018. 94% of respondents supported the changes to ensure equivalent offences across all the devolved governments are included within the list of offences.

Following support at consultation for the 2 additional offences to be included within the listed offences within the Social Workers Regulations, the UK and devolved governments will also include the offences within the listed offences within the other healthcare regulators legislative frameworks.

In line, with the Law Commissions of England and Wales, Scotland and Northern Ireland's recommendation in, Regulation of health care professionals, regulation of social care professionals in England, registrants will only be automatically removed from a regulator's register for blackmail or sexual assault offences where a custodial sentence has been imposed on a registrant. However, a conviction for the offence of rape will not require a custodial sentence to be imposed for automatic removal to take place.

The UK and devolved governments will keep the listed offences under review and will ensure that any changes to the listed offences will continue to be subject to public consultation.

Review of measures

Q46: Do you agree or disagree with the proposed powers for reviewing measures?

Proposal

The consultation set out that regulators will have powers to review a measure at any point before its expiry. Regulators will be required to set out in rules the process they will follow

in reviewing a measure. In addition, a registrant may request a review of a measure imposed at any point before its expiry. The regulator will set out the process for making and considering such a review in rules.

Table 65 - responses to Q46

Category	Number of responses	Percentage
Agree	357	94
Disagree	22	6
Total	379	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that regulators should have powers allowing them to review a measure at any point before its expiry and that a registrant may request a review of a measure imposed at any point before its expiry. Respondents also agreed that regulators should be required to set out in rules their processes for reviewing measures.

Respondents who agreed with the proposal on reviewing measures stated it seemed reasonable, flexible and fair. However, some respondents stated that an early review of measures should only be allowed when there is new information or evidence.

Respondents agreed that regulators should be required to set out in rules their processes for reviewing measures. Respondents highlighted that these rules should be subject to public consultation and that processes to enable an early review should be clearly defined, consistent across regulators and acceptable to both registrants and the wider public.

Several respondents agreed that the review powers should be available to both case examiners and Fitness to Practise Panels. Respondents were of the view that allowing case examiners to review measures would make the process more efficient and quicker. However, a small number of respondents raised concerns or disagreed with giving the power to case examiners since they are not legally qualified individuals. In addition, concern was raised as to how case examiner’s decisions will be quality assured.

Some respondents stated they would have liked to have seen more detail in the consultation on how the review process would work to be able to comment further. Respondents who disagreed were of the view that early reviews should only be available in exceptional circumstances.

Comments included:

Organisation: “Many registrants want to engage with the process and if they can achieve their conditions of practice for example before the next review, they should be allowed to request an earlier review”.

Organisation: "We are content that a registrant can request a review of a measure imposed at any point before its exposure and that appropriate rules will be made by the regulator for this provided that these rules are subject to proper consultation with stakeholders such as medical royal colleges and medical defence organisations".

Individual: “I think measures are imposed which are considered appropriate to meet the seriousness and circumstances of the case. If a registrant is unhappy, they can appeal. I would be very wary of allowing early reviews except in very limited circumstances”.

UK and devolved governments’ response

The UK and devolved governments remain of the view that regulators should have powers allowing them to review a measure at any point before its expiry and that a registrant should be able to request a review of a measure imposed at any point before its expiry. In addition, regulators should be required to set out in rules their processes for reviewing measures.

Early reviews of measures allow a regular to determine when a measure is no longer required or in the public interest, enabling a registrant to practise without restriction. Allowing regulators to be able to set review processes out in rules will allow them to respond flexibly to changing circumstances over time. We encourage regulators to work together on developing their rules.

Notifications to registrant and person(s) who raise a concern

Q47: Do you agree or disagree with our proposal on notification provisions, including the duty to keep the person(s) who raised the concern informed at key points during the fitness to practise process?

Proposal

The consultation proposed that regulators should have the power to set out the process for notifying registrants and the persons who raised the concern in rules. Regulators will be required to notify registrants whenever a substantive decision is being made. The

registrant would also have a right to request updates from the regulator about case progression.

Regulators would also have a duty to inform the person(s) who raised the concern at key points throughout the fitness to practise process, including whenever a substantive decision has been made, unless the person or persons who raised the concern does not wish to receive these updates. The regulator may also notify other relevant parties, such as employers or others with a direct interest in the concern and/or case, where they consider it to be appropriate and in line with data protection law.

Table 66 - responses to Q47

Category	Number of responses	Percentage
Agree	376	94
Disagree	22	6
Total	398	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents who responded to this question agreed with the proposal on notification provisions.

Respondents agreed that registrants and the person or persons who raised the concern should be kept informed throughout the fitness to practise process. Respondents stated that this was important for public protection. It was also suggested that employers should be notified in the interests of public protection. Several respondents stated that the proposal on notification provisions would allow transparency and openness throughout the fitness to practise process. Some respondents stated that they only agreed with the proposal on notification provisions if the information that was shared was appropriate and did not breach data protection legislation.

Some respondents stated that the regulators should have a duty to respond to requests for updates from registrants within a specific time period. It was highlighted that time delays add additional stress to registrants who are subject to a fitness to practise investigation. Some respondents suggested that any notification provisions should make clear that the registrant and the person or persons that have raised the concern are able to seek legal representation and have the ability to request reviews or appeal decisions made by the regulators.

Some respondents raised concerns that allowing the regulators to set out their processes for notifying registrants and the person or persons who raised the concern in rules could lead to inconsistency on notification processes across regulators.

Several respondents who disagreed with our proposal on notifications did not provide a reason why. Other respondents who disagreed and who did provide comments had differing views. One respondent felt that the person(s) who raised the concern should only be informed at the end of the fitness to practise process and another respondent felt that the person(s) who raised the concern should be updated regularly but they must be excluded from the decision-making process. In addition, a further respondent who disagreed had concerns that keeping the person or persons who raised the concern informed could be used as a substitute for meaningfully engaging with affected patients.

Comments included:

> Individual: “Transparency and fairness for all parties”.
>
> Organisation: “We agree with this proposal. Parties to a concern must be kept informed of progress of a case to help them engage and to manage anxieties related to the fitness to practise process. The proposals present a proportionate approach to ensuring information is exchanged at key points during the fitness to practise process”.
>
> Individual: “This is important for public and patient safety”.
>
> Organisation: “We are concerned that keeping the person who raised the concern informed could be used as a substitute for meaningfully engaging with affected patients. We would therefore support this proposal only if full requirements for engaging patients are introduced”.

UK and devolved governments’ response

The UK and devolved government remain of the view that regulators should have the power to set out the process for notifying registrants and the person or persons who raised the concern in rules. Regulators will be required to notify registrants whenever a substantive decision is being made. The registrant would also have a right to request updates from the regulator about case progression. It is essential that both registrants and people who raise concerns are kept up to date on the progress of a fitness to practise case.

Regulators will have a duty to inform the person or persons who raised the concern at key points throughout the fitness to practise process, including whenever a substantive decision has been made, unless the person or persons who raised the concern does not

wish to receive these updates. The regulator may also notify other relevant parties, such as employers or others with a direct interest in the concern and/or case, where they consider it to be appropriate and in line with data protection law.

Initial assessment stage

Q48: Do you agree or disagree with our proposal that regulators should have discretion to decide whether to investigate, and if so, how best to investigate a fitness to practise concern?

Proposal

The consultation proposed that regulators should be provided with a consistent set of powers concerning the initial assessment stage. Regulators would have a duty to consider a matter referred to them, and a discretion to determine whether or not there is a basis for onward referral in the fitness to practise process.

Regulators will have the following powers to enable an initial assessment of fitness to practise concerns:

- a broad power to assess a registrant's fitness to practise, enabling them to investigate a fitness to practise concern at any stage. This would allow regulators to investigate an initial concern and to consider further information that came to light at a later stage in the process
- a power to require information from a third party, and to seek an order from the courts requiring information from a third party should they refuse to provide it
- a power to require information from a registrant. This power will exclude reflective material
- a power to direct a registrant to undergo an assessment in relation to a fitness to practise investigation
- a rule making power for regulators to set out the process for assessing a concern and for the onward progression of a case in the fitness to practise system
- the right for a registrant to provide written submissions to the regulator during the course of the initial assessment. While a registrant would not usually be notified that an initial assessment is underway, they may have raised concerns about their own fitness to practise to the regulator or otherwise be aware that a concern has been raised

- a new power for regulators to decide, if appropriate, that there is no further action to be taken and to close the case at this stage

Table 67 - responses to Q48

Category	Number of responses	Percentage
Agree	361	90
Disagree	41	10
Total	402	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that regulators should have a duty to consider a matter referred to them and a discretion to determine whether or not there is a basis for onward referral in the fitness to practise process.

Respondents were of the view that the proposal was reasonable and gave regulators proportionate powers to enable an initial assessment of fitness to practise concerns. However, respondents stated that only people employed by the regulators who have the right skills and experience should be deciding whether a fitness to practise concern warrants onward referral and that regulators should prioritise the wellbeing of their registrants during their investigations.

A number of respondents highlighted that allowing regulators to have a discretion in relation to onward referral would be better for public protection as regulators would be focusing their time on cases that meet the threshold for fitness to practise rather than cases which do not. In addition, it was highlighted that the regulators could do more to help to explain to the public what fitness to practise is and the types of cases that would meet the threshold for fitness to practise. It was stated that a number of referrals to a regulator are made by the public and a significant number of these do not meet the threshold for fitness to practise. It was proposed that by increasing the public's understanding of fitness to practise this would help to ensure that only cases which are likely to meet the threshold for fitness to practise would be referred to the regulators from the public.

Several respondents stated that regulators should have consistent rules in place for determining whether or not there is a basis for onward referral in the fitness to practise process. It was stated that this would help to ensure that all regulated professionals are treated equally, and it would provide clarity for people who raise concerns.

Some respondents had concerns regarding giving all regulators a power allowing them to require information from a third party, and to seek an order from the courts requiring

information from a third party should they refuse to provide it. Respondents felt this power was too broad and stated there needed to be some clear exemptions specifically in relation to personal issues such as health.

Several respondents had concerns around the power to require information from a registrant. Some respondents highlighted that in criminal law individuals have a right against self-incrimination and these respondents were of the view that this should extend to civil law and therefore safeguards should be put in place around this power. In addition, respondents welcomed the exclusion of reflective material from the power. Respondents highlighted the recommendation of Professor Sir Norman Williams's review into Gross negligence manslaughter in healthcare as to why reflective material should be excluded. However, it was also highlighted that the power should allow a registrant to be able to disclose reflective material if they choose to do so.

Several respondents agreed that registrants should be able to provide written submissions to the regulator during the course of the initial assessment. However, respondents had concerns with the proposal that registrants would not routinely be made aware that an initial assessment is underway. Respondents felt that this contradicted the proposal that registrants should be able to make written submissions as a submission cannot be made without a registrant being notified that an initial assessment is underway unless they have referred themselves. In addition, respondents felt it would be respectful to regulated professionals to notify them that a concern has been raised about them.

Several respondents who did not agree or disagree with the proposal stated that they required more information on the powers before they could fully state if they agree or disagree with the proposal. Respondents who disagreed with the proposal were of the view that all concerns should be investigated or that concerns should be investigated by an independent body rather than the regulators.

Comments included:

> Individual: "Of course. Otherwise, they will be over-run with inappropriate cases".
>
> Organisation: "Overall we agree, and we welcome the exclusion of reflective material from investigations in line with the Williams' review, which is important for allowing healthcare professionals to remain open and transparent when adverse events take place, for the purpose of learning and improving patient care. However, we do not understand the rationale behind the suggestion that a registrant would not usually be notified that an initial assessment is underway. Healthcare professionals should be made aware that a concern has been raised against them and a formal assessment is being carried out".

Individual: “All concerns should be investigated”.

UK and devolved governments’ response

The UK and devolved governments remain of the view that regulators should have a duty to consider a matter referred to them, and a discretion to determine whether or not there is a basis for onward referral in the fitness to practise process. Regulators will also be required to publish guidance as to what amounts to impairment of fitness to practise. The guidance will help to ensure that the public and employers are aware of the types of cases that would meet the threshold for fitness to practise proceedings. Regulators will have the following powers to enable an assessment of fitness to practise concerns:

- a power to assess a registrant’s fitness to practise, enabling them to investigate a fitness to practise concern at any stage. This would allow regulators to investigate an initial concern and to consider further information that came to light at a later stage in the process
- a power to require information from a third party, and to seek an order from the courts requiring information from a third party should they refuse to provide it
- a power to require information from a registrant. This power will exclude reflective material
- a power to direct a registrant to undergo an assessment in relation to a fitness to practise investigation
- a rule making power for regulators to set out the process for assessing a concern and for the onward progression of a case in the fitness to practise system
- the right for a registrant to provide written submissions to the regulator during the course of the initial assessment and
- a power allowing regulators to decide, if appropriate, that there is no further action to be taken with the process for closing a case set out in rules

Q49: Do you agree or disagree that the current restrictions on regulators being able to consider concerns more than 5 years after they came to light should be removed?

Proposal

Several regulators cannot currently consider fitness to practise concerns which are more than 5 years old (the 5-year rule). While the time since a concern arose is a relevant consideration in assessing fitness to practise, it should not be a limitation on whether an incident can be considered as the basis for a fitness to practise concern.

The consultation proposed that the 5-year rule should be removed, allowing regulators greater discretion to consider whether a concern should be considered.

Table 68 - responses to Q49

Category	Number of responses	Percentage
Agree	250	63
Disagree	144	37
Total	394	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

There was a mixed response to this question.

A number of respondents agreed with the proposal that that the current restrictions on regulators being able to consider concerns more than 5 years after they came to light should be removed. Respondents were of the view that the 5-year rule was arbitrary and needed to be removed for public protection and to uphold confidence in the regulated health professions. Some respondents felt that the 5-year rule was not consistent with a regulator's duty to protect the public. Respondents highlighted or quoted the Paterson Inquiry which deemed the rule to be a potential barrier to public protection. Some respondents gave personal examples as to why the 5-year rule should be removed.

Several respondents opted not to answer this question or stated that they could not come to a decision as to whether they agreed or disagreed with the 5-year rule as they acknowledged the case for maintaining and removing it.

Respondents who disagreed with the removal of the 5-year rule stated that they felt that 5 years was sufficient time for a person to raise a complaint. A number of respondents commented that they felt that the 5-year rule should remain and that all regulators should

be given a discretion as to whether to investigate cases that are more than 5 years old. Several respondents highlighted that the GMC is currently able to consider allegations that are more than 5 years old where it is in the public interest to do so.

Respondents also stated that removal of the rule could lead to costly and time-consuming historical cases coming to light which may not be in the public interest. Several respondents stated that after 5 years people's recollection of events will not be as clear, and witnesses' testimonies may not be as reliable. In addition, some respondents highlighted that, medical records may not be available for historic cases and questioned how proceedings could be brought forward in the absence of clinical data.

Comments included:

> Individual: "A concern more than 5 years "old" may still be sufficiently serious that regulatory action is needed".
>
> Individual: "If a person has been hurt, they have been hurt, why should a time barrier be put in place, this is somebody's life of whom has been severely affected".
>
> Organisation: "There has been a whole raft of healthcare enquiries over recent years demonstrating how it can sometimes take a decade or more before concerns come to light and where regulatory action would still be warranted for public protection. Public protection should be the paramount concern of regulators and arbitrary time limits or bureaucratic obstacles such as this are neither helpful or necessary".
>
> Individual: "This is a difficult one to balance - not sure either way".
>
> Organisation: "There must be a limitation that applies for civil proceedings and disciplinary matters. We believe a 5-year rule should remain with the power for a regulator to investigate where there are exceptional reasons for doing so, such as, the concerns raised are of a type that if proved could result in the registrant being removed from the register. There is a public interest in concerns being raised quickly so that they can be properly investigated and result in a fair outcome, whatever that may be. The removal of the 5-year rule could also disincentivise complainants from raising their concerns sooner which, in turn, could increase the risk to patients by allowing an otherwise unfit healthcare professional to continue to practise".

UK and devolved governments' response

The UK and devolved governments are of the view that any current restrictions on regulators being able to consider concerns more than 5 years after they came to light should be removed from legislation.

Regulators will have discretion to determine whether a concern should be investigated based on the specific details of the case, which may include reflections on the length of time that has elapsed since the concern was raised or occurred.

Non-compliance

Q50: Do you think that regulators should be provided with a separate power to address non-compliance, or should non-compliance be managed using existing powers such as "adverse inferences"?

Proposal

The GMC currently has a separate power for dealing with instances where a registrant has failed to comply with a reasonable request to provide information made by the regulator, or with a reasonable direction by the regulator to undergo an assessment in relation to a fitness to practise investigation. Regulators who do not have such a power currently manage non-compliance using existing powers such as "adverse inferences" that is, a presumption that if a registrant chooses not to comply with a request to prove they have the required standard of English, their non-compliance could be taken as evidence that they do not.

The consultation proposed that this power should be extended to all regulators as the power would provide regulators with an additional mechanism to ensure that non-compliance by a registrant does not impede their ability to make an assessment of whether a registrant is fit to practise.

Table 69 - responses to Q50

Category	Number of responses	Percentage
Agree	228	64
Disagree	127	36
Total	355	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

There was a mixed response to this question.

Several respondents agreed that regulators should be provided with a separate power to address non-compliance. Respondents stated that this power is needed to ensure public protection and to uphold professional standards. It was felt that the introduction of a non-compliance power for all regulators would be a proportionate and effective means to protect the public. Some respondents felt that the current adverse inference powers that some regulators have do not provide the same level of public protection as a non-compliance power.

It was highlighted that the introduction of a non-compliance power for all regulators would improve a regulator's ability to conduct fitness to practise processes where a registrant's non-response or co-operation is a barrier, and it would provide clarity about expectations of the level of engagement registrants should have in the fitness to practise process. Some respondents stated they would like the GMC to continue to have a non-compliance power and stated that for consistency this power should be extended to all regulators. Several respondents commented that if this power is given to regulators, they would like rules to be developed that require the regulator to be clear and specific about information requirements. In addition, it was stated that there should be an appeal route if a non-compliance measure is imposed on a registrant.

One respondent suggested that a non-compliance power and adverse inference power could exist together and provide regulators with a range of options as to how individual situations are dealt with. The respondent acknowledged that adverse inferences are of limited use in circumstances where a regulator is unable to progress its investigation due to non-compliance. It was suggested that stronger case management powers could help to reduce non-compliance issues, meaning that separate non-compliance powers would only be required in limited circumstances.

A number of respondents opted not to answer this question. Some respondents commented that they felt the question was too technical and others stated they didn't understand the question. In addition, some respondents stated they would have liked to have received more information on the policy proposal or evidence such as a more detailed analysis of the use of the GMC's current power against adverse inferences to allow them to make an informed decision.

Respondents who disagreed with the introduction of a separate non-compliance power felt that managing non-compliance through adverse inferences and current approaches remained appropriate and proportionate for those regulators who currently have these powers. Some respondents highlighted there may be justifiable reasons as to why a

registrant has not provided a regulator with information and other respondents commented that non-compliance could be considered as misconduct.

Comments included:

> Organisation: “We agree that regulators should have powers to address non-compliance. This will both help uphold public confidence but also allow the regulator to react proportionately to registrant behaviour, for which there may be reasonable explanations”.
>
> Individual: “Non-compliance and no action is tantamount to condoning the activity”.
>
> Individual: “Agree, this provides an additional mechanism to ensure that non-compliance by a registrant does not impede the regulator's ability to make an assessment of whether a registrant is fit to practise and brings other regulators in line with the GMC”.
>
> Organisation: “No, regulators should not be provided with a separate power to address non-compliance. This would add additional complexity to the fitness to practise process and no evidence has been provided that a public protection risk has resulted from other regulators not having this power. It is sufficient for regulators to be able to make adverse inferences in the event of non-compliance with reasonable requests or directions”.

UK and devolved governments’ response

The UK and devolved governments have reflected on the responses to this question. As there was not a consensus from respondents as to how a registrant's non-compliance with a reasonable request to provide information made by the regulator, or with a reasonable direction by the regulator to undergo an assessment in relation to a fitness to practise investigation should be addressed we decided to re-evaluate our policy position on non-compliance.

We remain of the view that regulators should continue to be able to manage and address a registrant’s non-compliance. However, we no longer consider that a separate non-compliance power for doing so is the best means of achieving this.

Instead, we propose that regulators should have a combination of specific powers and adverse inference powers available to them to address a registrant's non-compliance with a reasonable request or direction. These powers will help to ensure public protection.

For example, a specific power allowing a regulator to remove a registrant from its register due to a registrant's failure to comply with its rules. For instance, a failure by a registrant to

undergo an assessment in relation to a fitness to practise investigation. In addition, adverse inference powers will be available allowing a regulator to take a registrant's non-compliance with a reasonable request into account when determining whether their fitness to practise is impaired based on misconduct, an inability to provide care to a sufficient standard and/or due to health and English language concerns. A regulator will be able to treat a registrant's non-compliance with a reasonable request or direction as a breach of the grounds for action.

Where there are specific powers in the draft order allowing a regulator to remove a registrant from the register for non-compliance such as failure to comply with a regulator's rules there will also be an appeal right.

Onward referral following initial assessment

Q51: Do you agree or disagree with our proposed approach for onward referral of a case at the end of the initial assessment stage?

Proposal

The consultation set out that if following an initial assessment, a regulator believes that there is a fitness to practise concern, they will be able to make an onward referral to a case examiner. At any time during or after initial assessment, the regulator may consider the use of an Interim Measure if immediate action is needed to protect the public.

Regulators will be required to make rules which will set out:

- how they will deal with multiple concerns against a single registrant, at any point in the fitness to practise process
- the ability to amend the grounds for action in relation to a case. These rules will need to set out arrangements to provide notice to the registrant and a right for the registrant to make written submissions

Table 70 - responses to Q51

Category	Number of responses	Percentage
Agree	361	95
Disagree	21	5
Total	382	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposed approach for onward referral of a case at the end of the initial assessment stage.

Respondents who agreed with the proposal stated that it seemed appropriate and logical for regulators to be able to make an onward referral to the case examiner stage. Some respondents stated that if onward referral is not permitted it would undermine the initial assessment stage. Respondents also agreed with the proposal which would allow regulators to use Interim Measures if immediate action is needed as this will ensure regulators are able to meet their public protection objectives.

In addition, respondents agreed with the proposed power which would allow regulators to be able to make rules on how they will deal with multiple concerns against a single registrant at any point in the fitness to practise process. Respondents were of the view that this would provide clarity for registrants on how multiple concerns will be taken forward. Respondents also agreed that regulators should be able to make rules on amending the grounds for action in relation to a case and that rules should set out the arrangements for providing notice to registrants and their right to make written submissions. However, the rights of people who raise concerns was raised by one respondent who queried whether people who raise concerns would be able to submit further evidence in response to written submissions from registrants.

Some respondents stated they neither agreed nor disagreed with the proposal as they would have liked to have seen more detail in the consultation document. Some respondents stated they believed the proposal contradicted the proposal set out at question 48. Respondents stated that if registrants are not routinely notified that an initial assessment is underway, they will be unaware of the grounds for action for the fitness to practise proceedings and this may cause an issue if regulators amend the grounds for action following an onward referral to a case examiner. Respondents felt that it was more logical for regulators to notify registrants at the initial assessment stage rather than the onward referral stage. It was stated that this would be more respectful to registrants as notification at the later stage may cause distress to some registrants.

Respondents who disagreed with the proposal had concerns with the introduction of a case examiner stage and were of the view that the onward referral should be to a Fitness to Practise Panel. Other respondents were of the view that an investigation stage should be added to the fitness to practise process with the onward referral to the investigation stage rather than a case examiner.

Comments included:

> Individual: “Seems reasonable and appropriate to be able to do this”.

Organisation: “Agree. If onward referral is not permitted, it undermines/devalues the initial assessment”.

Organisation: “Yes, we agree with the approach to onward referral and the imposition of interim measures if necessary. With regards to the rules, these need to be clear and concise and there needs to be clarity under what circumstances grounds can be amended, we would suggest that this would have to be in exceptional circumstances”.

UK and devolved governments’ response

The UK and devolved governments remain of the view that following an initial assessment of a fitness to practise concern, a regulator should be able to make an onward referral to a case examiner.

Regulators will be required to make rules which will set out:

- how they will deal with multiple concerns against a single registrant, at any point in the fitness to practise process
- the ability to amend the grounds for action in relation to a case. These rules will need to set out arrangements to provide notice to the registrant and a right for the registrant to make written submissions

Automatic removal in relation to specified criminal offences

Q52: Do you agree or disagree with our proposal that regulators should be given a new power to automatically remove a registrant from the register, if they have been convicted of a listed offence, in line with the powers set out in the Social Workers Regulations?

Proposal

The consultation proposed the introduction of a new power that will enable regulators to automatically remove a registrant from the register, if they have been convicted of specified serious criminal offences (known as listed offences).

These arrangements already apply in relation to social workers registered with Social Work England. Where a registrant has been convicted of a criminal offence that is not a listed offence, this would not trigger automatic removal but could form a ground for possible action under misconduct. Regulators will decide the appropriate action based on

the facts determined by the conviction. Regulators will also be able to refer such cases to an Interim Measures panel.

Table 71 - responses to Q52

Category	Number of responses	Percentage
Agree	329	83
Disagree	68	17
Total	397	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal that a new power should be introduced that would enable the regulators to automatically remove a registrant from the register, if they have been convicted of specified serious criminal offences. A number of respondents asked us to consider their response to question 45 in answer to this question.

Respondents who agreed with this proposal stated that the proposal would help to ensure public protection and uphold public confidence in the regulated professions. However, a number of respondents set out that a regulator should only be able to remove a registrant from its register when a registrant's conviction is confirmed and is not subject to an appeal.

Respondents who disagreed with the proposal felt that Fitness to Practise Panels should be the only bodies with the ability to remove registrants from a regulator's register.

Comments included:

> Individual: "Some offences are serious enough to need automatic erasure".
>
> Individual: "In the interest of public safety and professional credibility and integrity".
>
> Individual: "Anyone convicted of these offences should be suspended from practising by the regulators immediately. However, some of the offences listed should lead to a fitness to practise hearing rather than immediate removal without right of appeal".
>
> Organisation: "The list of offences named are serious and should lead to automatic removal from the regulator upon conviction. For the sake of natural justice an appeals process should have been given the chance to

occur before the removal is permanent, or a successful appeal should be taken into consideration for reinstatement".

UK and devolved governments' response

The UK and devolved governments remain of the view that a new power should be introduced that will enable regulators to automatically remove a registrant from the register where they have been convicted of specific serious criminal offences, known as listed offences. Registrants will have a right of appeal to the courts against a decision by a regulator to automatically remove them from their register.

The introduction of this power will deliver public protection more quickly and help to uphold confidence in the regulated professions.

Case examiners

Q53: Do you agree or disagree with our proposals that case examiners should:

have the full suite of measures available to them, including removal from the register

make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations

be able to conclude such a case through an accepted outcome, where the registrant must accept both the finding of impairment and the proposed measure

be able to impose a decision if a registrant does not respond to an accepted outcomes proposal within 28 days

Proposal

The consultation set out that there will be 2 final decision-making roles in the fitness to practise process: case examiners and Fitness to Practise Panels.

Case examiners will undertake a detailed assessment of the case, from the written information and evidence available, and where possible, make a decision based on their assessment of impairment and whether action is needed to protect the public.

The consultation proposed that all of the regulators should have the case examiner role as part of their fitness to practise process, with a full suite of measures with which they can conclude a case. This would include powers to conclude a case via an accepted outcome. Case examiners should also be able to impose measures upon a registrant who has not responded to the case examiner's offer of an accepted outcome. If a registrant does not respond within 28 days of a proposal by the case examiner to conclude the case through an accepted outcome, the proposed measure will come into force.

If a case examiner is not able to make a decision based on the information available to them, they will refer the case to a Fitness to Practise Panel.

Table 72 - responses to Q53 - have the full suite of measures available to them, including removal from the register

Category	Number of responses	Percentage
Agree	288	77
Disagree	87	23
Total	375	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 73 - responses to Q53 - make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations

Category	Number of responses	Percentage
Agree	297	79
Disagree	78	21
Total	375	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 74 - responses to Q53 - be able to conclude such a case through an accepted outcome, where the registrant must accept both the finding of impairment and the proposed measure

Category	Number of responses	Percentage
Agree	306	82
Disagree	66	18
Total	372	100

Note: Percentage figures have been rounded and therefore may not total 100%

Table 75 - responses to Q53 - be able to impose a decision if a registrant does not respond to an accepted outcomes proposal within 28 days

Category	Number of responses	Percentage
Agree	268	72
Disagree	104	28
Total	372	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents either fully or partly agreed that case examiners should:

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

Respondents who agreed or partly agreed that case examiners should have the full suite of measures available to them stated that for the accepted outcomes process to work case examiners need to have access to a full range of measures. Permitting case examiners to have access to a full range of measures will allow more cases can be disposed of quickly and it will also allow public protection to be achieved in a less adversarial way.

However, a number of respondents highlighted that they could only support case examiners having the full range of measures if safeguards are in place such as case examiners only being able to conclude cases through an accepted outcome. Respondents stated that where an accepted outcome is not reached the case should be referred to a Fitness to Practise Panel.

Respondents who disagreed with the proposal had concerns around the impartiality of case examiners and with permitting case examiners to be able to suspend or remove registrants from a regulator's register specifically in relation to non-responding registrants. It was highlighted that these 2 measures have serious consequences for a registrant's employment. Respondents were of the view that suspension and removal orders should not be available to case examiners since they will not undertake in-person hearings and will make decisions on the written evidence only.

A number of respondents agreed or partly agreed that case examiners should be able to make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations. Respondents who disagreed with the proposal felt that some cases were too serious to have a decision of impairment made only on the written evidence. Respondents were also concerned that decisions would be made routinely in private based on written evidence unlike public Fitness to Practise Panel hearings and queried whether it was appropriate for all misconduct cases especially those with a public interest to be determined this way. In addition, some respondents queried how patients and the public could interact with the case examiner if in-person testimonies are not heard.

Respondents who agreed or partly agreed that case examiners should be able to conclude a case through an accepted outcome (where the registrant must accept both the finding of impairment and the proposed measure were of the view) stated that this would lead to a less adversarial fitness to practise process. Respondents stated this would be beneficial for registrants and people who raise concerns as cases will be concluded more quickly. However, some respondents caveated their answer to say they only supported accepted outcomes if the PSA have a right to appeal decisions made by case examiners to the appropriate courts.

Respondents who disagreed raised concerns around the expertise and decision making of case examiners. Some respondents emphasised that case examiners can't call witnesses or determine disputed facts. Several respondents highlighted that the consultation had stated that the accepted outcomes process should not be a negotiation between a case examiner and a registrant, however some respondents raised concerns that in practise a negotiation situation may occur. In addition, several respondents raised concerns around unrepresented registrants accepting outcomes without seeking independent or legal advice. It was stated this demonstrated why an appeal right against a case examiner decision is necessary.

Respondents who agreed that case examiners should be able to impose a decision if a registrant does not respond to an accepted outcomes proposal within 28 days were of the view that this was a reasonable proposal as registrant's non-response should not delay a regulator's ability to put measures in place to protect the public. In addition, these respondents were of the view that 28 days were sufficient for a registrant to respond providing that a registrant was able to appeal the case examiner's decision. Respondents who disagreed, were of the view that case examiners should not be able to impose the full suite of measures in the event of non-response by a registrant. Respondents felt that in these situations case examiners should only be able to impose Interim Measures, with the case being referred to a Fitness to Practise Panel.

In addition, a number of respondents felt that 28 days was too short a timescale and felt that this needed to be longer as there may be reasonable reasons, such as health grounds, as to why a person has not responded within the time period.

Comments included:

> Organisation: "If the registrant is in agreement, there would then be no need for a full Fitness to Practise panel hearing, which can be distressing for all involved. This is sufficient time within which to consider and either accept or reject an outcomes proposal".
>
> Organisation: "This will speed the process up in the case of straightforward cases, which would be of benefit for both the complainant and the registrant. However, this needs to be audited carefully to ensure that decisions are made consistently and in line with the regulator's standards. There is a risk of lack of impartiality and unconscious bias when decisions are made by one person".
>
> Organisation: "Ensures consistency if all regulators can use case examiners, speeds up the process, less adversarial, reduces burden on those required to attend a hearing. If finding of impairment and proposed measure accepted by the registrant, then prevents going further to a Fitness to Practise Panel whose eventual outcomes are exactly the same as the case examiners".
>
> Individual: "The 28 day rule doesn't take into account ill health or hospitalisation of a registrant".

UK and devolved governments' response

The government and devolved governments remain of the view that case examiners should:

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

Providing case examiners with the full suite of measures and the ability to conclude cases through the accepted outcomes process will allow more cases to be concluded more quickly and it will also allow public protection to be achieved in a less adversarial way. This will be beneficial for registrants, people who raise concerns and the wider public.

The introduction of an accepted outcomes process will leave panels to consider cases where an outcome is not accepted, or where the case examiner is not able to make a decision on impairment. This could include, for example, where the evidence needs to be tested at a hearing.

We have considered the responses to the proposal that a registrant should have to reply to an accepted outcomes proposal from a case examiner within 28 days and we are now of the view that 28 days should be a minimum period which will be set out in primary legislation. We will allow regulators to set out in rules their own time periods and the circumstances in which an extension to their time periods may be granted. Registrants will be required to provide a reasoned response to a notification of a proposed accepted outcome from a case examiner, within a timeframe prescribed in the regulator's rules, provided that the notification warned the registrant that a measure may be imposed if they do not respond to the case examiner. Whether a response is reasoned would be a matter for the case examiner in each individual case and we expect regulators to issue guidance on this. Where a registrant does not provide a reasoned response to a case examiner's offer of an accepted outcome within the regulator's timeframe the case examiner may impose a measure upon the registrant.

Interim Measures

Q54: Do you agree or disagree with our proposed powers for Interim Measures, set out above?

Proposal

The consultation proposed that all regulators should be provided with a consistent set of powers relating to Interim Measures. Regulators would be able to consider a case for an Interim Measure at any point in the fitness to practise process, from initial receipt of the concern until a final outcome is reached.

Regulators would have the power to convene Interim Measures panels, but Interim Measures may also be considered by Fitness to Practise Panels and case examiners. Any Interim Measure proposed by a case examiner will only come into force if it is agreed by the registrant. If a registrant does not accept an Interim Measure proposed by a case examiner, the case examiner must refer the matter to an Interim Measures panel. Regulators would have the power to set their Interim Measures process in rules.

A regulator may put in place an Interim Measure for a period of up to 18 months and a regulator must review an Interim Measure at least every 6 months, while the measure is in place. The regulator may also choose to review an Interim Measure at any time, including where it receives new information or circumstances change to indicate an early review is necessary. In addition, the registrant can request an early review of an accepted or imposed Interim Measure at any time. Such a review would be at the regulator's discretion.

Table 76 - responses to Q54

Category	Number of responses	Percentage
Agree	330	88
Disagree	44	12
Total	374	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed with the proposal on Interim Measures.

Respondents who agreed or partly agreed with the proposal were of the view that regulators need to have the ability to be able to impose Interim Measures during fitness to practise investigations as this is critical for public protection. A number of respondents

stated they could only support the proposal if the rules on Interim Measures processes are clear and are consulted on.

Several respondents welcomed regulators being permitted to review Interim Measures at any point as this would allow regulators to respond to changing circumstances. However, some respondents had concerns around the proposal that an Interim Measure proposed by a case examiner will only come into force if it is agreed by the registrant. These respondents felt that having to seek agreement would lead to delays which could put the public at risk and were of the view that strict timelines needed to be set out in legislation to avoid delays in restricting the practice of these registrants. In addition, some respondents felt that timelines needed to be introduced to ensure regulators do not delay a request from a registrant for an early review of an Interim Measure or in determining the outcome of that review.

Other respondents were of the view that given Interim Measures are temporary and are not findings of impairment, it would be reasonable for a case examiner to be able to impose Interim Measures as this would ensure there are no delays to public protection, subject to appropriate appeal rights being in place.

Respondents who disagreed with the proposal were of the view that case examiners should not have powers allowing them to propose Interim Measures to registrants. These respondents were of the review that only Fitness to Practise Panels or Interim Measures panels should have these powers due to concerns around the decision making of case examiners. Some respondents raised concerns around allowing regulators to develop their own rules on Interim Measures processes.

Comments included:

> Individual: “Interim measures are an ideal way to protect the public swiftly and to prevent potential further harm”.
>
> Organisation: “The opportunity to review at any point is also appropriate allowing reflexivity to changed circumstances/information”.
>
> Organisation: "The majority of the proposed powers for interim measures set out in the consultation document look to be proportionate. However, the regulators will need the rules to be supported by clear guidance so that there is clarity for registrants and the public on the differences and similarities between Interim Measures panels and Fitness to Practise Panels”.

Organisation: “Disagree - Interim measures are applied in specific circumstances where the risk to the public is high enough to warrant it and a model seeking registrants’ agreement will introduce delays”.

UK and devolved governments’ response

The UK and devolved governments remain of the view that regulators need to have the ability to be able to impose and review Interim Measures during fitness to practise investigations to ensure public protection.

Following consideration of the consultation responses we are no longer of the view that case examiners should be able to invite registrants to accept Interim Measures as this could add unnecessary complication and could potentially lead to delays in delivering public protection. Only a panel should have powers to impose an Interim Measure on a registrant.

We remain of the view that case examiners should have a role in reviewing Interim Measures on registrants the same way that a panel are able to do so. However, case examiners will also have a power allowing them to refer a case to a panel to review an Interim Measure if a case examiner believes the case warrants consideration by a panel.

A regulator may put in place an Interim Measure for a period of up to 18 months and it must review an Interim Measure at least every 6 months, while the measure is in place. The regulator may also choose to review an Interim Measure at any time, including where it receives new information or circumstances change to indicate an early review is necessary. In addition, the registrant can request an early review of an imposed Interim Measure at any time. Such a review would be at the regulator’s discretion.

Fitness to Practise Panel stage

Q55: Do you agree or disagree that regulators should be able to determine in rules the details of how the Fitness to Practise Panel stage operates?

Proposal

Fitness to Practise Panels will make a determination on the question of whether a registrant’s fitness to practise is impaired and put in place suitable measures to protect the public.

To ensure that fitness to practise procedures are open and transparent, the consultation proposed that regulators should be required to establish rules and procedures to ensure that, where appropriate, hearings are held in public.

The consultation also proposed that processes to be followed in relation to the functions of Fitness to Practise Panels should be set out in rules made by the regulator and that these rules must be publicly consulted on by the regulator.

Table 77 - responses to Q55

Category	Number of responses	Percentage
Agree	331	84
Disagree	61	16
Total	392	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that regulators should be able to determine in rules the details of how the Fitness to Practise Panel stage will operate.

Respondents were of the view that allowing regulators to set the rules for Fitness to Practise Panels would provide flexibility. Respondents stated that the rules needed to be clear and consistent across all regulators and that they should be subject to public consultation. Some respondents stated they only agreed with the proposal subject to a Fitness to Practise Panel being made up of lay majority of members to avoid self-regulation by the regulators.

Respondents who disagreed with the proposal stated that the details should be set out in primary legislation. Respondents were of the view that this would ensure consistency across all of the regulators. In addition, respondents welcomed the proposal that a regulator will not have the right to appeal a decision made by a Fitness to Practise Panel stating this was in line with the recommendation in Professor Sir Norman Williams's review into Gross negligence manslaughter in healthcare. However, some respondents raised concerns with the proposal that regulators will have the power to compel witnesses to appear where necessary. Respondents felt this power was not inappropriate in the context of professional regulation where a civil standard of proof is used to adjudicate.

Comments included:

> Individual: "Fitness to Practise Panels may need to operate and have their processes changed at short-notice, as was with the case in the COVID-19

pandemic, so regulators being able to determine in rules how fitness to practise panels operate seems very sensible".

Organisation: "Agree provided that the rules are transparent, and any proposed changes are subject to consultation and attention is drawn to changes made".

Organisation: "We agree, and welcome the proposal, in line with the Williams review, that a regulator will not have the right to appeal a decision made by a Fitness to Practise Panel, and that this power will be removed from the GMC. We consider that the Professional Standards Authority right of appeal provides effective protection for patients and the public".

Individual: "Should be in legislation".

UK and devolved governments' response

The UK and devolved governments remain of the view that regulators should be able to determine in rules the details of how the panel stage will operate. Allowing regulators to set these processes out in rules will enable them to respond flexibly and proportionately to changing circumstances over time. We encourage regulators to work together to develop their rules which will need to be publicly consulted on.

Registrant appeals

Q56: Do you agree or disagree that a registrant should have a right of appeal against a decision by a case examiner, Fitness to Practise Panel or Interim Measures panel?

Proposal

Registrants must have a right to appeal decisions made by a case examiner, Fitness to Practise Panel or Interim Measures panel. The consultation proposed that these appeal rights should apply in the following circumstances, where:

- a case examiner has found a registrant's fitness to practise to be impaired and has imposed a measure due to a non-responding registrant

- a case examiner has found a registrant's fitness to practise to be impaired, and a registrant has accepted the proposed outcome and measure

- a Fitness to Practise Panel has found a registrant's fitness to practise to be impaired and has imposed a measure

- an Interim Measures panel has imposed an Interim Measure

Table 78 - responses to Q56

Category	Number of responses	Percentage
Agree	391	99
Disagree	3	1
Total	394	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that a registrant should have a right of appeal against a decision by a Fitness to Practise Panel or Interim Measures panel. A number of respondents stated that from a natural justice and fairness perspective it is important that registrants can appeal a decision.

However, in respect of having a right of appeal against a decision by a case examiner, several respondents did not agree that a registrant should have a right of appeal to the courts where a case examiner has found the registrant's fitness to practise to be impaired, and the registrant has accepted the proposed outcome. These respondents felt that these decisions should be challenged through internal processes rather than the Courts.

Some respondents agreed that case examiner decisions, where measures have been imposed on non-responding registrants, should be appealable to the Courts. However, several respondents were of the of view that case examiner decisions where measures have been imposed on registrants, following their non-response, should be appealable to a Fitness to Practise Panel in the first instance.

Those respondents who agreed that a registrant should have a right of appeal against a decision by a case examiner, highlighted that this was important because, under the proposals, case examiners will have access to a full range of measures. Case examiners will carry out a detailed assessment of the case from the evidence which is significantly different to holding an in-person hearing. Some respondents highlighted that the absence of an in-person hearing may lead to the testimonial of the professional not being as powerful as it could be making the need for a right of appeal more important.

Comments included:

Organisation: “Registrants should always have a right of appeal against a decision made by a regulator, including decisions made by a case examiner, Fitness to Practise panel or Interim Measures panel in accordance with the principles of natural justice”.

Organisation: “In principle, we believe that Fitness to Practise [Panel] and Interim Measures panel decisions should be challenged through appeals (that is, externally) and case examiner decisions should be challenged through local processes (that is, internal review powers). We consider this to be a proportionate response that acknowledges the distinction between independent panels and employed case examiners”.

Organisation: “We agree that there should be a right of appeal against decisions of a case examiner. As we understand the proposals, case examiners will not hold hearings, so such a right is essential”.

UK and devolved governments’ response

The UK and devolved governments will introduce appeal rights for registrants in the following circumstances:

- where a case examiner has found a registrant’s fitness to practise to be impaired, and a registrant has accepted the proposed outcome and measure
- where a case examiner imposes a Final Measure on a registrant who has not submitted a reasoned response to a case examiner’s offer of an accepted outcome within the regulator's prescribed timeframe
- where a case examiner has found that a registrant's fitness to practise is not impaired and closed a case
- where a case examiner has found that a registrant's fitness to practise is not impaired but has issued a warning
- where a panel has found a registrant’s fitness to practise to be impaired and has imposed a Final or Interim Measure on a registrant

Article 6 of the European Convention on Human Rights guarantees the right to a fair trial to any person whose civil rights or obligations are being determined. In line with article 6 of the European Convention on Human Rights we are of the view that registrants should have a right of appeal in the above circumstance even where a registrant may have accepted an outcome and measure proposed by a case examiner.

Q57: Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland?

Proposal

The consultation set out that appeals should be heard by the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

Table 79 - responses to Q57

Category	Number of responses	Percentage
Agree	334	89
Disagree	41	11
Total	375	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that a registrant should have a right of appeal against a decision by a case examiner, Fitness to Practise Panel or Interim Measures panel and that the right of appeal should be to either the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

Several respondents who agreed stated they felt the proposal was fair highlighting the independence of the judiciary and recognising that having an appeal route to Courts would ensure an open and transparent process.

Those respondents who disagreed or had concerns regarding a right of appeal to the Courts stated that this appeal route was not easily accessible and made the appeals process more complex and drawn out. A number of respondents highlighted the high financial costs associated with bringing an appeal to either the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland. Some respondents queried whether another body should be responsible for contributing towards these financial costs, with others noting that the financial costs involved currently deterred registrants from appealing. In addition, several respondents highlighted that bringing forward an appeal to the Courts can have an emotional and mental toll on a registrant.

A number of respondents suggested alternative options to a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland. These options included:

- regulators setting up their own internal appeals panels with an appeal route to the relevant court should a further appellate route be required

- establishment of a central appeals panel that would cover all regulators with an appeal route to the relevant Court if a registrant would like to challenge the central appeals panel's decision

- the establishment of an independent body to hear appeals against decisions by a case examiner, Fitness to Practise Panel or Interim Measures panel

- a Registrar review mechanism with an appeal route to the relevant Court if a registrant would like to challenge the Registrar's decision

- a different court, such as the County Court in England and Wales, hearing an appeal against a decision by a case examiner, Fitness to Practise Panel or Interim Measures panel

Comments included:

> Individual: "An appeal should be outside a regulator's field".
>
> Organisation: "Given the potential consequences for both the public and registrant, the appeal should be made to courts practised in the delivering on such matters, conducted by legal professionals experienced in appeals processes".
>
> Organisation: "There should be an internal appeal process first with the courts being the last resort. Court costs are high and they are backlogged with cases so this is burdensome".
>
> Individual: "A court at lower level should be able to deal with such cases. The High Court is extreme".

UK and devolved governments' response

The UK and devolved governments remain of the view that registrants should have a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland. However, following consideration of the consultation responses we are no longer of the view that this should be a direct right of appeal to the Courts for all fitness to practise decisions. We are of the view that registrants should first of all have an internal right of appeal against the following decisions:

- where a case examiner has found a registrant's fitness to practise to be impaired, and a registrant has accepted the proposed outcome and measure

- where a case examiner imposes a Final Measure on a registrant who has not submitted a reasoned response to a case examiner's offer of an accepted outcome within the GMC's prescribed timeframe

- where a case examiner has found that a registrant's fitness to practise is not impaired and closed a case

- where a case examiner has found that a registrant's fitness to practise is not impaired but has issued a warning

An internal right of appeal against these decisions should lead to cost and time savings for registrants. Registrants would then have a subsequent right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland against the panel's decision.

Where a panel has found a registrant's fitness to practise to be impaired and has imposed a Final or Interim Measure on a registrant, the registrant will have a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland on the ground of error of law.

Restoration to the register

Q58: Do you agree or disagree that regulators should be able to set out in Rules their own restoration to the register processes in relation to fitness to practise cases?

Proposal

Registrants should have a right to appeal a decision by the regulator not to permit restoration to the register. The consultation proposed that the process for considering these appeals should be similar to that for appeals against registration decisions, with the initial appeal being considered internally. The consultation also proposed that there should be a further right to appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland. Regulators would be required to set out the process for this in rules. The rules must include:

- the time frame in which an application for restoration may be made

- the process for determining how the application is reviewed

- the internal appeal process for a registrant to challenge a decision not to permit restoration

Table 80 - responses to Q58

Category	Number of responses	Percentage
Agree	336	88
Disagree	46	12
Total	382	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that regulators should be able to set out in rules their own restoration to the register processes in relation to fitness to practise cases.

Respondents who agreed highlighted that this proposal was consistent with the overarching principles of the regulatory reform programme. Respondents were of the opinion that this proposal would give more flexibility and autonomy to regulators to allow them to respond appropriately to changing operating environments over time. However, a number of respondents stated that the rules must be consistent across all regulators. Respondents suggested that regulators should work together on developing the rules and all regulators should be required to publicly consult on them.

Respondents who disagreed with the proposal stated that restoration to the register processes in relation to fitness to practise cases should be set out in primary legislation. Those respondents felt that this was the only way to ensure consistency across regulators on restoration to the register processes.

Comments included:

> Organisation: “We agree that regulators should be able to set out in rules their own restoration to the register processes in relation to fitness to practise cases. We would want to see a mechanism to ensure consistency of these rules between regulators”.
>
> Organisation: “Will allow for a system which can be adapted to changing circumstances”.
>
> Individual: “These should be laid down in primary legislation”

UK and devolved governments' response

We note the feedback from the consultation and recognise the importance of including clear and proportionate powers for regulators to scrutinise fitness to practise concerns which remain outstanding, or which are raised after a person has lapsed from the register.

The UK and devolved governments are of the view that regulators should have a duty to consider any concerns that have been raised about a person's fitness to practise (either before or after they lapsed or were removed from the register).

We remain of the view that there should be a proportionate appeals process set out in the legislation for all restoration decisions, and we also intend to provide regulators with powers to make rules on some elements of the restoration process for applicants. We encourage regulators to work together to develop their rules and any rules developed by regulators must be subject to public consultation.

Q59: Do you agree or disagree that a registrant should have a further onward right of appeal against a decision not to permit restoration to the register?

Proposal

The consultation proposed that the further onward right of appeal should be to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

Table 81 - responses to Q59

Category	Number of responses	Percentage
Agree	371	97
Disagree	13	3
Total	384	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that a registrant should have a further onward right of appeal against a decision not to permit restoration to the register. The online consultation tool only permitted respondents to agree or disagree with this question.

Some respondents, who did not use the consultation tool to respond, provided reasons for their answer to this question. Those who agreed stated that the further onward right of appeal provided accountability and fairness and ensured that errors made by independent decision makers could be corrected.

One respondent questioned whether there should be a two-stage appeal model. They felt that having an internal appeals mechanism first of all was not proportionate and could cause unnecessary confusion for registrants and the public as the proposal was not consistent with the appeal model for the other fitness to practise appealable decisions.

Another respondent had concerns that the proposal in the consultation document modelled restoration to the register appeals on registration appeals. The respondent stressed that these 2 types of appeals were completely different as registration appeals are often administrative decisions whereas restoration to the register decisions involve registrants who will have been removed from the register previously for misconduct. The respondent highlighted that the risk of harm to the public of a poor restoration decision is much higher than that of a registration decision. The respondent stated that Fitness to Practise Panels should be the body responsible for making restoration to the register decisions and that internal appeals panels should not be established. The respondent set out there where an application for restoration is rejected by a panel, there should be an appeal right to the Courts for a registrant. In addition, where an application is granted by the panel, the PSA should have the option of appealing this decision to the Courts.

Comments included:

> Organisation: “Agree that there should be a further onward right of appeal in order for there to be public confidence in the system, particularly given the serious consequences of a registrant not being restored to the register as a result of an internal process".
>
> Organisation: “We don’t object to this proposal. However, we don’t think a two-stage appeal model is needed. Our preference is for a direct right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland. An additional internal appeal stage isn’t proportionate, or consistent with the registrant appeal model for the rest of fitness to practise decisions. We don’t believe the two-stage model has clear benefits, and as such it would cause unnecessary confusion for registrants and the public”.

UK and devolved governments’ response

The UK and devolved governments remain of the view that there should be a right of appeal against a decision not to permit restoration to the register. As set out at question 37

and 38, the legislation will include a requirement for some applicants for restoration to the register to satisfy the regulator that their fitness to practise is not impaired. Where a panel has decided that an applicant has not met this requirement and should not be admitted to the register on this basis, there will be a direct appeal route to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

Where an individual has had an application for restoration refused as they have failed to meet the other requirements and standards for registration, the legislation will provide an internal appeal route to the regulator, with a further onward right of appeal to the County Court.

Q60: Should this be a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland?

Proposal

The consultation sets out that the further onward right of appeal should be heard by the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

Table 82 - responses to Q60

Category	Number of responses	Percentage
Agree	326	91
Disagree	32	9
Total	358	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that the right of appeal should be to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.

A number of respondents who responded to this question stated that from a natural justice and fairness perspective it is important that registrants should have a right to appeal a decision by the regulator not to permit restoration to the register.

Several respondents who agreed asked that their response to question 57 was taken into account as their answer to this question. Some respondents who agreed and provided

comments stressed that the right to appeal to the Courts should only take place following an unsuccessful internal appeal. Respondents highlighted the high financial costs to registrants with appealing to the Courts and proposed that having an internal appeal process first of all one be a more cost-effective option for a registrant.

Several people who disagreed with the proposal did not provide a reason as to why they disagreed. Some respondents who disagreed and provided comments stated this was because of the high financial cost of appealing to the courts and suggested the appeal should either be heard internally by a regulator, by another body or by a different Court.

Comments included:

> Individual: “This seems sensible and fair”.
>
> Organisation: “There should be an internal appeals process to challenge any decision in the first instance with a subsequent right of appeal to the courts if required”.
>
> Individual: “Appeal must be simpler and cheaper than the High Court. It should be another 3rd party”.

UK and devolved governments’ response

The UK and devolved governments remain of the view that there should be a right of appeal against a decision not to permit restoration to the register.

As set out at questions 58 and 59 the appeal route for restoration decisions will vary depending on whether the application has been refused because the applicant has failed to meet the standards and requirements of registration, or because they have failed to satisfy the regulator that their fitness to practise is not impaired.

Registrar review powers

Q61: Do you agree or disagree that the proposed Registrar review power provides sufficient oversight of decisions made by case examiners (including accepted outcome decisions) to protect the public?

Proposal

The consultation set out our proposal for a Registrar review mechanism for all regulators. This will allow the Registrar of each regulator to review a fitness to practise decision made

by a case examiner, or a case that was closed at the initial assessment stage. This review power will also apply to Interim Measure decisions made by a case examiner, which have been accepted by a registrant. The proposed grounds for a Registrar review are, that in the judgement of the Registrar:

- the decision was based on a material error of fact or law, either wholly or in part
- there is new information which would have, wholly or in part, led to a different decision

But only if one or more of the following grounds are also satisfied:

- the Registrar considers that the decision may not be sufficient to protect the public
- the Registrar considers that the review may be necessary for the prevention of injustice to the registrant

The consultation proposed that any person will be able to request a Registrar review, but the regulator will only have a power to direct a review when a request meets the grounds set out above. The regulator will be required to set out in rules the process for carrying out such a review.

Table 83 - responses to Q61

Category	Number of responses	Percentage
Agree	282	78
Disagree	79	22
Total	361	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents agreed that the proposed Registrar review power provides sufficient oversight of decisions made by case examiners (including accepted outcome decisions) to protect the public.

Respondents that agreed with the introduction of a Registrar review mechanism were of the review that it provides a proportionate and effective mechanism for oversight of decisions made by case examiners and decisions to close a case at the initial assessment stage. However, respondents stated that rules and guidance will need be developed by the regulators to accompany the Registrar review mechanism to ensure professional and public confidence in the process.

Several respondents highlighted that some regulators already have Registrar review processes which work well and stated that the process is less adversarial which benefits registrants and those who raise concerns. In addition, respondents were of the review that the Registrar review mechanism provides a means to resolve cases in a timely manner while maintaining public protection.

Respondents who disagreed with the proposal stated that they would like to see the PSA's section 29 powers extended so that the PSA has a right to refer decisions made by case examiners, including accepted outcome decisions, to the appropriate Courts. Respondents were of the review that an independent body needs to be able to scrutinise and challenge case examiner's decisions. Several respondents stated they disagreed with the proposal due to case examiners and the Registrars both being employed by the regulator, it was stated this could bring the Regulator's independence into question.

In addition, some respondents highlighted there may be a conflict of interest between the administrative and investigatory role of the Registrar, as under the reform proposals, Registrars will sit on a regulator's unitary board and have the legal authority for investigating and referring fitness to practise cases. Some respondents were of the view that an independent decision maker should carry out the review role instead of the Registrar such as an independent reviewer or a Fitness to Practise Panel to ensure professional and public confidence in the review process.

In addition, several respondents raised concerns that the proposals do not include a time limit within which a Registrar review can be brought forward. It was stated that a time frame is needed to minimise the potential burden of the review process, provide clarity for registrants and to ensure a review is not used as means to delay the regulatory process.

Some respondents also raised concerns with the proposal that where the Registrar review results in a case being reopened which had been closed at the case examiner stage, it must be referred to the Fitness to Practise Panel stage. These respondents felt this was disproportionate and could inadvertently lead to a high increase in the number of cases being transferred to a Fitness to Practise Panel. Respondents were of the review that regulators should be given a discretion to decide whether a case should be reopened by a case examiner or be referred to a Fitness to Practise Panel.

Comments included:

> Organisation: "This seems a reasonable approach to ensure fair and consistent judgements are made without the need for prolonged and complicated processes that do not support the best interests of either the public or the registrant".

Organisation: “We agree that a registrar review power would be beneficial to regulators, and an appropriate and proportionate way to consider some cases without the need for judicial review. However, we acknowledge that such a power would involve the same organisation both making the original decision and reviewing it. To that end, we consider that regulators will need to provide clear, public guidance and processes on how such review will be undertaken”.

Organisation: “Whilst a Registrar review power has some potential benefits there is a risk that without additional oversight such as currently exists with the PSA this would reduce assurance to the public and make it more difficult for them to challenge decisions”.

Organisation: “We believe an independent examiner is required to ensure transparency”.

UK and devolved governments’ response

The UK and devolved governments remain of the view that regulators should have an internal mechanism to be able to revise case examiner and initial assessment decisions. Individuals, including registrants and members of the public, should be able to request that a case examiner decision is revised where there has been a material change of circumstances since it was made or on the ground of error of fact or law. However, on reflection we are no longer of the view that this should be a function of the Registrar and should instead be a function of the regulator. We believe an internal mechanism which allows the revision of decisions by a regulator rather than the Registrar will provide a means to resolve cases in a timely manner in a less adversarial way which benefits both registrants and those who raise concerns.

We will give regulators powers, in their legislation, which will allow them to revise case examiner decisions. We expect regulators to develop clear and comprehensive rules and guidance on their revision processes including detail on how on an individual can request a revision of an initial assessment decision.

Q62: Under our proposals, the Professional Standards Authority for Health and Social Care (PSA) will not have a right to refer decisions made by case examiners (including accepted outcome decisions) to court, but they will have the right to request a Registrar review. Do you agree or disagree with this proposed mechanism?

Proposal

The PSA has a right to refer Fitness to Practise Panel decisions made by a regulator to court where it considers the action taken by the regulator is insufficient to protect the public, using its section 29 powers. This is treated as an appeal. The PSA's ability to review fitness to practise cases is an important element of public protection, and its right to refer cases resolved by a panel to court will remain.

The consultation does not propose to extend the PSA's section 29 powers to cover case examiner decisions. It is important that the oversight of cases closed by accepted outcome is proportionate and sufficient to protect the public.

Table 84 - responses to Q62

Category	Number of responses	Percentage
Agree	265	74
Disagree	95	26
Total	360	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

There was a mixed response to this question. Respondents who agreed with the proposal were of the view that anyone, including the PSA, should be able to request a Registrar review. However, they felt that the PSA's section 29 powers should not be extended to include case examiner as this would be disproportionate. Respondents highlighted that the Registrar review process would be less expensive for both the PSA and the regulators and should reach a faster resolution than an appeal to the High Court in England and Wales. Respondents were of the view that a swifter and less adversarial process would be beneficial for both registrants and those who raise concerns.

Some respondents were of the view that the PSA should concentrate on reviewing Fitness to Practise Panel decisions as the most serious fitness to practise cases will be heard by panels rather than case examiners. It was also stated that should a case by reopened following a Registrar review, and referred to a Fitness to Practise Panel, the PSA would

have the opportunity to appeal the Fitness to Practise Panel's decision to the Court if they were unhappy with the case's outcome. In addition, several respondents were of the view that extending the PSA's powers would undermine the nature of the accepted outcomes process by making the process more adversarial leading to a loss of registrant and regulator confidence in the process. It was highlighted that one of the aims of the reform programme is to move away from the adversarial nature of fitness to practise proceedings and extending the PSA's section 29 powers would go against this.

Respondents who disagreed with the proposal were of the view that the PSA's section 29 powers should be extended to provide independent oversight of case examiner decisions. It was stated this would increase public confidence in the review process. A number of respondents asked us to refer to their response to question 61 setting out why they believed an independent body, or the PSA should review case examiner decisions rather than a regulator's Registrar.

Several respondents highlighted recommendation 68 of the Law Commissions' report, 'Regulation of Health Care Professionals Regulation of Social Care Professionals in England' which stated that, "the Professional Standards Authority's power to refer fitness to practise decisions to the higher courts should be extended to include consensual disposals". In addition, respondents also raised concerns that the Registrar review mechanism may place an additional burden on individuals who wish to appeal case examiner decisions.

The PSA responded to say it disagrees with the proposal that its section 29 powers won't be extended to cover case examiner decisions. The PSA's consultation response sets out the reasons as to why it disagrees. A copy of the full response is available on the PSA's website. The PSA's response has been taken into consideration along with all of the other responses we received to this proposal.

Comments included:

> Organisation: "The Registrar Review can be a very effective measure for all parties involved including the PSA as it can bring swift outcomes that may otherwise have gone through lengthy and expensive court proceedings".
>
> Organisation: "Agree as PSA should deal with cases that have or had more serious consequences. Not those at case examiner stage".
>
> Organisation: "The PSA should not be able to refer decisions made by case examiners to court as it would undermine any agreed outcome decisions that are acceptable to both registrant and regulator".

Individual: “At some stage the case needs to be assessed independently from the regulatory body”.

Organisation: “We believe the Professional Standards Authority should be empowered to review and challenge decisions made by the regulators at all stages of the fitness to practise process. Simply recommending a registrar to review decisions is woefully inadequate”.

UK and devolved governments’ response

The UK and devolved governments remains of the view that the PSA’s section 29 powers should not be extended to cover case examiner decisions. However, we will amend section 26(3) of the National Health Service Reform and Health Care Professions Act 2002 to allow the PSA to request that a case examiner decision is revised by a regulator.

We are of the review that extending the PSA’s section 29 powers would be disproportionate and would go against the objectives of our reform programme which aim to give regulators more autonomy and deliver a fitness to practise process that is less adversarial. A swifter and less adversarial process will benefit both registrants and those who raise concerns.

Q63: Do you have any further comments on our proposed model for fitness to practise?

We received several comments from respondents. A number of these comments have been considered as part of our analysis to individual questions within the consultation summary. For example, we received further comments about the training and expertise of case examiners and on the Registrar review mechanism which we have considered as part of our response to the specific questions in these areas.

Annex B sets out some of the additional key themes that respondents raised to this question and the UK and devolved governments’ response on these.

Additional comments included:

Organisation: “Regulators should also be consistent in how they explain the nature and purpose of the fitness to practise process to the public, employers and any other stakeholders who make referrals. There is still considerable misunderstanding of the purpose of fitness to practise processes so they should be a co-ordinated effort to explain this to stakeholders in simple terms that will help reduce the volume of inappropriate referrals”.

Organisation: “The final proposals should include safeguards for people who raise concerns to prevent inappropriate and bullying attacks on their integrity, which sometimes happens when they appear as a witness at fitness to practise hearings. This is a major disincentive for people who would otherwise report concerns. Hearings should restrict themselves to the facts of the allegations/concerns”.

Individual: “The General Medical Council should have its right to appeal fitness to practise decisions by its Medical Practitioner Tribunal Service removed. The PSA will retain its right to appeal these cases to ensure public protection, in the same way that it does for the other 8 regulatory bodies for healthcare professionals”.

Regulation of anaesthesia associates and physician associates

As set out in the Executive Summary, the vast majority of reforms set out in the consultation document will also apply to anaesthesia associates (AAs) and physician associates (PAs) once statutory regulation of these roles begins.

There will, however, be differences in the way that each healthcare profession is regulated to reflect the contexts in which each role practises and the associated risks posed. The detail of what regulation for AAs and PAs will look like will be set out in Rules developed and consulted on by the GMC once the legislation giving it the powers to regulate both roles has been brought into force.

The GMC has followed a number of principles when developing the system of regulation for AAs and PAs. These are:

- parity of esteem with medical practitioners as the other profession regulated by the GMC
- that regulation must be proportionate to the roles and associated risks
- that where the current arrangements under the Faculty of PAs are working well, they should be retained

A total of 525 responses to the consultation were received. However, not all respondents answered the questions specifically relating to the regulation of AAs and PAs.

Of those that did respond to the questions in this section, not all respondents answered every question. We have only included quantitative data for those that clearly stated that

they ‘agreed’ or ‘disagreed’ with the question asked. A summary of additional comments is included under each question.

Q64: Do you agree or disagree with the proposed approach to the regulation of PAs and AAs

Proposal

As set out in the consultation document, in order to bring AAs and PAs into regulation, the GMC will be required to:

- register qualified and competent AAs and PAs
- set standards of education, training, knowledge, skills, experience, conduct, performance, ethics and English language
- operate fitness to practise procedures for both roles

The GMC’s powers will be extended to enable it to:

- approve and quality assure AA and PA education and training programmes
- determine which international qualifications it will recognise for the purposes of registration in the UK

Regulation will also mean that it will be an offence for someone to:

- use the titles 'anaesthesia associate' or 'physician associate' if they are not registered as such with GMC (though note the transitional arrangements below)
- claim (with intent to deceive) that they have an approved qualification (which will cover AA and PA courses)
- claim (with intent to deceive) that they are registered with the GMC

Proportionate transitional arrangements will be put in place to enable those AAs and PAs already practising to meet the requirements for registration with the GMC in a timely manner.

Table 85 - responses to Q64

Category	Number of responses	Percentage
Agree	258	86

Category	Number of responses	Percentage
Disagree	43	14
Total	301	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents to this question (86%) agreed with our proposed approach to the regulation of AAs and PAs. Comments made by respondents covered the following key themes:

- patient protection and safety
- accountability
- quality assurance
- credibility and parity of esteem
- workforce benefits
- pursuit of prescribing responsibilities

A summary of some of the main supportive arguments made by respondents is set out below:

- regulation will embed the roles into the multidisciplinary team and facilitate role development and progression
- regulation will enable the roles to request ionising radiation and facilitate the pursuit of prescribing responsibilities which would further enhance the roles and improve the efficiency of patient care
- education and training will be standardised and subject to mandatory quality assurance checks
- regulation will protect the AA and PA titles and reassure employers, peers and the public that professionals are qualified, insured and of a sufficient level of competence

In some cases, although respondents said that they agreed overall with our proposed approach, their comments included caveats or suggestions for improvements or expansion. These included the GMC developing a foundation style training programme

with specialised training pathways for PAs akin to that of doctors and reconsideration of the current funding model to support entry training for PAs.

Comments included:

> Individual: "This is a proportionate approach to safeguard the registrant, patients and the public and colleagues in the multi-professional healthcare team."
>
> Organisation: "We agree with the proposed approach to regulation of PAs and AAs. It is important that the public has confidence that these roles are regulated, and this will ensure that they can prescribe. Prescribing is important to ensure that maximum benefit for the public is obtained by the development of PA and AA roles."

14% of respondents to this question stated that they disagreed with the approach to regulating AAs and PAs. Comments made by respondents covered the following key themes:

- role and/or regulation not appropriate
- oversight by an alternative regulator to GMC
- conflation with role of doctors
- impact on training for doctors

A summary of some of the main arguments made by respondents who disagreed is set out below:

- regulatory oversight should be by an alternative regulator to the GMC for example, HCPC, or another separate body, so that the GMC maintains its focus on the regulation of doctors
- the need to maintain a clear distinction between the scope of practice for doctors and that for AAs and PAs
- training opportunities for doctors should not be impacted by the professional development requirements for AAs and PAs
- one organisation also raised concerns around the protection of the professional title 'anaesthesia associate' due to the existence of a similar professional title already in use in Scotland in relation to a different unregulated role

Comments included:

> Individual: "Whilst both PAs and AAs are important service provision roles, their respective scope of works need to be set out in clear terms…., a clear hierarchy is required so both PAs/AAs and junior doctors know who reports to who."
>
> Organisation: "PAs should be regulated by the HCPC as this role has significant potential to contribute to the MDT [multi-disciplinary team]. There is a danger that being regulated by the GMC they adopt the medical model of care, which in itself has significant limitations, particularly post COVID."

UK and devolved governments' response

We note that the majority of respondents stated they agreed with the overall approach to regulating AAs and PAs.

As we set out in the consultation, regulation is a significant step towards embedding AAs and PAs in the multi-disciplinary healthcare workforce. It is also a necessary step towards the longer-term aspiration of extending a form of prescribing responsibilities to these professions. This is why, alongside the work to regulate AAs and PAs, the department is working with representatives from the professions, NHS England, Health Education England and the Devolved Legislatures to develop a robust case for extending some level of prescribing responsibilities to one or both roles. The Commission on Human Medicines (the independent body responsible for making recommendations on prescribing responsibilities) has convened an expert working group to consider prescribing responsibilities across the healthcare workforce.

We acknowledge that concerns were raised by some respondents around the GMC's expanded portfolio and the negative impact this may have on doctors, particularly a potential loss of training opportunities and support. While it is important that the GMC ensure parity of esteem amongst the professions it regulates, it will be expected to consider the bespoke needs and requirements of each profession.

Finally, the reformed GMC legislation will mean that it will be less legislatively complex to introduce further medical associate professions into regulation under the GMC in the future. However, if evidence emerges leading to proposals to introduce further professions to regulation, a full public consultation and debates in Parliament would still be required.

High-level UK-wide curricula

Q65: In relation to PAs and AAs, do you agree or disagree that the GMC should be given a power to approve high level curricula and set and administer exams?

Proposal

Once regulation begins, programmes leading to the award of an AA or PA qualification will need to follow UK-wide curriculum set by the relevant Royal Colleges and approved by the GMC. Currently, UK-wide curricula for AAs and PAs is set by the Royal College of Anaesthetists and the Faculty of PAs respectively.

Giving the GMC the power to approve AA and PA UK-wide curricula will enable it to provide assurance that all AA and PA programmes that lead to registration provide a consistent standard of education and training and equip registrants to provide safe and effective care.

The GMC will also be given a power to set and administer exams or other assessments as it deems necessary for entry to the register.

Table 85 - responses to Q65

Category	Number of responses	Percentage
Agree	244	87
Disagree	37	13
Total	281	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents to this question (87%) agreed with our proposed approach. Comments made by respondents who agreed covered the following key themes:

- remit of the regulator
- quality assurance
- parity with other regulated professions

A summary of some of the main supportive arguments made by respondents is set out below:

- the regulator [GMC] should have oversight of, and approve, education standards owing to the interplay between standards and registration requirements

- homogenising AA and PA education and training across the UK is essential to ensuring both roles are trained to an agreed and consistent standard. It will provide transparency and clarity to employers and patients about the quality of practitioners

- the proposed approach is consistent with existing regulatory practice. It will facilitate equitable treatment between AAs and PAs and other regulated professions, including doctors

Again, some respondents caveated their agreement, particularly around the degree of autonomy that the GMC should have with regards to exam setting. Respondents were of the view that it should not set or administer exams. This was seen as the role of professional bodies, such as the royal colleges, and educational institutions.

Comments included:

> Individual: "Standardisation of education and training across the UK is essential as there will always be the temptation to modify curricula to meet local need. National examinations, whilst not universally accepted, provide an added measure of consistent 'product' from university education as well as a practical assessment of attitude and behaviours."
>
> Organisation: "Giving the GMC power to approve high level curricula, set and administer exams for PAs and AAs will promote consistency in relation to both training and standards."

13% of respondents to this question stated that they disagreed with our proposals. Comments made by respondents covered the following key themes:

- remit of the regulator

- local training needs

Those that disagreed said that the regulator's role was to approve educational institutions and their courses and to set standards for registration, not to set or administer exams. Some highlighted the need for the regulator to maintain objectivity with regards to exams in case it was needed to adjudicate any concerns.

Some respondents were concerned that allowing the GMC to set exams would mean the development of a single, standardised national exam which would preclude diversity of candidates and be inflexible for meeting local training needs.

Comments included:

> Individual: "Curricula - yes. I do not believe that regulators should set or administer exams; rather, they should supervise the professional bodies that do this."
>
> Organisation: "The relevant medical colleges are best placed to establish curricula, set and administer exams for this group. The GMC should be given an oversight role to ensure that assessments are handled efficiently and provide an adequate guarantee of standards."

UK and devolved governments' response

As the gatekeepers to the regulated professions, it is our view that, it is the regulators' role to determine the education and training standards needed to practise. The GMC will set, own, and maintain a shared outcomes framework. This framework will set out the high-level outcomes expected for AA and PA graduates. The GMC will also set, own and maintain a pre-registration assessments. The GMC is in the process of developing a pre-registration assessment for AAs (as is already the case for PAs) which is likely to apply to AAs completing their qualification from 2025 onwards.

However, we would expect regulators to collaborate with education and training providers and other relevant bodies when developing these standards. For example, the Faculty of Physician Associates and Royal College of Physicians will develop, own and maintain the PA national curriculum and the Royal College of Anaesthetists will develop, own and maintain the AA national curriculum. The GMC will then approve the curricula and ensure that they meet the required standard. The legislation will also require the GMC to consult on new standards and any significant changes to standards.

These powers will ensure that the GMC has the flexibility to maintain uniform high standards in education and training.

Transitional arrangements

Q66: Do you agree or disagree with the transitional arrangements for PAs and AAs set out above?

Proposal

The legislation will include transitional arrangements which will enable the GMC to provide a proportionate route to registration for AAs and PAs who are already qualified and/or practising.

The transitional arrangements will mean that, when statutory regulation comes into force any AAs or PAs who are already practising in the UK, or who hold an AA or PA qualification from a UK university, will be able to continue to practise and use the relevant professional title without being registered with the GMC for up to 2 years from the start date of regulation. By the end of that 2-year period, they must either cease practising and using the relevant title or have applied to the GMC and been admitted to the register in order to continue practising. The 2-year transition period is in line with similar processes used for other roles that have been brought into regulation in recent years, such as dental nurses and dental technicians.

Table 86 - responses to Q66

Category	Number of responses	Percentage
Agree	262	92
Disagree	23	8
Total	285	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents to this question (92%) agreed with our proposed approach to transitional arrangements. Comments made by respondents covered the following key themes:

- proportionality
- awareness of the arrangements amongst education providers, employers and professional bodies
- equalities considerations

A summary of some of the main supportive arguments made by respondents is set out below:

- the 2-year transitional period allows sufficient time for practising professionals to meet the requirements for GMC registration and is consistent with other professions that have transitioned into regulation
- the transitional arrangements balance the rights and needs of established practising professionals with maintaining public protection

- the transition period provides time for education providers, employers and professional bodies to embed new regulatory requirements within their programmes and processes with minimal disruption to ongoing practice

While in broad agreement with the proposals, some respondents raised concerns about the ability of certain groups to meet the GMC's requirements for registration within the 2-year timescale, for example, professionals who have been unable to practise within the 2-year period due to ill health or parental leave. Others raised the importance of providing adequate and timely information about the new regulatory requirements to employers so that they are able to support AAs and PAs currently in their employ to be 'registration-ready', and so they are aware of these requirements when employing new practitioners.

A few respondents queried whether there would be registration routes for overseas qualified AAs and PAs and what these would look like, and also whether there would be a non-practising register. It was also suggested that PAs currently registered on the Faculty of PAs voluntary register (PAMVR) might be automatically grandfathered across to the GMC's register, as a more proportionate route to registration.

Comments included:

> Individual: "We agree with the transitional arrangements for PAs and AAs described in this consultation as these professionals are brought into statutory regulation. We believe the 2-year period for practitioners to transition to a statutory register is reasonable and proportionate, and should not significantly disrupt ongoing practice, or the education and training of these professionals."
>
> Organisation: "We agree as the time period for PAs and AAs transitional arrangements mirrors that of other regulators and it is a sufficient time scale."
>
> Organisation: "There will need to be transitional arrangements and those proposed seem reasonable and proportionate. There will also be a job to be done to educate the service so that they can also support any affected employees."

8% of respondents to this question stated that they disagreed with our proposals. Comments made by respondents covered the following key themes:

- the length of the transitional period
- the extent and robustness of the transitional arrangements

A summary of some of the main arguments made by these respondents is set out below:

- a small number of those that disagreed had concerns that the transitional period may not be long enough for practising AAs and PAs to meet the GMC's requirements for registration. However, the majority thought 2 years was too long arguing that the lack of statutory oversight during this time poses a public protection risk. To mitigate this risk, it was suggested that all practising AAs and PAs should be mandated to join a voluntary register while transitioning. Alternatively, the transition period should be shortened to 6 months

- some respondents thought the extent and robustness of the proposed transitional arrangements seemed insufficient. For example, the proposal set out in the consultation document that the defined knowledge and skills required for GMC registration would equate to meeting the criteria for the voluntary registers but without providing any detail as to whether these registers meet relevant standards, such as those set for registers accredited by the Professional Standards Authority (PSA)

Comments included:

> Individual: "I think that the transitional arrangements require some refining particularly for those who are qualified. I think a 2-year transition period is rather long and generous and leaves the general public open to harm."

UK and devolved governments' response

It is important that the introduction of statutory regulation for AAs and PAs does not negatively impact on AAs and PAs already playing a vital role in the healthcare system in the UK.

We believe that a 2-year transition period provides the right balance between allowing individuals the time to register with the GMC and ensuring that those using the title AA and PA and working in these roles have the appropriate level of regulation for public protection.

In order to enable a transition period, the offence relating to the use of the protected titles ‘anaesthesia associate' and 'physician associate' will not take effect until 2 years after regulation begins. The GMC has confirmed that they will be encouraging registration at the earliest possible opportunity and sending reminders to students and employers.

We are clear that any further transitional requirements set by the GMC must be proportionate, balancing public protection while protecting individual professionals from disproportionate burden.

Continued competence

Q67: Do you agree or disagree that PAs and AAs should be required to demonstrate that they remain fit to practise to maintain their registration?

Proposal

The consultation set out that the GMC should have a process that provides regular assurance of the continued competence of registered AAs and PAs. It was proposed that the GMC will set out the standards and/or requirements for these professions in rules and guidance. We also thought that the GMC should be provided with the power to remove registrants who fail to comply with the standards and/or requirements.

Table 87 - responses to Q67

Category	Number of responses	Percentage
Agree	312	95
Disagree	18	5
Total	330	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority of respondents to this question (95%) agreed that AAs and PAs should be required to demonstrate that they remain fit to practise. Comments made by respondents covered the following key themes:

- competence
- patient safety
- consistency with other professions
- proportionality

A summary of some of the main supportive arguments made by respondents is set out below:

- there is clear agreement from respondents that once regulated, AAs and PAs should be required to demonstrate their fitness to practise in order to maintain patient safety. This would be in line with other regulated health and care professions.

- some respondents were in favour of a portfolio approach to revalidation rather than an exam and highlighted that support from employers would be required.

Comments included:

> Individual: "For public safety, health practitioners should be at the top of their game every day of their career."
>
> Individual: "This seems to be in line with other professions, for example the NMC require similar from nursing associates."
>
> Organisation: "Demonstration of fitness to practise is fundamental to public safety."
>
> Organisation: "This forms parity with all other regulated professions and provides assurance to the public and the employers."

Only a small number of respondents (5%) selected disagree in response to this question with the majority providing no additional comments.

UK and devolved governments' response

The government is clear that ensuring that professionals remain fit to practise is an essential component of public protection.

As set out previously, the GMC's legislation will require the organisation to develop a system that will ensure AA and PA competence is maintained. However, we remain of the view that it should be the responsibility of the regulator to decide the most proportionate approach for each of the professions it regulates, in conjunction with key stakeholders such as the relevant professional bodies.

The GMC has already begun developing policies in relation to revalidation for AAs and PAs. Further information about the GMC's plans in this area can be found on its website.

Regulation of AAs and PAs - equalities impacts and costs and benefits analysis

Questions 68 and 69 of the consultation asked for views on an initial assessment of the possible costs and benefits of our proposals. The identified costs and benefits covered both the broader reform of professional regulation and the regulation of AAs and PAs.

Question 70 asked for views on an initial assessment of the potential impacts (either positive or negative) of our proposals on protected characteristics covered by the Public Sector Equality Duty (‘the General Duty’), at section 149 of the Equality Act 2010 (and relevant legislation across the UK).

The responses to these questions are analysed and discussed in the next chapter but comments made specifically in relation to the regulation of AAs and PAs are summarised below.

Benefits of regulation

Of those who agreed with the benefits set out in question 68, comments centred around an improvement in standards. Others thought that regulation would mean that AAs and PAs would be able to undertake prescribing training and thus become more useful members of the workforce.

Comments included:

> Organisation: "It cannot be under-estimated how important that the ability to (with appropriate training) to request radiation examinations and prescribe medicines contributes to flexible and efficient working."

> Organisation: "An additional benefit is the likelihood of greater acceptance of these roles by both the medical profession and the lay public."

Of those who disagreed with the benefits outlined, comments included:

> Individual: "Expanding scope of PAs will impact on medical training opportunities and damage future training progs for consultants."

Costs of regulation

Comments around the costs identified under question 69 included highlighting the need to include costs relating to the loss of GMC focus on doctors.

Impact of regulation of protected characteristics

Of those that disagreed with the potential equalities' impacts set out under question 70, a number of respondents highlighted the possible negative impact of regulation on those who are on maternity leave. In particular in relation to the proposed transition period for those already working as AAs and PAs and whether it will be adequate.

UK and devolved governments' response

We are committed to ensuring that any reforms that are made are developed in a way that considers potential impacts on protected characteristics and other marginalised groups.

The responses received as part of this consultation will be considered as part of the development of a full equalities impact assessment relating specifically to the GMC and the changes that are being made to its legislation. The first part of this assessment, in relation to AAs and PAs.

The GMC also has responsibilities under equalities legislation, and we would expect these considerations to be built into its policy and process development. In addition, it must be noted that the PSA's regulator performance reviews include a standard on equalities under its ‘General Standards’: This standard sets out that the regulator must understand the diversity of its registrants and their patients and service users and of others who interact with the regulator and ensure that its processes do not impose inappropriate barriers or otherwise disadvantage people with protected characteristics.

Impact assessment and equalities impact assessment

An initial assessment of the impact of the reform proposals was carried out in advance of the consultation. This considered the costs and benefits of reforming the professional regulators' legislative frameworks. The consultation document then summarised this initial assessment and sought views from respondents on whether the costs and benefits identified were the right ones.

The Public Sector Equality Duty (section 149 of the Equality Act 2010 and relevant legislation across the UK), requires public authorities, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not

The General Duty covers the following protected characteristics:

- age

- disability
- gender reassignment
- pregnancy and maternity
- race (includes ethnic or national origins, colour or nationality)
- religion or belief (includes lack of belief)
- sex
- sexual orientation

An initial assessment of the potential impact of our proposals on equality and protected characteristics covered by the duty was carried out in advance of the consultation. As part of the consultation, we sought further evidence on whether our proposals could impact (positively or negatively) on any of the protected characteristics listed above.

This section sets out response data for both assessments and summarises the main themes from respondents who provided additional comments.

Q68: Do you agree or disagree with the benefits identified in the table? Please set out why you've selected your answer and any alternative benefits you consider to be relevant and any evidence to support your views.

Proposal

A summary of the possible benefits of the proposed reforms and of regulating AAs and PAs were included in the consultation document (see table below) and views were sought on whether respondents agreed with the benefits identified or whether there were any additional or alternative benefits that needed to be considered.

Table 88 - benefits of proposed reforms

Benefits of reform	Accrues to
Improved patient safety More efficient governance Faster resolution of concerns Greater transparency of processes Improved cooperation between regulators	Patients, wider public Individual registrants Professional regulators

Benefits of reform	Accrues to
Registrants better supported through improved standards and CPD Improved public perception of regulated professionals.	Learners undertaking education and training Individual registrants Patients, wider public
Greater autonomy to amend own procedures Cost savings from ability to be more flexible in functions for example, registration and fitness to practise.	Professional regulators Individual registrants Patients, wider public
Opportunity for more economic use of resources for example moving away from focusing on fitness to practise and moving towards preventative regulation.	The Professional Standards Authority for Health and Social Care (PSA) Professional regulators Individual registrants Patients, wider public
Lower central administrative costs of maintaining the legislation.	Taxpayers, government

Table 89 - benefits of regulation of AAs and PAs

Benefits of regulation of AAs and PAs	Accrues to
Improved training standards	AAs, PAs, employers, patients
Pre-employment administration checks	Employers
Increased patient redress	Patients and families
Increased patient safety	Patients and families
Increased scope of responsibility	AAs, PAs, employers, patients

Table 90 - responses to Q68

Category	Number of responses	Percentage
Agree	292	89
Disagree	37	11
Total	329	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority (89%) of respondents to this question agreed with the benefits identified in the consultation document. 63 respondents provided additional comments.

We recognise that some respondents felt that there was not enough information to come to a conclusion on the benefits of the reforms. The majority of the remaining comments can be grouped under one of the following themes:

- autonomy of regulators
- consistency
- registrant fees
- fitness to practise

A number of respondents answered this question in relation to AAs and PAs only. These comments are summarised on page 181 and 182.

Comments included:

> Individual: "Supportive of a reform which looks to align a multitude of professional regulatory processes, increasing transparency….and efficiency for all concerned, with a view to improving public safety and the welfare of its professionals."
>
> Organisation: "Improved pathways will mitigate costs of reform over time."
>
> Organisation: "Excessively restrictive legislation has not only impacted on the experience of members of public and their perception of the regulators. Healthcare professionals, unfamiliar with the complexities of the prescriptive legislation have also found the system of regulation confusing and inaccessible and therefore may have a negatively framed perception of the regulator."

Of those that disagreed with the benefits outlined in the consultation document, a number of respondents highlighted the potential for increased costs in the short-term following the introduction of any reforms with any cost benefits not being realised until later.

There was also concern from some that giving the regulators more autonomy around their operational procedures could be misplaced or could increase disparity between regulators rather than encourage cooperation.

Comments included:

Individual: "Need to be more checks and balances to protect the public. Tighter regulation rather than more flexible."

Organisation: "It is essential that the needs of patients are given far more prominence and consideration within any reforms."

Q69: Do you agree or disagree with the costs identified in the table? Please set out why you've chosen your answer and any alternative impacts you consider to be relevant and any evidence to support your views.

Proposal

A summary of the possible costs of the proposed reforms and of regulating AAs and PAs were included in the consultation document (see table below) and views were sought on whether respondents agreed with the costs identified or whether there were any additional or alternative costs that needed to be considered.

Table 91 - costs of reform

Costs of reform	Borne by
Upfront costs of delivery of reform (developing policy and legislation)	Taxpayers, government, regulators
Transitional costs involved in implementing changes	Professional regulators
Costs of regulation of PAs and AAs	Borne by
Costs to employed individuals for registration fees	Individual registrants
Administration costs to public sector employers for registration, renewal and revalidation	Public sector
Initial set-up and transitional arrangement costs.	Taxpayers, government

Table 92 - responses to Q69

Category	Number of responses	Percentage
Agree	273	85
Disagree	46	14

Category	Number of responses	Percentage
Don't know	1	0.3
Total	320	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The majority (85%) of those who responded to this question agreed with the costs we identified. 83 respondents provided additional comments.

As with Q68, we recognise that some respondents felt there was not enough information to come to a conclusion on the costs of the reforms. The majority of remaining comments can be grouped under one of the following themes:

- additional costs
- costs to government
- costs related to the regulation of PAs and AAs
- registrant costs

A number of respondents answered this question in relation to AAs and PAs only. These comments are summarised on page 192.

Of those who said they agreed with the highlighted costs comments included:

> Individual: "Costs outlines are proportionately spread across stakeholders."
>
> Organisation: "We agree with the costs identified within the table as ultimately, the costs will be borne by the registrants by virtue of the Annual Retention Fee."

Of those who disagreed with the highlighted costs, an increase in registrant fees was the most frequently expressed concern with a focus on ensuring any costs are proportionate and do not have an adverse effect in terms of individuals leaving a profession.

Some respondents thought the government should cover the costs of reform, in particular any transitional costs, rather than these being transferred to registrants through increased fees.

Additional costs highlighted by respondents included:

- costs to professional bodies in supporting membership
- costs to employers
- costs to HEIs and training providers
- costs to the Professional Standards Authority
- non-financial costs

UK and devolved governments' response for Q68 and Q69

The department is grateful for the additional information provided by respondents in relation to the possible impact of the reforms.

The responses received as part of this consultation will be considered as part of the development of the GMC specific impact assessment and the changes that are being made to its legislation.

A separate impact assessment will be carried out for each of the healthcare regulators to accompany the consultation on changes to their legislation as we progress with the programme of work. Any comments made as part of this consultation will also be considered in the development of these impact assessments.

Equalities assessment

Q70: Do you think any of the proposals in this consultation could impact (positively or negatively) on any persons with protected characteristics covered by the general equality duty that is set out in the Equality Act 2010, or by section 75 of the Northern Ireland Act 1998?

Proposal

As part of the consultation, we sought further evidence on whether our proposals could impact (positively or negatively) on equality or any of the protected characteristics covered by the general equality duty that is set out in the Equality Act 2010, or by section 75 of the Northern Ireland Act 1998.

Table 93 - responses to Q70

Category	Number of responses	Percentage
Yes - positively	84	25
Yes - negatively	49	14
No	69	20
Don't know	140	41
Total	342	100

Note: Percentage figures have been rounded and therefore may not total 100%

Question analysis

The table above highlights that the responses to this question were spread across a broad spectrum of views including 41% of respondents to this question selecting 'don't know'.

82 respondents to this question provided additional comments. Again, as with Q68 and Q69, we recognise that a number of respondents felt that there was not enough information provided in this section to come to a conclusion on the possible impacts of the reforms on protected characteristics.

The majority of other comments can be grouped under one of the following key themes:

- autonomy of the regulator
- advocacy
- health

Comments included:

Autonomy

Organisation: Yes positively: "Allows for regulators to address those with protected characteristics in a flexible manner."

Individual: "No, but regulators should undertake impact assessments to determine any risks on those with protected characteristics."

Advocacy

Organisation: "Disappointed that the need for quality support and advice for the public and patients to navigate the health professional regulatory system is not addressed by the consultation at all."

Individual: Yes negatively: "Lack of provision of independent advice, support and representation of patients or complainants increases risk of indirect prejudice for disabled individuals, those of a different ethnicity or religion and whistle blowers."

Health

Organisation: Yes positively: "The removal of health as a separate ground will reduce the risk of discrimination."

Individual: Yes negatively: "Proposals to remove responsibility of regulators to maintain a register of those registered but without a licence to practise would negatively impact those stepping away from the profession temporarily for maternity/paternity, health etc. reasons."

Respondents also highlighted a number of considerations as being important. These included marginalised groups, including people living on a low income or experiencing poverty, people experiencing homelessness, and people living in rural communities.

UK and devolved governments' response

The UK and devolved governments are grateful for the additional information provided by respondents in relation to the possible impact of the reforms on protected characteristics.

We are committed to ensuring that any reforms that are made have been developed in a way that considers potential impacts on protected characteristics and other marginalised groups.

The responses received as part of this consultation will be considered as part of the development of a full equalities impact assessment relating specifically to the GMC and the changes that are being made to its legislation.

A separate equalities impact assessment will be carried out for each of the regulators at the same time as we consult on changes to their legislation. Any comments made as part of this consultation will also be considered in the development of these assessments.

Additional comments

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

A summary of the key themes from the additional comments is set out below:

Impact assessment

Some respondents stated that an impact assessment including an equality impact assessment should have been published alongside the consultation document especially in relation to the proposed fitness to practise reforms.

UK and devolved governments' response

The UK and devolved governments will be publishing an impact assessment as part of our forthcoming consultation on the new legal framework for the GMC.

Reduction and abolition of regulators

Some respondents suggested that the number of regulators could be reduced to provide for more cost-effective regulation. In addition, some respondents suggested specific regulators could be abolished.

UK and devolved governments' response

The Health and Care Bill contains provisions to enable the government to make changes to the regulation of healthcare professionals through secondary legislation. These powers include the power to merge and abolish individual health and care professional regulators.

The department ran a competitive tender exercise in May 2021 for an independent review on how the healthcare professional regulatory landscape might be simplified. KPMG were the successful bidder and completed their review in December 2021.

The review covered the UK healthcare professional regulators (excluding the Pharmaceutical Society of Northern Ireland) plus the Professional Standards Authority for Health and Social Care. It looked at options for how the regulatory bodies might be configured with the aim of enhancing public protection and informed by efficiency and economic considerations. Please see the Executive Summary for next steps in this area.

The relationship between the PSA and the Regulators

The consultation document sets out proposals to reduce the adversarial nature of fitness to practise proceedings between registrants and regulators. However, some respondents, felt that an unintended consequence of this could be that an adversarial relationship between the PSA and the regulators may develop.

UK and devolved governments' response

The PSA's main objective is to protect the public by delivering highly effective oversight of regulation. All of the regulators also have a duty to protect the health and safety of patients and the public. As the PSA and the regulators are all working towards the same goal, we do not believe an adversarial relationship will develop between them.

The purpose of fitness to practise proceedings

One respondent was of the view that there is still considerable public misunderstanding of the purpose of fitness to practise proceedings. The respondent suggested that more work needs to be carried out to explain to the public and stakeholders the role and purpose of fitness to practise proceedings.

UK and devolved governments' response

The UK and devolved governments agree that messaging on fitness to practise should be clear, consistent, accessible and easily understandable to all. We encourage regulators to work collectively to continue to help to explain the role and purpose of fitness to practise proceedings to the public and wider stakeholders. In addition, as part of our reforms all regulators will be required to publish guidance as to what amounts to impairment of fitness to practise. The guidance will help to ensure that the public and employers are aware of the types of cases that would meet the threshold for fitness to practise proceedings.

False or vexatious Claims

It was requested that further consideration is given to how false or vexatious concerns against registrants are dealt with.

UK and devolved governments' response

The introduction of a 3-stage fitness to practise process for all regulators should help to identify false or vexatious claims at an early stage. The purpose of the first stage, the initial assessment, is to determine whether a concern received about a registrant meets the criteria for onward referral in the fitness to practise process. We would expect the majority of false or vexatious concerns to be closed at this stage.

In addition, where a complainant makes a false statement about a professional to the professional's regulator this may amount to criminal conduct.

Independent advice for those who raise concerns during fitness to practise proceedings

Respondents highlighted that those who raise concerns, for example patients and families, need to have access to independent advice to enable them to actively participant in the fitness to practise process. It was highlighted that if you are not familiar with the fitness to practise process it can be hard to navigate the system. Respondents were of the view that freely available independent advice on how to do this should be available to people who raise concerns.

UK and devolved governments' response

Some regulators already provide access to an independent service to people who raise concerns. For example, the GOsC provide access to an independent service managed through Victim Support. We encourage all regulators to provide support to people who raise concerns throughout the fitness to practise proceedings.

In addition, the Patient Advice and Liaison Service (PALs) provides confidential advice, support and information on health-related matters to people. PALs can provide advice on the NHS complaints procedure including how to get independent help if a person wants to make a complaint. Assistance can also be provided by the independent NHS complaints advocacy service, which supports people who wish to make a complaint about their NHS care or treatment.

Safeguards for people who raise concerns

Respondents commented that safeguards for people who raise concerns need to be factored into the fitness to practise process. It was highlighted that this would help to prevent inappropriate behaviour towards people appearing as witnesses during fitness to practise proceedings.

UK and devolved governments' response

The UK and devolved governments expect all regulators to have clear processes in place for when a person raises a concern and for when a person is called to be a witness during a fitness to practise hearing. It should be clear from these processes that any form of inappropriate behaviour such as bullying or intimidation of complainants or witnesses is not condoned and action will be taken against people who undertake these behaviours.

Representation at fitness to practise hearings

Several respondents made comments about representation for registrants during fitness to practise proceedings. It was proposed by one respondent that a centralised representation unit for unrepresented registrants should be established. Other respondents highlighted that registrants may choose to be represented by their Trades Union representatives during fitness to practise proceedings and that regulators should contact the registrant's trades union representative in the first instance rather than the registrant.

UK and devolved governments' response

Where a regulator determines that fitness to practise proceedings should be undertaken, they should advise a registrant of their right to seek legal advice and representation ahead of and during the fitness to practise proceedings. Several bodies have been established which provide advocacy services to registrants and we encourage regulators to signpost their registrants to these organisations.

Support for registrants who are under investigation or lose their registration

A respondent highlighted that the consultation document did not consider support options for registrants who are under investigation or the availability of support for those registrants who lose their registration through fitness to practise proceedings. It was also highlighted that the consultation document did not mention support for applicants whose requests for registration are turned down.

UK and devolved governments' response

Regulators should provide guidance to its registrants that are under a fitness to practise investigation and following a fitness to practise determination. In addition, guidance should be available to people who wish to apply to join a regulator's register. Where a person is turned down for registration, they should be advised of their right to appeal.

The GMC's right to appeal against fitness to practise decisions

Some respondents queried why the recommendation that the GMC's right to appeal decisions of the Medical Practitioners Tribunal Service to the High Court, from Professor Sir Norman Williams's review into Gross negligence manslaughter in healthcare was not mentioned in the consultation document.

UK and devolved governments' response

The government has accepted all of the recommendations from Professor Sir Norman William's review into gross negligence manslaughter in healthcare. We plan to consult on draft legislation that will remove the GMC's current powers which allow it to appeal decisions of the Medial Practitioners Tribunal Service to the High Court. Subject to the responses to the consultation, we aim to lay the legislation in 2023.

Research

One respondent commented that the use of the public confidence criterion in cases involving clinical error needs to be reviewed and that further research should be conducted into what members of the public would really expect in cases involving clinical error.

UK and devolved governments' response

While the UK and devolved governments have no plans at this time to commission specific research into this question, we are aware that our programme of reform presents regulators, the PSA and government with further opportunity to research areas of regulatory and clinical best practise.

Undergraduate student fitness to practise processes

Several respondents were of the view that undergraduate students, particularly those on clinical placements, should be accountable to regulators.

UK and devolved governments' response

Undergraduate student fitness to practise processes are out of scope for our programme of professional regulation reform. However, regulators are able to take into account concerns that may have occurred prior to their qualification as a health professional in relation to a decision to allow a professional to join a register, or indeed whether a registered professional's fitness to practise is impaired.

Accredited registers

Several respondents made comments in relation to accredited registers, for example, one respondent proposed that section 29 of the National Health Service Reform and Health Care Professions Act 2002 should be updated to include accredited registers.

UK and devolved governments' response

Accredited registers are outside the scope of our programme of professional regulation reform. However, officials will consider the comments that were received on accredited registers.

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