Department of Health

Regulation of Health Care Professionals

Regulation of Social Care Professionals in England

The Government's response to Law Commission report 345, Scottish Law Commission report 237 and Northern Ireland Law Commission report 18 (2014) Cm 8839 SG/2014/26

Cm 8995

Regulation of Health Care Professionals

Regulation of Social Care Professionals in England

The Government's response to
Law Commission report 345,
Scottish Law Commission report 237 and
Northern Ireland Law Commission report 18 (2014)
Cm 8839 SG/2014/26

Presented to Parliament
by the Secretary of State for Health
by Command of Her Majesty

January 2015

Cm 8995

This publication is available at www.gov.uk/Government/publications
Any enquiries regarding this publication should be sent to us at Public Enquiries Unit, Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS or e-mail: rhp.billcoordination@dh.gsi.gov.uk
Print ISBN 9781474113670
Web ISBN 9781474113687

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office
ID 06010501 01/15 46547 19585
Printed on paper containing 75% recycled fibre content minimum

Contents

Foreword

We would like to express our gratitude to the Law Commissions for the work they have done reviewing the complex professional regulation legislation, and the comprehensive report they published in April 2014.

We have worked closely with the Law Commissions and agree with their view that the framework for holding health and social care professionals to account needs to be fit for the future, creating significant benefits in terms of public protection.

In considering our response there has been close working with the regulatory bodies, and the Professional Standards Authority to ensure their views have been taken into consideration. We would like to thank them for their hard work and dedication to reforming the system of professional regulation.

In 2011, the White Paper *Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers* (*Enabling Excellence*)[1] announced the Government's intention to ask the Law Commissions to look into simplifying and modernising the current legislative framework.

Enabling Excellence made clear that any review of regulation policy should have the overriding objective that the system should focus on delivering safe and effective care, and should take close account of the Hampton principles of better regulation[2]. The Law Commissions have made a significant contribution to meeting that challenge.

Since the publication of *Enabling Excellence*, the context for health and professional regulation has developed. The seminal report following the inquiry into the harrowing events at Mid Staffordshire Hospital by Sir Robert Francis QC published in February 2013 (the *Francis Inquiry*)[3] raised a series of challenges to the way in which health and care professional regulation works. Professional healthcare regulators need to become much more adept at analysing and using the information they have. Where they identify a risk to public protection, regulatory bodies need to take a more proactive approach and co-operate with other organisations (including systems regulators and health and care providers) to address that risk and ensure patients are protected.

---

[1] https://www.gov.uk/Government/publications/enabling-excellence-autonomy-and-accountability-for-health-and-social-care-staff

[2] proportionate to the risk that it seeks to mitigate;
accountable to ensure that all those with an interest are able to influence it;
consistent, so that it does not unreasonably place a heavier burden on any particular sector;
transparent so that its activities can be scrutinised effectively; and
targeted to avoid blanket approaches which impose regulatory burdens unnecessarily.

[3] http://www.midstaffspublicinquiry.com/report

The Francis Inquiry also identified barriers to overcoming these challenges: restrictive and complex legislation and insufficient capacity and resource. The Law Commissions' review helps to address some of these issues – with recommendations aimed at allowing the regulatory bodies to become more proactive – as well as proposing better co-operation between the regulatory bodies, and giving a clearer oversight role to the Professional Standards Authority.

Systems of continuing fitness to practise are key to changing the regulatory model from reactive to proactive, improving quality of care and ensuring that safety is an absolute, and the Law Commissions' recommendations build on all the work that has been done in this area over the last decade and more.

Changing culture and relationships in healthcare is not an easy task and cannot be easily legislated for. However the legislation surrounding health and care professional regulation needs to be reformed if we are to better support the necessary culture and relationships to grow.

We understand that the regulatory bodies may be disappointed that legislative processes have not moved quicker on this occasion. The Government is committed to legislating on this important matter when parliamentary time allows. In the interim, we are taking forward secondary legislation to improve the regulatory bodies' processes in order to enhance patient protection and improve public confidence[4]. In addition, the Health and Social Care (Safety and Quality) Bill, presented by Jeremy Lefroy MP seeks to drive up public safety, professional standards and public confidence by proposing that regulatory bodies and the Professional Standards Authority have public protection as their over-arching objective.

Several key themes arise throughout this response, including, but not limited to public protection and how this can be best served by systems of professional regulation, balancing the regulatory bodies' autonomy and proportionate regulation with appropriate safeguards and ensuring consistency in certain key areas across the regulatory system when it is in the public interest to do so. It is important that professional regulation legislation is proportionate, effective and efficient, imposing the least cost and complexity consistent with securing safety and confidence for patients, carers and the public.

When the Department of Health published its response to the Francis Inquiry, *Hard Truths*, in 2013 the Secretary of State, Jeremy Hunt, said at the time that we need to look at things

---

[4] The General Medical Council (Fitness to Practise etc.) and the Professional Standards Authority for Health and Social Care (Referrals to Court) Order 2014;
The Nursing and Midwifery (Amendment) Order in Council 2014;
The Health Care and Associated Professions (Knowledge of English) Order 2015;
The General Dental Council (Fitness to Practise etc.) Order 2015;
The Health and Care Professions (Public Health Specialists and Miscellaneous Amendments) Order 2015;
The Pharmacy (Preparation and Dispensing Errors) Order 2015;
The Pharmacy (Premises Standards, Information Obligations, etc.) Order 2015;
The Pharmacy (Responsible Pharmacists, Superintendent Pharmacists etc.) Order 2015.

from the patient's perspective. That is what we and the Law Commissions are aiming to do – creating the professional regulatory system that patients and their families and friends expect.

As we go forward we will continue to develop the Law Commissions' approach, to ensure that our regulatory systems across the UK hold health and care professionals to account, for the care they provide, in a way that is fair, effective and proportionate, and is fit for the 21st century, with patient safety and public protection at its heart.

Dr Dan Poulter MP
Parliamentary Under Secretary of State
Department of Health

Mark Drakeford AM
Minister for Health and Social Services
Welsh Government

Shona Robison MSP
Cabinet Secretary for Health, Wellbeing and Sport
Scottish Government

Jim Wells MLA
Minister for Health, Social Services and Public Safety
Northern Ireland

Executive Summary

I. Registered health care professionals in the UK and social workers in England are regulated by nine statutory bodies (referred to in this response as "regulatory bodies"). They are:

a) The General Medical Council (GMC), which regulates doctors in the UK.
b) The Nursing and Midwifery Council (NMC), which regulates nurses and midwives in the UK.
c) The General Dental Council (GDC), which regulates dentists and professions complementary to dentistry in the UK.
d) The General Optical Council (GOC), which regulates optometrists, dispensing opticians, student opticians and optical businesses in the UK.
e) The General Osteopathic Council (GOsC), which regulates osteopaths in the UK.
f) The General Chiropractic Council (GCC), which regulates chiropractors in the UK.
g) The General Pharmaceutical Council (GPhC), which regulates pharmacists and pharmacy technicians and regulates pharmacies in England, Wales and Scotland[5].
h) The Pharmaceutical Society of Northern Ireland (PSNI), which regulates pharmacists in Northern Ireland.
i) The Health and Care Professions Council (HCPC), which regulates certain other health care workers in the UK[6], and social workers in England.

II. While the regulation of health and care professionals is not devolved in Wales, regulation of health and care professionals is a devolved matter in Northern Ireland, and in Scotland it is devolved for health professionals brought into regulation since Scottish devolution (these are: operating department practitioners and practitioner psychologists, regulated by the HCPC; dental nurses, dental technicians, clinical dental technicians and orthodontic therapists, regulated by the GDC and pharmacy technicians, regulated by the GPhC). The general position is that the jurisdiction of the regulatory bodies in respect of health professionals is UK-wide. The exception to this is the GPhC which covers Great Britain and the PSNI which covers Northern Ireland. The regulation of social care professionals falls within the legislative competence of each country.

III. These regulatory bodies are independent authorities who register and regulate health and social care professionals in the UK and are overseen and scrutinised by the Professional Standards Authority for Health and Social Care (PSA). Collectively, the

[5] By maintaining a register of premises at which a retail pharmacy business is being conducted and determining standards to be met by those carrying on such a business at registered premises.
[6] Arts therapists, biomedical scientists, chiropodists and podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists and orthotists, radiographers, and speech and language therapists – see paragraph 1 of Schedule 3 to the Health and Social Work Professions Order 2001 S.I 2002/254.

nine regulatory bodies are responsible for the standards of practice of over 1.47 million professionals[7].

IV. Each of the regulatory bodies is governed by a separate piece of legislation[8], many of which have been amended extensively by orders made under section 60 of the Health Act 1999 (section 60 Orders – a form of secondary legislation that enables the legislative framework to be kept up to date without the need for new primary legislation), and a range of Acts of Parliament.

V. It is estimated there are approximately 200 pieces of secondary legislation which specifically address the regulatory bodies or professional regulation in general. This has led to the current legal framework becoming highly complex, inflexible, inconsistent and expensive to maintain. Accordingly, there is need for reform, which has been recognised by the regulatory bodies as well as the Government.

VI. The tripartite project between the Law Commission, the Scottish Law Commission and the Northern Ireland Law Commission reviewed UK law relating to the regulation of health care professionals, and in England only, the regulation of social workers. The issues considered by the review included:

a) The registration and renewal of registration of professionals, student registers, registration appeals, protected titles and protected functions;
b) How the regulatory bodies oversee the quality of pre-registration and post-registration education and training;
c) How the regulatory bodies set standards for professional conduct and practice, and ensure ongoing practice standards (for example, through revalidation);
d) The investigation and adjudication of fitness to practise cases;
e) The role of the PSA;
f) The regulation of business premises and activities;
g) The governance arrangements of the regulatory bodies, including the size and composition of Councils;
h) The systems through which the regulatory bodies can be held to account, including the roles of the Privy Council, Government and Parliament, and duties to consult the public.

VII. Following a three month consultation that ran from March - May 2012 and received 192 responses, the Law Commissions' report, setting out their 125 recommendations together with a draft Bill, was published on 2 April 2014.

---

[7] http://www.professionalstandards.org.uk/docs/default-source/annual-reports/the-authority-annual-report-and-accounts-2013-2014---english.pdf?sfvrsn=0

[8] *See* The Medical Act 1983 c.54; Dentists Act 1984 c.24; Opticians Act 1989 c.44;Osteopaths Act 1993 c.21; Chiropractors Act 1994 c.17; Nursing and Midwifery Order 2001 S.I 2002/253; Health and Social Work Professions Order 2001 S.I 2002/254; Pharmacy Order 2010 S.I 2010/231; Pharmacy (Northern Ireland) Order 1976 S.I 1213(N.I.22).

The Changing Policy Context

VIII. *Enabling Excellence* envisaged a proportionate and effective approach to professional regulation, imposing the least cost and complexity consistent with securing safety and confidence for patients, service users, carers and the wider public. Since its publication, the context for health and professional regulation has developed. The Francis Inquiry demonstrated further the need for reform in both health system and professional regulation. Government, regulatory bodies, professionals and providers have accepted the need to learn from the system failures highlighted by the Francis Inquiry.

IX. Of the 290 recommendations resulting from the Francis Inquiry, a number related to the regulation of health care professionals, and emphasised the need for effective regulation by the regulatory bodies. These came to the public's attention at a time when the review of regulation was already underway, and when the Law Commissions were developing their policy proposals in respect of regulatory reform in this area.

The Government's Response

X. The Government is grateful for the Law Commissions' report and draft Bill, which is a thorough and robust consideration of the many issues affecting professional regulation. We agree with their view that the framework for holding health and social care professionals to account needs to be fit for the future, creating significant benefits both in terms of public protection and improved efficiency. We have accepted the large majority of the Law Commissions' recommendations in full, and others in part. We believe that there are opportunities to continue to develop the Law Commissions' approach in some areas, to ensure that our regulatory systems hold healthcare professionals to account, in a way that is fair, effective and proportionate.

XI. The Government is committed to legislate further on this matter in due course. We consider the Law Commissions' draft Bill is an important step in making sure that our professional regulation system is fit for the future, but it is imperative that future legislation is right, for the regulatory bodies, as well as the public, patients, and registrants. We are taking the opportunity to consider the Law Commissions' report and draft Bill further and are working closely with the regulatory bodies and other stakeholders towards this policy aim.

XII. This response is made by the UK Government on behalf of all four countries, and where we state "Government" in this document we are, unless specified, referring to all four countries. The focus of this response is the recommendations made by the Law Commissions. It is noted here that the response is without prejudice to the current discussions and eventual implementation of the renegotiated Recognition of Professional Qualifications Directive (MRPQ) which allows professionals to have qualifications received in one Member State recognised in another, enabling them to

pursue their profession anywhere in the European Economic Area (EEA) or Switzerland regardless of where they were trained[9].

XIII. The detail of any future legislation is dependent on further policy development, and the Law Commissions' recommended approach may or may not be adopted as we take this forward. Where the Government accepts a recommendation in full, in any future Government Bill we would seek to reflect those recommendations, though the detail of the drafting may be different. Where we *accept in principle*, we would look to reflect the underlying policy intention, and where we have committed to further work, we will continue to work with the regulatory bodies and other stakeholders as appropriate in order to reach a position for the purposes of any such legislation.

[9] Directive 2005/36/EC of the European Parliament and of the Council as amended.

1. Structure of Reform

The Law Commissions' recommendation concerning single statute (recommendation 1)

1.1 The 2011 White Paper *Enabling Excellence* announced the Government's intention to ask the Law Commissions to undertake a simplification review of the existing legislative framework and to develop a draft Bill for consultation. As part of their report the Law Commissions recommended that there should be a single statute providing the legislative framework for all the regulatory bodies and the PSA.

1.2 The Government agrees that a single statute for the regulatory bodies and the PSA would bring many advantages. Consolidating some reforms with the existing legislation into a single statute would provide clarity for regulatory bodies, professionals and the public about the statutory framework. This would increase the understanding of the regulation of health and social care professionals for the public and other stakeholders, ensure a common framework when needed and also provide an opportunity to make some much needed changes to ensure effective public protection.

1.3 The Law Commissions made 125 recommendations relating to the potential structure of any new legislative framework and this document sets out the Government's response to these recommendations. We accept many of these recommendations which we agree would ensure effective public protection through a strengthened regulatory framework. However, we have identified areas where we think further consideration is needed in order to inform our development of a legislative framework which best meets the needs of health and social care professionals and those who use their services. These are discussed below and in the other chapters of this response.

The Law Commissions' recommendations concerning rules, and role of the Privy Council (recommendations 2, 3, 8, 9 and 10)

1.4 The Law Commissions have recognised that in order for the regulatory bodies to effectively fulfil their statutory obligations to protect the public a framework is needed which offers, where appropriate, flexibility for the regulatory bodies to carry out their duties while ensuring consistency between them in certain key areas where it is in the public interest to do so.

1.5 At present, regulatory bodies have powers to make rules concerning a range of issues which, in most cases, must be approved by the Privy Council and laid before Parliament. In their consultation, the Law Commissions argued that "the process of Privy Council approval is unduly complex, resource-intensive and limits the regulatory bodies' ability to modernise and innovate". They recommended that the regulatory bodies be given more operational autonomy, including more powers to make legal rules without approval from Government or Parliament, recommending greater reliance on oversight from the PSA to help ensure consistent outcomes.

1.6 Following consultation, in their report the Law Commissions noted concerns about the removal of the role of Government. They proposed a number of ways of addressing

these concerns: more detail on the face of the Bill, reducing the need for regulatory bodies' rules; Government regulation-making powers in key areas to ensure Government oversight over key issues of public interest; and oversight from the PSA (although not approving or commenting on the content of the rules). They also recommended (recommendation 88) that the public interest, in the case of fitness to practise rules, required greater consistency, and that the Government should be given a power to give guidance about the content, including in the form of model rules, and that the regulatory bodies should be required to have regard to these rules. This is discussed in Chapter 5.

1.7 In *Enabling Excellence*, the Government also acknowledged that there may be advantages in giving regulatory bodies greater autonomy in rule-making where appropriate, and the Government continues to see a place for this. In particular, shortening the time taken for the approval of rules may allow public protection issues to be addressed more quickly. However, taking into account the Law Commissions' work and the implications for the policy context of the Francis Inquiry, we also accept that in certain key areas consistency may be necessary to guarantee core procedural safeguards for the benefit of the public and the effective regulation of professionals. There is a need to ensure that the appropriate safeguards and assurance are in place for all those affected by the regulatory bodies' actions.

1.8 This is a key aspect of the Law Commissions' work and the consideration of it by the Government. The approach taken to regulatory bodies' rules and any process for associated approval or oversight would impact across the full scope of regulation of health professionals and (in England) social care professionals.

1.9 Any change to the current approach to rule making must be viewed in the context of a new legislative landscape which cannot be fully developed until the policy on all areas is settled. This requires further detailed work, some of which is highlighted elsewhere in this document. That work is necessary to determine the scope of rule-making powers and where they should lie, to fully assess the level of risk associated with delegating these powers and the appropriate safeguarding mechanisms or oversight arrangements.

1.10 The Government will consider the following key principles in taking this forward.

1.11 The approach to the framework should be common for each regulator and, taken with the other principles set out in this chapter, should aim to strike the right balance between consistency and assurance, allowing for flexibility where appropriate, for example, to account for differences in how the regulatory bodies undertake their day-to-day business. There should also be transparency for those impacted by regulatory bodies' proposals, including registrants and the public, in the form of processes, including consultation duties, set out on the face of any Bill. Further, we need to be assured that rule-making powers are only provided in any Bill where there can be sufficient mitigation of risk by way of oversight or otherwise. Rule-making processes should also provide for robust accountability, regardless of the level of oversight.

1.12 The levels and methods of oversight should be proportionate to the risk involved with delegating a power to the regulatory bodies. Of particular importance is the risk to

public protection. Litigation before the domestic and European courts challenging the validity or meaning of rules may lead to disruption and uncertainty for the regulatory framework, with consequential impacts on effective public protection.

1.13 The Law Commissions have proposed introducing model rules in fitness to practise procedural matters, on account of public interest, and to mitigate the risks identified above. However we are not yet persuaded by the Law Commissions' recommendation 88 that the Secretary of State should have a power to issue guidance, potentially including model rules. We will therefore explore alternatives to guidance in this area, based on the principles set out above. The Government will also continue to engage with regulatory bodies, the PSA and other stakeholders to inform our work on this.

1.14 The Law Commissions' reservation about the role of the Privy Council in the rule-making process is also relevant to our response to the Law Commissions' recommendation 9, that the Privy Council's role in relation to regulation of health professionals should be removed entirely. The Privy Council currently has a number of major roles: to approve section 60 orders; to exercise default powers; to approve regulatory bodies' rules; and to make provision for the constitution of and to appoint members to a regulator.

1.15 As discussed above we propose to do further work about the process for oversight of regulator rules, including the Privy Council's role in that respect. However, it is the Government's view that the Privy Council should retain its other powers in relation to regulation of health professionals, including continuing to exercise default powers in relation to the regulatory bodies and PSA, rather than the Government (recommendation 10). This also impacts the Law Commissions' recommendations 16 and 19 which are discussed in Chapter 2.

The Law Commissions' recommendations concerning devolution (recommendations 4, 5, 6 and 124)

1.16 Regulation of health professionals is a devolved matter in Northern Ireland and in Scotland for health professionals brought into regulation since Scottish devolution. The UK Government is only able to legislate on devolved matters with the consent of the devolved Governments. Accordingly this is a matter for the UK Government, the Scottish Government and the Northern Ireland Government, who agree that a legislative consent motion would be needed for a future Government Bill that sought to enact the Law Commissions' recommendations.

1.17 The PSNI is different from the other regulatory bodies in that it also has a representational role for the profession it regulates.

1.18 We share the view of the Law Commissions that the PSNI's role is therefore fundamentally different to that of the other regulatory bodies, which is based on independence from the professions they regulate. Inclusion of the PSNI in a single statute would mean that many of the provisions of such legislation should not apply to the PSNI while it retains its current role. The Law Commissions' report noted that: "The Department of Health, Social Services and Public Safety for Northern Ireland supported the principle of UK-wide consistency of professional regulation. It argued that

incorporating the Society into the new statutory framework would be acceptable only on the basis of a clear separation between its regulatory and representational role and only if the regulation of pharmacists on a UK-wide basis was rejected. The Pharmaceutical Society of Northern Ireland supported its inclusion in the single statute only on the basis that, among other matters, its dual role of regulation and professional leadership would be retained".

1.19 The Department of Health and the Department of Health Northern Ireland agree that the PSNI should not be incorporated into the new legislative scheme unless its representational role is removed.

1.20 The UK legislative framework for professional regulation does not extend to the Channel Islands and the Isle of Man. However, the Law Commissions pointed to a perceived risk to patient safety as some professions are left unregulated or to less robust fitness to practise procedures leaving patients, mainly British citizens at risk. The Law Commissions also highlighted the benefits to assisting the mobility of the professions. In response to recommendation 124, we therefore propose to seek the views of the Crown Dependencies and review with them whether future legislation should be extended to the Crown Dependencies.

The Law Commissions' recommendations concerning section 60 of the Health Act 1999 (recommendations 7 and 9)

1.21 Section 60 of the Health Act 1999 was introduced to enable the legislative framework which underpins the regulation of health and social care professionals, to be kept up to date without the need for primary legislation, by providing for this to be achieved instead by Her Majesty by an Order in Council. A section 60 Order can be, and often is, used in response to requirements for legislative changes, such as those set out in the foreword. The Government therefore sees this power as a valuable and necessary tool in the regulatory framework, and would propose that the principle - of there being powers for the Privy Council to amend the legislative framework - should be carried forward in any future reform.

1.22 The Law Commissions' view is that section 60 is no longer necessary and should be repealed, except where it applies to the PSNI and the Medicines Act 1968 (recommendation 7). They recommend that under a new legislative framework there should be new Government regulation-making powers that would apply to most matters currently within the remit of section 60 Orders and direct Privy Council order-making powers (recommendation 9). These regulation-making powers would in effect, in the Law Commissions' analysis, provide for a replacement power to section 60 of the Health Act 1999 in respect of most of the matters within the scope of the Law Commissions' draft Bill. However, the Law Commissions recognised that those parts of section 60 applicable to matters beyond the remit of the Bill needed to be retained (recommendation 7). These parts relate to the PSNI, consistent with recommendation 6, and the regulation of handling medicines under the Medicines Act 1968.

1.23 The Government considers that there should be adequate powers to amend, as required, the legislative framework in this area without requiring primary legislation. These should be subject to the appropriate parliamentary procedure recognising (where

relevant), the legislative competence of the Scottish Parliament. We agree with the Law Commissions that section 60 should be retained for the purposes of the PSNI and the application of the Medicines Act 1968. Where the other elements of section 60 should sit is something that must be considered in the context of any future Government Bill. We would want to give further consideration as to whether making replacement provision in the new framework for some or all of the matters covered by section 60 is the best approach, or whether to retain section 60 and ensure its powers are equally sufficient for future purposes.

Law Commissions' recommendation		*Government View*	*Remarks*
1	There should be a single statute which provides the framework for all the regulatory bodies and the Professional Standards Authority.	Accept	The Government accepts this recommendation in full on the understanding that the Law Commissions' recommendation does not include the PSNI (see recommendation 6).
2	The new legal framework should give the regulators greater operational autonomy, impose greater consistency between the regulators in certain key areas where it is in the public interest to do so, such as in fitness to practise adjudication.	Accept in part	We accept the principles of this recommendation but in each case will wish to consider where the right balance between autonomy and consistency lies in accordance with the principles discussed in Chapter 1 and referred to in our remarks on recommendation 3.
3	The regulators should be given powers to make legal rules which are not subject to approval by Government or any Parliamentary procedure. The Professional Standards Authority should oversee the processes adopted by them to make and amend rules.	Accept in part	We accept the principle, as above, that regulatory bodies should have greater operational autonomy but the Government intends to undertake further work to determine the scope of rule-making powers and where these should lie, to fully assess the level of risk associated with delegating these powers and the appropriate safeguarding mechanisms or oversight arrangements, considering the principles set out in paragraphs 1.11 and 1.12.
4	The draft Bill should not interfere with the legislative competence of the devolved assemblies.	Accept	We accept this recommendation in full. We have agreed with the Scottish Government, the Northern Ireland Government and the Welsh Government that a legislative consent motion would be needed for a future Government Bill which sought to enact the Law Commissions' recommendations.
5	The new legal framework should proceed on the basis of a Legislative Consent Motion in Northern Ireland and Scotland.	Accept	As above.

Law Commissions' recommendation		*Government View*	*Remarks*
6	The Pharmaceutical Society of Northern Ireland should not be incorporated into the new legislative scheme unless its representational role is removed. The Department of Health, Social Services and Public Safety for Northern Ireland and the UK Government should consider removing the representational role of the Pharmaceutical Society of Northern Ireland and incorporating the Society into the new scheme, or merging it with the General Pharmaceutical Council.	Accept	The Department of Health and the Department of Health, Social Services and Public Safety Northern Ireland agree that the PSNI should not be incorporated into the new legislative scheme unless its representational role is removed. The Northern Ireland Minister for Health has agreed that departmental officials should begin preparatory work to explore options for the future arrangements for the regulation of the Pharmacy profession in Northern Ireland. This will include consideration of the existing Professional Leadership role of the Society.
7	The order-making power under section 60 of the Health Act 1999 should not be capable of modifying the draft Bill. It should be retained only for the purposes of the Pharmaceutical Society of Northern Ireland and the Medicines Act 1968.	Accept in part	The Law Commissions propose replacing section 60 of the Health Act 1999 with a clause in their draft Bill containing similar powers except so far as it applies to the PSNI and the Medicines Act 1968. For any future Government Bill we would wish to give further consideration as to whether this is the best approach or whether to retain section 60 of the Health Act 1999 and ensure its powers are equally sufficient for future purposes. However, in any event, we agree that section 60 of the Health Act 1999 should be retained for the purposes of the PSNI and the application of the Medicines Act 1968 in Northern Ireland. This is in line with our response to recommendation 6.
8	The formal role of the Privy Council in relation to health and social care professionals regulation should be removed entirely.	Accept in part	It is the Government's view that the Privy Council should retain its powers. The exception is the case of approval of regulatory bodies' rules, which will be subject to the outcome of the Government's further consideration mentioned at recommendation 3. This position on the role of Privy Council is given further consideration under recommendations 9, 10, 16 and 19.
9	The Government should be given regulation-making powers on matters currently within the scope of section 60 of the Health Act 1999 and direct Privy Council order-making powers. The procedure for such regulations would reflect existing arrangements under section 60, including a separate procedure in Scotland on devolved matters where appropriate.	Do not accept	We do not agree that regulation-making powers currently within the scope of section 60 of the Health Act 1999, or direct Privy Council order-making powers (e.g. regulatory body and PSA constitution orders) should be given to the Secretary of State as it is the Government's position that these powers should remain with the Privy Council.
10	The Government should be given powers to notify and then give directions to a regulator, or the Professional Standards Authority, if it has failed or is likely to fail to perform any of its statutory functions. If the body fails to comply with any direction given, the Government should be able to give effect to the direction itself.	Accept in part	The Government's policy is that any default powers should be exercised by the Privy Council.

Law Commissions' recommendation		*Government View*	*Remarks*
124	The UK Government and the Governments in the Channel Islands and the Isle of Man should consider reviewing whether the new legal framework should be extended to the British Islands as a whole.	Accept	We agree with this recommendation in full. The Government will seek to review with the Crown Dependencies whether the new legal framework should be extended to them.

2. Regulatory Bodies

2.1 Essentially, the role of the regulatory bodies is to safeguard the public by upholding and enforcing regulation in accordance with the statutory framework. The regulatory bodies achieve this through a number of primary functions:

- keeping and maintaining registers of health and social care professionals who are fit to practise in the UK;
- setting and promoting standards of conduct, ethics and competence that registered health and social care professionals must meet;
- setting standards of education and training which health and social care professionals must meet;
- dealing with concerns from patients, the public and others about health and social care professionals who are alleged to be unfit to practise because of poor health, misconduct or poor performance; and
- removing professionals from its registers and preventing them from practising if the regulatory bodies consider this to be in the best interests of the public and taking action against those falsely claiming to be registered.

2.2 Within the recommendations made by the Law Commissions, there are a number which are concerned with what the Government considers to be key components that 'make up' a regulatory body:

- consistent and meaningful objectives that focus on the primary aim of professional regulation, this being the protection of the public;
- a properly constructed constitution that underpins the statutory body and enables it to carry out its functions effectively and efficiently and in line with its overall objectives;
- proportionate governance that allows regulatory bodies to competently carry out their role while ensuring sufficient oversight measures to hold them accountable to the UK Parliament and the devolved administrations where this is consistent with the devolution position including our response to the Law Commissions' recommendation 4, and the public; and
- expertise and capability in establishing and raising professional standards and implementing effective professional regulation.

2.3 *Enabling Excellence* emphasised that any system of regulation needs to be proportionate, accountable, consistent, transparent and targeted, which are the five principles of good regulation devised by the Better Regulation Task Force in 1997. The Legislative and Regulatory Reform Act 2006 statutorily requires bodies that exercise regulatory functions to have regard to these five principles and to the statutory Code of Practice made under that Act[10].

[10] See sections 21 and 23 of the Legislative and Regulatory Reform Act 2006.

2.4 The Government therefore recognises that the provisions within the statutory framework, dealing with regulatory bodies' powers, duties, objectives, constitution and governance, should reflect these principles to ensure a robust system of regulation.

2.5 The following sections set out how the Government intends to respond to the Law Commissions' recommendations in this area:

- The general objectives, which concerns recommendation 13;
- Constitution of a regulatory body which concerns recommendations 16-23 and 113-114;
- Accountability and governance of a regulatory body which concerns recommendations 11, 12, 14, 15, 110-112 and 115; and
- Joint working which covers recommendations 94-97.

The Law Commissions' recommendation concerning general objectives (recommendation 13)

2.6 The general objectives of a regulatory body provide the basis for the strategic direction of a council of a regulatory body when carrying out its functions. Most but not all of the current governing Acts or Orders of the regulatory bodies have a general over-arching objective, focusing on the protection of the public, although these vary across each regulatory body.

2.7 The Law Commissions' report concluded there should be consistency and a common set of objectives, across all the regulatory bodies and the PSA, in so far as the PSA is carrying out its functions in relation to the regulatory bodies. This would ensure a consistent strategic approach by regulatory bodies in the performance of their functions and a clear public statement of the purpose behind professional regulation.

2.8 The Law Commissions recommend (recommendation 13) that there should be a main objective for each regulatory body, and the PSA, to "protect, promote and maintain the health, safety and well-being of the public". In addition, there should be two equally weighted general objectives: "to promote and maintain public confidence in the profession" and "to promote and maintain proper professional standards and conduct for individual registrants". The Law Commissions' intention is that a hierarchical approach to the objectives should be applied.

2.9 Although we agree with the principle of consistent general objectives for regulatory bodies, we do not agree with the hierarchical approach proposed by the Law Commissions. Our view is that there should be an over-arching objective of *the protection of the public* and that regulatory bodies should look to satisfy this through applying equal consideration to the three objectives put forward by the Law Commissions.

2.10 Public confidence in the health and social care professions, and proper standards of conduct and behaviour of professionals, have a positive impact on public protection. For example, reductions in public confidence in health professionals, or an actual or perceived fall in professional standards, risk the public becoming wary of seeking appropriate professional care when it is needed. Therefore we consider it is important

that these objectives have equal prominence to that of public safety, in so far as they further the over-arching objective of public protection.

2.11 The General Medical Council (Fitness to Practise etc.) and the Professional Standards Authority for Health and Social Care (Referrals to Court) Order 2014 is currently being finalised to be laid before Parliament. This section 60 order will give the GMC the over-arching objective of the protection of the public. This involves the pursuit of three objectives when carrying out its functions of: protecting, promoting and maintaining the health, safety and well-being of the public, promoting and maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct. The Government agrees that the regulatory bodies' general objectives should be consistent and apply to all regulatory bodies and the PSA, where the PSA is carrying out certain functions[11] in relation to the regulatory bodies. This is why we are supporting the Health and Social Care (Safety and Quality) Private Member's Bill presented by Jeremy Lefroy MP. This includes a provision that seeks to drive up public safety, professional standards, and public confidence, by proposing that the regulatory bodies of certain health and social care professionals and the PSA have public protection as their over-arching objective.

2.12 The Law Commissions' view is that the general objectives should apply in the exercise of all the PSA functions. We will consider whether the application of the over-arching objective should be extended in this way in the context of a future Government Bill.

2.13 As described in paragraph 5.7 (deciding which cases regulatory bodies should investigate), the Government's intention is that fitness to practise panels must have regard to the over-arching objective.

The Law Commissions' recommendations concerning the constitution of a regulatory body (recommendations 16-23 and 113-114)

2.14 Each regulatory body is governed by its council which is made up of a number of appointed members. The council's role is to set policy and strategy in respect of how regulatory bodies' functions are carried out and to oversee operational matters. The constitution of a regulatory body, in the context of this sub-section, is concerned with the composition of the council in terms of its size and structure, who can become a member and how members are appointed and removed.

2.15 The Government believes that the correct composition of a regulatory body is fundamental in ensuring it can properly carry out its functions and overall role of maintaining and overseeing the regulation of its registrants.

---

[11] Promoting best practice by regulators of health and care professionals in the performance of their functions; formulating principles of good professional self-regulation and encouraging health and care professional regulators to conform to them and promoting co-operation between health and care professional regulators and between them and other bodies that exercise corresponding functions.

2.16 Currently, the constitution of a regulatory body is provided for by Order of the Privy Council which specifies matters such as the size and structure of the council, the appointment of its members and terms of office. Recommendation 16 in the Law Commissions' report states that the Government should have a regulation making power to make provision for the constitution of a regulatory body. We agree with the Law Commissions that the constitution should not be a matter for the individual regulatory body. However, in line with our response to recommendation 9, we consider that powers to make provision for the constitution of regulatory bodies should remain with the Privy Council.

2.17 In terms of the members that should sit on the council of a regulatory body, the Law Commissions noted that some of the regulatory bodies had slight disparities in their definitions of what constituted a registrant and lay member. The Law Commissions recommended (recommendation 21) the definition for both should be consistent across all regulatory bodies and that a registrant member should be anyone who is, or has been, registered with a regulatory body, or is eligible to be registered. This would also include current and former directors of a regulated body corporate. A 'lay' member should be someone who does not fall within this definition of a registrant when appointed.

2.18 The Law Commissions also recommended it was so important that members of a regulatory body should not be dominated by the profession, that this should be specified on the face of the primary legislation. Recommendation 17 states that registrant members should not form a majority on any regulatory body. In terms of the precise numbers of lay and registrant members, the Law Commissions felt this should be a matter for Government to decide. Currently, the relevant legislation for each regulatory body provides for there to be an equal mix of registrant and lay members, which would be consistent with this recommendation.

2.19 The Government agrees that there should be consistency across the constitutions of the regulatory bodies and agrees in the main with the recommendations put forward by the Law Commissions for these purposes. The Government agrees there should not be a registrant majority and agrees with the Law Commissions' definitions of registrant and lay members for the purposes of the constitution of a regulatory body.

2.20 It is our view that councils should be comprised of either an equal mix of registrant or lay members or a majority of lay members, and that this balance should be ensured on the face of any future Government Bill. While not technically part of the recommendation it should be noted here that we do not agree with the Law Commissions that the precise numbers of lay and registrant members should be a matter for Government through a regulation-making power. Rather, this should remain a matter for inclusion in constitution orders made by Order of the Privy Council, as per recommendation 16 above.

2.21 The Law Commissions were also concerned that a number of members of the regulatory bodies were serving concurrently as members of other regulatory bodies. Their view was that this should be prohibited in the new framework (recommendation 22) as it undermines public confidence, providing a negative old-boys network image and is not conducive to the promotion of joint working between the regulatory bodies,

which is discussed in more detail in our response to the Law Commissions' recommendations on joint working (paragraphs 2.36 to 2.44). We agree with the Law Commissions' conclusions and consider this will promote better objectivity and diversity across councils of regulatory bodies.

2.22 In respect of the removal of members, the Law Commissions expressed concern that some of the regulatory bodies current constitution orders permit members to be removed on the basis of ill health, which could lead to a breach of discrimination laws (recommendation 18). The Government accepts that removal on discriminatory grounds is not acceptable. This is a very important issue that we wish to explore further through discussions with the regulatory bodies and others and we will give further consideration to how to address this principle. In their consideration of the appointment of members of the council, the Law Commissions made a number of recommendations. Firstly, they were of the view that Privy Council powers to appoint members should be given to the Government through regulation-making powers, in accordance with recommendation 9. Subject to this, the Law Commissions' view is that the current procedure should be replicated, i.e. that a nominee should be recommended following a selection process run by the regulatory body concerned and that the PSA should provide confirmation that the process was in accordance with standards and guidance set by them to ensure openness, fairness and transparency (recommendation 19). This is in line with the current system of appointing members. The Law Commissions further considered that, in addition to this process, there was merit in the Health Select Committee (HSC) having a role in overseeing the appointment of chairs and urged the Government to take this forward (recommendation 20).

2.23 The Government, consistent with the response to recommendation 9, considers powers to appoint members should be exercised by the Privy Council, but agrees with the Law Commissions that the current system for appointing members should remain, as we consider this to be fair and transparent. The Government has considered the option put forward in the Law Commissions' report of a role the HSC could have in the appointment of Chairs, taking account of the potential benefit that additional oversight by the HSC would bring. We concluded the current system of appointing Chairs was working well and could see no clear benefit in adding further complexity, as well as time, to the process by adding an additional stage of oversight by the HSC. There is also a potential conflict of interest risk if the HSC were to be involved in appointments to bodies that it holds to account.

2.24 While the Law Commissions' framework would allow for the existing constitution orders of the regulatory bodies to remain in place, the Law Commissions have recommended (in effect) that this should only be on a transitory basis (recommendation 23). The Government accepts this and in due course we intend to review the constitution orders and make any necessary changes to ensure consistency with a new framework under any future Government Bill.

2.25 The Government agrees with the Law Commissions' recommendations 113 and 114 that preserve the existing position that regulatory bodies should continue with their current status as bodies corporate and be able to apply to become registered UK charities should they so wish.

The Law Commissions' recommendations concerning the accountability and governance of a regulatory body (recommendations 11, 12, 14, 15, 110-112 and 115)

2.26 The statutory framework for professional regulation sets out the governance arrangements of a regulatory body. Due to the significant role of regulatory bodies in public protection such provision is necessary to ensure regulatory bodies are accountable in carrying out their functions effectively and efficiently and with appropriate transparency.

2.27 Providing for robust governance reinforces public confidence in the regulatory bodies and the regulatory system as a whole. However, this structure must balance the need for public reassurance and accountability with the autonomy to allow professional regulation to benefit from the unique expertise and knowledge of the regulatory bodies. Councils should not be hindered or slowed down by unnecessary regulation of their governance and the Government recognises the need to be proportionate in this area.

2.28 The Law Commissions recommended that Parliament should consider establishing a specialist Joint Select Committee on health and social care professional regulation. Otherwise, the Health Committee should consider holding annual accountability hearings with the regulatory bodies, co-ordinated with the PSA's performance reviews. The Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly should also consider introducing similar arrangements (recommendation 11). The Government is not itself able to accept this recommendation, but will bring this to the attention of the respective legislatures.

2.29 The GDC, GPhC and the HCPC are accountable to the Scottish Parliament as well as the UK Parliament to reflect their regulation of classes of health professionals for whom regulation is devolved in Scotland. As part of these accountability measures, regulatory bodies are required to lay their annual reports, strategic plans and accounts before the parliaments they are accountable to. The Law Commissions considered that to represent the devolved administrations' legitimate interest in the impact of professional regulation on their own health services, all regulatory bodies should lay their respective accounts and reports before the UK Parliament and the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly (recommendation 12). The Government considers that the laying of such documents should be prescribed in accordance with Parliamentary accountability and, consistent with our response to recommendation 4, should not interfere with the legislative competence of the devolved administrations. We therefore conclude that the current position should remain.

2.30 Public consultation is an important measure in keeping regulatory bodies accountable, especially when making decisions on changes to regulations, rules and guidance. The Law Commissions considered the existing duty should be more prescriptive and that legislation should impose a duty to consult where issuing or making a change to rules, determining standards and issuing guidance (recommendation 110), and detailing within the statute a list of bodies that should be consulted. The Law Commissions felt this particularly relevant in keeping with their recommendation that the new framework should give regulatory bodies greater autonomy in the form of new rule-making powers. It accepted, however, there may be occasions where a full public consultation would be disproportionate or inappropriate and deemed that in such cases a regulatory body may

dispense with the duty. As an additional safeguard, however, the Law Commissions proposed that approval to dispense with the duty must be obtained by the PSA (recommendation 111).

2.31 While, as set out in Chapter 1, the Government intends to consider further the safeguards and oversight arrangements around delegation of powers to the regulatory bodies, the Government does agree with the general principle that regulatory bodies should be required to carry out a consultation before making rules, as this is a necessary and important accountability measure. However, we would favour a less prescriptive approach than that adopted by the Law Commissions. The general oversight role of the PSA, the potential for judicial review, and Cabinet Office guidance provide sufficient governance as well as allowing a more flexible and proportionate approach to be taken. We agree that a regulatory body may dispense with the duty to consult where it considers it would be disproportionate or inappropriate to do so, for example, to provide clarification, correcting a mistake or bringing a document in line with other legislation, but do not agree that approval should be required from the PSA. This would be a significant departure from current practice and, we believe, an unnecessary restriction as regulatory bodies should be able to assess, as they do now, whether such criteria are met.

2.32 The Law Commissions have recognised, in recommendation 115, the need for regulatory bodies' governance arrangements to allow for autonomy, by acknowledging the regulatory bodies' capability to determine their own internal governance structures, as opposed to the current position of a statutory requirement to establish specific formal committees. The Government agrees that regulatory bodies should generally be left to decide how they perform their functions and that it is unnecessary, in most cases, for statute to dictate which committees should be established for this purpose. Equally, such provision should allow regulatory bodies to retain existing committees if they so wished, after the statutory requirement is removed. However, due to the distinct nature of their functions, the Law Commissions proposed that fitness to practise panels should remain a statutory requirement. We agree with this as they are necessary to ensure appropriate adjudication standards when dealing with individual cases, rather than general policy matters. Similarly, the appointments bodies or persons proposed by the Law Commissions (see recommendation 75) should also be a statutory requirement.

2.33 The Law Commissions identified a number of measures that would, in the view of the Government, promote the productivity of regulatory bodies and make them more flexible and responsive in the exercise of their functions and better able to reflect the individual needs of the professions they regulate. It recognised that encouraging councils to be more board-like in their structure should make them more effective and efficient in carrying out their role. Recommendations 14 and 15 are that council members should concentrate on strategic or policy matters, rather than operational delivery, and that they should continue to have the powers to delegate functions (other than making rules) to staff or internal bodies.

2.34 The Government is in agreement with the Law Commissions and considers that both these recommendations, along with recommendation 95, which is discussed below and states regulatory bodies should be able to delegate their functions externally to other regulatory bodies or any other person, would contribute to improving the way in which

councils operate. However, delegation should not displace or affect in any way the accountability or responsibility for the function being delegated. We also agree that it would not be right to allow rules to be delegated as this important function should be the preserve of the council.

2.35 The Government also agrees with Law Commissions' recommendation 112 that any future Government Bill should make clear the scope of the power of all regulatory bodies to fulfil their functions, as this would eliminate any potential uncertainty.

The Law Commissions' recommendations concerning joint working (recommendations 94-97)

2.36 The complex nature of the UK healthcare regulatory system requires a mix of system regulatory bodies, including the Care Quality Commission (CQC) and Monitor, and the regulatory bodies to ensure consistently safe and effective care is provided to patients and the public. Within professional regulation alone, the nine regulatory bodies have responsibility for over 1.47 million registrants, working across 32 professions. For the regulation of health and social care professionals to be effective in its objective of public protection, it is vital the different parts of the regulatory system work together and fully co-operate with each other.

2.37 Closer working relationships, sharing information and joint working between the regulatory bodies themselves, and between the regulatory bodies and system regulatory bodies, will bring benefits to public protection. Indeed, the Francis Inquiry highlighted the need for greater co-operation between the regulatory bodies, such as the GMC and NMC, and system regulatory bodies, such as the CQC, as a way of recognising potential issues before they become major failings. The Government accepted this and in its response to the Francis Inquiry, *Hard Truths*[12], at recommendation 234, described a memorandum of understanding between the CQC and the GMC relating to information sharing, as a good example of this. In addition to improved public protection, this should lead to a more efficient use of resources by reducing duplication and more effective sharing of knowledge and experience.

2.38 Current legislation governing regulatory bodies places, in most cases, a general duty on them to co-operate with other system and regulatory bodies. The Law Commissions' report suggests, however, that despite this legislation, much more can be done and regulatory bodies could be more innovative in how they work with each other.

2.39 The Government agrees. Legislation should empower regulatory bodies to look for ways in which they can work together and make best use of their respective skills and resources to both better support public protection and perform more efficiently as organisations. We agree the PSA should have a specific role in promoting co-operation

[12] https://www.gov.uk/Government/publications/mid-staffordshire-nhs-ft-public-inquiry-Government-response

between the regulatory bodies (recommendation 94) for example by promoting best practice in this respect, identifying opportunities for co-operation between the regulatory bodies and, as part of their annual performance review of each regulatory body, monitoring progress made towards this.

2.40 The Law Commissions' proposals encourage closer working between the regulatory bodies through, for example, delegating functions, other than the power to make rules, to another regulatory body or any other person (recommendation 95). The Government supports this and agrees with the Law Commissions that, to ensure accountability, a regulatory body must maintain overall responsibility for the services or functions that it chooses to delegate to another body. Indeed, the Government agrees that any future Government Bill should promote and encourage co-operation between regulatory bodies through powers to delegate functions, although it should make clear that the delegation of the function would not affect the liability of a regulatory body for the exercise of that function.

2.41 The Government accepts there may be barriers to closer working between regulatory bodies, some cultural and others more practical. This could be down to a lack of clarity around what can be done under current powers and a reluctance to be the first to try new ways of working. The Law Commissions argue these issues can be overcome through clear legislation that places regulatory bodies and the PSA under a duty to co-operate with each other and other relevant authorities, which include, in the Law Commissions' draft Bill, NHS bodies, the police, and the health and social care inspectorates (recommendation 96). We are undertaking further work in relation to which bodies should be described as relevant authorities for these purposes.

2.42 The Government agrees that the legislative framework should encourage and promote greater co-operation by regulatory bodies and that relevant authorities should be under a similar duty to co-operate with regulatory bodies and the PSA. We accept the PSA could benefit from similar closer working relationships with regulatory bodies and other healthcare bodies. We agree, therefore, with the Law Commissions that the PSA should also be required, through legislation, to co-operate with the regulatory bodies in the same way as the regulatory bodies it oversees must co-operate with the PSA.

2.43 When considering co-operating with another body, there will inevitably be times when it is impractical to do so or where a request falls outside the remit of a regulatory body, the PSA or a relevant authority. The Government agrees with the Law Commissions that, in such cases, the regulatory body, the PSA or the relevant authority can put forward a case to the other party for not co-operating in that instance, but only if it is incompatible with the exercise of its own duties or would otherwise have an adverse effect on the exercise of its functions (recommendation 97).

2.44 While not part of their recommendations, the Law Commissions' draft Bill proposes that a regulatory body should only enter into joint working arrangements or delegate functions to another body where it considers it is "likely to lead to an improvement in the way in which its functions are exercised". The Government feels this is an unnecessary condition as it could discourage innovation and is something that regulatory bodies, as public bodies, would take into account as a matter of course when considering whether to adopt a new way of working.

Law Commissions' recommendation		*Government view*	*Remarks*
11	Parliament should consider establishing a specialist Joint Select Committee on health and social care professionals regulation. Otherwise, the Health Committee should consider holding annual accountability hearings with the regulators, co-ordinated with the Professional Standards Authority's performance reviews. The Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly should also consider introducing similar arrangements.	N/A	This recommendation is addressed to the UK Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. It will be brought to the attention of each of these respective legislatures and it is for them to consider how to respond.
12	The regulators' annual reports, strategic plans and accounts should be laid in the UK Parliament, Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.	Accept in part	We do not agree that it is necessary to change the current position as to the Parliaments in which regulatory bodies are required to lay reports etc. These should reflect devolution arrangements.
13	The main objective of each regulator and the Professional Standards Authority should be to protect, promote and maintain the health, safety and well-being of the public. The regulatory bodies and the Authority also have the following general objectives: to promote and maintain public confidence in the profession and to promote and maintain proper standards and conduct for individual registrants.	Accept in part	We accept the principle of the Law Commissions' recommendation but propose that there should be an over-arching objective of public protection, the pursuit of which involves the pursuit of objectives in relation to protecting, promoting and maintaining the health, safety and well-being of the public, promoting and maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct.
14	The regulatory bodies should be required to ensure that, as far as possible, members concentrate on strategic or policy matters rather than operational delivery.	Accept	The Government agrees that councils should be strategic and that any new legislative framework should point councils in a strategic direction.
15	The regulatory bodies should have powers to delegate their functions, apart from making rules, to any staff members or internal bodies.	Accept	The Government agrees that regulatory bodies should have powers to delegate their functions, other than rule making, internally to staff members or other internal bodies. However, delegation should not displace or affect in any way the accountability or responsibility of the delegator.
16	The Government should have a regulation-making power to make provision for the constitution of any regulatory body.	Accept in part	The Government agrees that matters of constitution should not be left to each individual regulatory body. However, it does not agree that the responsibility for provision regarding a regulatory body's constitution should be given to Government through regulation-making powers. Our position, consistent with recommendation 9, is that these powers should be retained by Privy Council.
17	Registrant members should not form a majority on any regulatory body.	Accept	The Government agrees registrant members should not form a majority on any regulatory body.

Law Commissions' recommendation		*Government view*	*Remarks*
18	The Government should consider taking steps to ensure that members of the regulatory bodies cannot be removed from office on the basis of ill health alone.	Accept	The Government accepts that members of a regulatory body should not be able to be removed from office on the basis of ill health in circumstances where this would be unlawfully discriminatory. This is a very important issue that we wish to explore further through discussions with the regulatory bodies and others and we will give further consideration to how to address this principle.
19	The Government should have powers to appoint members of the regulatory bodies following a selection process run by the regulator concerned and confirmation by the Professional Standards Authority that the process adopted has been open, fair and transparent.	Accept in part	The Government agrees that the existing appointment system should be replicated but we do not agree that the Privy Council should be replaced by the Government. It is the Government's position that the Privy Council should retain this role.
20	The Government should consider inviting the Health Committee to oversee the appointment of chairs of the regulatory bodies.	Do not accept	We do not consider that involving the Health Select Committee (HSC) in the appointment of Chairs will add any value to the current process, which is shown to be working well. Involving the HSC would add complexity to the appointments processes and would add significantly to the time taken to appoint a Chair. In addition, HSC involvement could potentially give rise to a conflict of interest since regulatory bodies are accountable to Parliament.
21	A registrant member of a regulatory body should be defined as someone who is or has been registered with any of the professionals' regulatory bodies, including predecessor organisations, or is eligible to be registered. A lay member should mean a member who is not a registrant when appointed.	Accept	We agree with the definitions of registrant and lay members for the purposes of the constitution of a regulatory body.
22	Concurrent membership of the regulatory bodies should be prohibited.	Accept	The Government agrees that concurrent membership should be prohibited as this undermines public confidence in professional regulation.
23	The Government should be required to review the provisions constituting the regulatory bodies and determine whether they conform to the requirements of the draft Bill, and introduce regulations containing any necessary changes.	Accept	The Government agrees with this recommendation in the context of a future Government Bill.
94	Any two or more regulators should be able to arrange for any of their respective functions to be exercised jointly. The Professional Standards Authority should be given a general function to promote co-operation between the regulators.	Accept	The Government accepts this recommendation in full, although the Law Commissions' Bill subjects these powers to a 'likelihood of improvement test' so a regulatory body may only enter into such arrangements if it considers they are likely to improve the way in which its functions are exercised. We consider that this test is an unnecessary requirement and therefore would not propose to replicate it in a future Government Bill.

Law Commissions' recommendation		*Government view*	*Remarks*
95	Each regulator should be given an express power to delegate any of its functions (except the power to make rules) to another regulator or any other person. This would not affect any liability or responsibility of the regulatory body for the exercise of its functions.	Accept	The Government accepts this recommendation in full, although the Law Commissions' Bill subjects these powers to a 'likelihood of improvement test' so a regulatory body may only enter into such arrangements if it considers they are likely to improve the way in which its functions are exercised. We consider that this test is an unnecessary requirement and therefore would not propose to replicate it in a future Government Bill.
96	The regulators should be required to co-operate with each other, the Professional Standards Authority and specified "relevant authorities". A similar duty should be placed on the Professional Standards Authority.	Accept	The Government accepts this recommendation but is undertaking further work, in relation to which bodies should be described as *relevant authorities* for these purposes. A future Government Bill may therefore take a different approach to the Law Commissions in defining such bodies.
97	When a regulator requests the co-operation of a relevant authority (or when such an authority makes a similar request of regulator), the requested party must comply with the request unless doing so would be incompatible with its own duties or would otherwise have an adverse effect on the exercise of its functions. A person who decides not to comply must give written reasons. A similar power should be given to the Professional Standards Authority.	Accept	The Government accepts this recommendation but is undertaking further work, in relation to which bodies should be described as *relevant authorities* for these purposes. A future Government Bill may therefore take a different approach to the Law Commissions in defining such bodies.
110	The regulators should be required to carry out a public consultation before they make or issue rules, standards or guidance.	Accept	The Government agrees that regulatory bodies should be required to consult when making rules or issuing standards or guidance. However, our position on occasions where consultation may be dispensed with is different to the Law Commissions and set out at recommendation 111 below.
111	A regulator may dispense with the duty to consult in a particular case if it considers that it would be inappropriate or disproportionate to consult, and approval has been given by the Professional Standards Authority.	Accept in part	As set out in Chapter 1 the Government intends to consider further the balance between primary legislation and rules and regulations and accompanying safeguards and oversight arrangements and within this it will need to consider such consultation duties and the scope (if any) for dispensing with them. The Government agrees that a regulatory body may dispense with the duty to consult where it considers such a step to be disproportionate or inappropriate. We disagree that approval should be required from the PSA on the basis this is an unnecessary restriction and could create a conflict of interest for the PSA in assuring the quality and robustness of the decisions and actions of the regulatory bodies.

Law Commissions' recommendation		*Government view*	*Remarks*
112	The regulators should have a power to do anything which is calculated to facilitate, or which is conductive or incidental to, the exercise of their functions.	Accept	We agree with this recommendation in terms of setting out a general power regarding the scope of action regulatory bodies can take when performing their functions.
113	The status of the regulators as bodies corporate should be continued in the new legal framework.	Accept	The Government agrees that the existing status of regulatory bodies as bodies corporate should continue in the new legal framework.
114	The regulators should be able to apply to become registered with the Charity Commission, the Office of the Scottish Charity Regulatory body and the Charity Commission for Northern Ireland.	Accept	The Government agrees that regulatory bodies should continue to be able to apply to become registered with the charity commission if they wish to do so.
115	The regulators should not be required to establish formal committees.	Accept	We agree with this recommendation on the basis that regulatory bodies should generally be left to decide how they perform their own internal governance arrangements. It should not be for statute to dictate any requirement to have particular committees, although regulatory bodies could retain existing committees if they so wished after the statutory requirement is removed. We also agree that fitness to practise panels, which are necessary to ensure appropriate adjudication standards and which deal with individual cases as opposed to policy matters, should remain a statutory requirement. Similarly the appointments bodies or persons proposed by the Law Commissions should also be a statutory requirement.

3. Registers and Registration

The Law Commissions' recommendations that relate to registers and registration (recommendations 24 – 45)

3.1 Registration is a fundamental part of professional regulation and, by extension, so is the ability for the regulatory bodies to hold registers. There are a number of types of register that fall within the sphere of regulation, some of which do not relate only to the individuals who work within the particular professions. For example, registers of businesses and premises, which are discussed further within this chapter at paragraphs 3.31-3.42. In addition, those organisations accredited by the PSA are able to hold voluntary registers of health and care professionals for unregulated professions.

3.2 It should be noted that the UK Government has recently been involved in the renegotiation of the MRPQ Directive with the European Commission and other European Member States. The MRPQ Directive allows professionals who have qualified in an EEA country or Switzerland to have those qualifications recognised in another of those countries, enabling them to pursue their profession anywhere within those countries regardless of where they were trained. While the Government has considered the recommendations made by the Law Commissions in respect of registers and registration, the responses to these recommendations are without prejudice to the current discussions and eventual implementation of the renegotiated Directive.

3.3 The Government will continue to use the principle of registers and registration as a core component of a future structure of the legislative framework of professional regulation, should legislation be introduced. We believe these lists secure proper levels of public protection and provide safeguards for patients and service users by ensuring those individuals registered are appropriately qualified and are fit to practise within the relevant profession. Maintenance and publication of such lists ensures that when a member of the public visits a regulated health or care professional they have a better understanding of who to visit and they can rely on that person being safe to practise.

3.4 We are supportive of the Law Commissions' desire to bring consistency across the regulatory bodies in this respect and therefore agree with recommendation 24, that each of the regulatory bodies should be required to hold a register for each profession they regulate (professionals register). We recognise this is a change from the current regime where a number of the regulatory bodies, for example the HCPC, hold one register split into parts. However, we consider that the recommended approach will bring added benefits. In addition to the concept of a professionals register being established in law, there will be a degree of uniformity across the regulatory bodies and a single register for each profession should bring greater clarity as to the status of each profession and for the public when accessing registers.

3.5 Given the ever evolving nature of regulation we also agree with the aim set out in the second part of recommendation 24, that there should be a regulation making power to

allow the Government to alter the structure of any of the registers. However in line with our response to recommendation 9 we would expect any such power to be exercisable by the Privy Council.

3.6 Linked to this is the notion that the GMC registers for general practitioners and specialist medical practitioners and the NMC registers for first and second level nurses should be treated as separate parts of the main register (recommendation 26). The GMC is supportive of the approach taken in this regard, however, we do note the issues that have been raised by the NMC. The Law Commissions have also provided for the GDC to retain its current system to hold separate registers for dentists and regulated dental care professions and we agree that this should be maintained.

3.7 As outlined in the Law Commissions' report, the NMC would in the long run like the part of its current register for second level nurses removed. In addition there are some complexities relating to the current part of the NMC's register for Specialist Community Public Health Nurses (SCPHN) and the protected title used for this part of the workforce. While the third, SCPHN, part of the NMC's current register has not been provided for in the Law Commissions' recommendation (the scheme of the Law Commissions framework allowing for this through the use of annotations) the protected title has been. However, the NMC report this title is not used by practitioners, who use, for example, 'Health Visitor' or 'School Nurse' instead. See later in this chapter for further detail of protected titles and function, at paragraphs 3.48-3.57.

3.8 The Government is keen to ensure that issues raised by the NMC in respect of the second level nurse and SCPHN parts of the register are considered going forward, therefore further work will be required.

3.9 Within this context the Law Commissions have also considered further the types of register held by the regulatory bodies. The Law Commissions have recommended that the Government should hold a regulation making power in order to require the regulatory bodies to hold supplementary registers for those who do not intend to practise the profession (recommendation 30). This follows on from the recommendation that only those who have an intention to practise the profession should be registered on the professionals register (recommendation 29). We disagree with both of these recommendations.

3.10 The Government believes that it can be helpful in certain circumstances for those who do not intend to practise the profession to be registered. It was suggested within the Law Commissions' report that supplementary registers could be utilised for academics or advisors. However, we feel this group of individuals should be registered on the professionals registers, as it is our intention that maintenance of registration should be linked to ongoing fitness to practise within the scope of a registrant's practice, rather than a declaration of an intention to practise.

3.11 At present when a member of the public searches the public register to determine whether a health or care professional is registered, it is clear that if that person is registered, and, for example in the case of the GMC, with a licence to practise, they are fit to practise the profession. Conversely, if that individual is not registered, or does not hold a licence to practise, they should not be working in a regulated role. Creating

a subset of the professionals register for those who do not intend to practise could create a lack of clarity for members of the public. It could also potentially be unclear if the individual registered has the correct registration status to undertake a particular role. In addition the Government has received feedback from the regulatory bodies who suggest they do not have an ambition to reconfigure their register/registration models in such a way.

3.12 The Law Commissions have recommended the introduction of a regulation making power, allowing the Government to introduce barring schemes operated by the regulatory bodies (recommendation 31). Rather than a list of individuals allowed to practise a profession, this would effectively be a record of those individuals that are not allowed to practise a prescribed health or care profession, activity or use a particular title for reasons of public protection, patient safety or the wider public interest. The Government agrees that prohibition orders could be a useful tool in areas of risk where the introduction of a full statutory regime would not be proportionate. In line with our response to recommendation 9 we would expect any such power to be exercisable by the Privy Council.

3.13 The Law Commissions have also considered the recently established assured voluntary registration scheme (AVR). This is where organisations that operate voluntary registers for individuals who are or have been unregulated health professionals or unregulated health care workers in the UK, or unregulated social care workers in England or certain students[13] can apply to the PSA for accreditation. The PSA considers whether the voluntary organisation meets the applicable standards and criteria, and will accredit those that do.

3.14 At recommendation 28, the Law Commissions have suggested that the PSA should retain its powers to set standards and accredit voluntary registers, but that the regulatory bodies should have their powers to hold voluntary registers removed. We agree that the PSA should retain its powers to accredit voluntary registers. The PSA's AVR scheme requires organisations that hold accredited registers to meet standards of governance, setting standards for registrants, education and training, managing the register, providing information and handling complaints. To date the PSA has accredited 17 voluntary registers covering such groups as sports rehabilitators and psychotherapists. We believe that this is a proportionate regulatory tool giving a degree of assurance to the public for professionals who provide health or care services but where the risk to public protection does not justify statutory regulation.

3.15 The Government has carefully considered the other aspect of the recommendation around removing the regulatory bodies' powers to hold voluntary registers. We welcome the debate the Law Commissions have opened up around the regulatory bodies holding such registers and we note that none of the regulatory bodies have set

[13] See sections 25F to I of the NHS Reform and Healthcare Professions Act 2002.

up such a register. However, the scheme is in its early stages, having only been implemented in 2013, and we are keen to see the AVR model become more established before this element of the recommendation is considered further, potentially within a wider review of AVR.

3.16 Falling within the purview of the registers held / those regulated by the regulatory bodies is the issue of compulsory student registration. Within the current legislative framework the GOC is the only regulatory body which has a duty to hold a compulsory student register, which means those on a GOC approved training course for dispensing optics or in optometry must be registered with the GOC. We are in agreement with the approach of the Law Commissions that this should continue and the recommendation that the Government should hold a regulation making power to allow the introduction of compulsory student registration for any regulated professions (recommendation 27) however in line with our response to recommendation 9 we would expect any such power to be exercisable by the Privy Council. Should a scheme of student regulation be introduced in future, it is our current intention that the legislation would be designed in such a way as to allow for a system of student indexing. Student indexing would allow the regulators to maintain a list of students, which would enable education and training providers to check whether an individual enrolling in their institution has already been removed from another course due to misconduct. This will assist in the creation of a much more joined up approach to regulation of students.

3.17 In terms of access to the register, we agree that each of the regulatory bodies should be required to appoint a registrar (recommendation 25) and that these registrars should be required to deal expeditiously with applications for registration or renewal (recommendation 36). We would expect that upon the introduction of any future legislation, powers would be included that allow the registrar to delegate his or her functions. However, in keeping with our responses to the Law Commissions' recommendations on joint working outlined in chapter 2, we would intend that accountability for the functions should remain with the delegator, which in this case will be the registrar.

3.18 The types of registration that the Law Commissions have suggested should be made available to individuals wishing to access the profession are contained within recommendation 32. It has been suggested that the regulatory bodies should have the ability to register individuals on a full, conditional (in fitness to practise cases) or a temporary basis. It also proposes the Government should have a regulation making power to introduce other forms of registration. While we agree with the introduction of such a power, we do not agree with the suggestion set out in the Law Commissions' report that this power should include the ability for the Government to introduce a general system of conditional registration should it be necessary in future, for example when a new group of professionals are being brought in to the statutory registration regime. Should grandfathering arrangements be required when a new group is regulated it is expected that these would be provided for under either section 60 of the Health Act 1999 or the replacement powers for that provision (see our response in Chapter 1 to recommendation 7). We therefore would not intend to utilise this power for such arrangements.

3.19 The Government also notes that the GDC is undertaking a review of its temporary registration provisions, which operate as a type of conditional registration. Section 17 of the Dentists Act 1984 allows for temporary registration. This is where any person, irrespective of their nationality, who holds a diploma in dentistry from a country outside of the EEA or Switzerland can seek registration but with certain conditions. Should legislation be introduced on such matters in a future Parliament, the outcomes of the GDC's review will need to be considered. However, the Government is minded not to introduce new systems of conditional registration.

3.20 The Government agrees with the registration criteria, set out at recommendation 34, that to be registered an individual must be appropriately qualified, fit to practise, have (except for social workers) adequate insurance or indemnity arrangements and pay any prescribed fee. The Health Care Professions: Indemnity Arrangements Order 2014 S.I 2014/1887 was brought into force, requiring that any registered healthcare professional should have appropriate indemnity arrangements. We will ensure that any future legislation will be consistent with the requirements introduced through the Order. It should be noted that the EU Directive[14] from which this Order derives is applicable only to healthcare workers, social workers are outside of its provisions. While the Government sought views via a public consultation about whether social workers should be included within the indemnity arrangements measures it was concluded they should not be included at this stage.

3.21 As part of this recommendation the Law Commissions suggested that the regulatory bodies should have a rule-making power to specify the detail under each of these criteria. Further detail on our approach to regulatory bodies' rule-making powers can be found at Chapter 1, paragraphs 1.4-1.15 of this document.

3.22 Linked to this is the suggestion that the Government should have a regulation making power to enable regulatory bodies to carry out proportionate language controls on those applying to join the professionals register who have rights under the MRPQ Directive (for example because they have qualified in another EEA state or Switzerland), with which we agree (recommendation 35). Given the necessity to ensure public protection and patient safety, the introduction of language controls is a priority for the Government. Therefore, we have already made provision for the GMC to carry out language checks through the introduction of an Order under section 60 of the Health Act 1999[15]. A second Order, the Health Care and Associated Professions (Knowledge of English) Order 2015 is now being progressed to enable the GDC, NMC, GPhC and the Pharmaceutical Society of Northern Ireland (PSNI) to carry out the same checks, prior to registration but after the issuing of a letter of recognition of qualifications. We plan to go out to public consultation later this year on proposals to give similar powers to the HCPC, GOC, GCC and the GOsC and are considering how best to achieve this.

---

[14] Directive 2011/24/EC.
[15] The Medical Act (Amendment) (Knowledge of English) Order 2014 S.I 2014/1101.

3.23 It should be noted that at paragraph 5.85 of the Law Commissions' report it recommends that the same language controls scheme should be available to or operated by all the regulatory bodies, including the GMC, which is currently able to carry out language checks after registration and prior to issuing a licence to practise. However, we do not support this recommendation as the Government is of the view that it is appropriate to apply language controls for doctors after their qualifications have been recognised through registration, but before they are given access to the profession through the licence to practise. For the other professions, registration has the effect of granting access to the profession, which means that language controls must take place before a professional is registered, provided their qualifications have been recognised before those controls are applied, as required by the MRPQ Directive. We do not see a need to amend this, therefore, any legislation that is introduced in future will need to be consistent with the measures introduced through the section 60 Orders.

3.24 We are in agreement with the Law Commissions that, upon the advice of the Secretary of State that an emergency has occurred, the regulatory bodies should be provided with powers to register practitioners on a temporary basis or make an annotation to the register (recommendation 33). This will help, among other measures taken, to ensure adequate numbers of individuals are able to provide health and care services and order and prescribe medications in a state of emergency.

3.25 Moving on to consider the content of the registers: we agree that the regulatory bodies should have powers to annotate their registers with additional qualifications or specialisms (recommendation 40). We also believe the proposed criteria of "risk to the public" should have a wide reading so as to include promoting and maintaining public confidence in the profession and promoting and maintaining proper standards of conduct. By not doing so, the innovation demonstrated by the regulatory bodies could potentially be stifled and it could also hamper the wishes of some of the regulatory bodies to carry out credentialing. This is a process which provides formal accreditation of attainment in a defined area of practice and indicates that the individual is fit to practise in that area.

3.26 The Government is in complete agreement with the Law Commissions' recommendation that the regulatory bodies should publish and keep up to date their registers (recommendation 37) and that the public register should reflect the person's name, reference number, registration status, date of registration, primary qualification and, where appropriate, the part of the register in which the individual has been registered (recommendation 39). This will ensure public protection by enabling relevant organisations and individuals to confirm those who have been assessed as having satisfied the registration conditions and are fit to work in a regulated role and profession.

3.27 Where the regulatory body has reasonable grounds for believing an entry has been fraudulently procured or an error has been made, it should have the ability to remove that entry (recommendation 38). For example, where an individual has made an application to be registered as a doctor and has submitted false documentation as proof of education and training or identity, that person would immediately be removed

from the register. This is on the basis the individual's name should never have been entered on to the register.

3.28 However, in instances of fraud in relation to other additional qualifications, for example specialist registration, where the qualification would not be a requirement of full registration but would nevertheless be an entry on a specialist register or an annotation to the full register (see the response to recommendation 40) and had been procured fraudulently, we would seek to enable not only the registrar to remove such an additional entry but also for the matter to be referred into the fitness to practise procedures to consider whether there are any elements of misconduct which may give rise to an allegation of impaired fitness to practise. Where necessary an interim order would be available. Should legislation be introduced it will be necessary to ensure that the fitness to practise procedure would work smoothly with any appeal rights the registrant may have.

3.29 While we agree with the Law Commissions that public registers should indicate all current sanctions and consensual disposals, we are considering further how long details of the sanction or disposal should remain on the register once expired (recommendation 41). We are also in agreement that the regulatory bodies should be required to maintain lists of individuals whose entry has been removed following a finding of impairment or voluntary removal (recommendation 42). However, it should be noted that upon introduction of any future legislation the term voluntary removal will be reserved for those not going through fitness to practise procedures, to ensure clarity of process (see paragraph 5.20 for further details on our response to the Law Commissions' recommendation to enable the registrant to agree with the regulator to remove their name from the register while they are subject to the fitness to practise procedures). Details of those who are removed in the course of fitness to practise procedures by agreement with the regulatory body will also be included in the published list. Further detail on this can be found at Chapter 5, paragraphs 5.19-5.22. We also agree that all fitness to practise decisions should be published (recommendation 43). We believe that these recommendations are important both for employers and the public to have access to a single and authoritative source of information about the fitness to practise of individual practitioners, including details of their fitness to practise history and a clear indication of those not permitted to practise further to concerns having been raised about their conduct or performance. This is essential to enable patients and the public to be able to make informed decisions about who they seek care or treatment from.

3.30 The regulatory bodies should be required to establish registration appeals panels and to provide further rights of appeal to the appropriate higher courts (recommendation 44) and any legislation will reflect the approach taken in relation to fitness to practise and interim orders panels where appropriate. Further detail can be found at Chapter 5, paragraphs 5.32-5.38. We also agree applications for restoration to the register where a registrant's entry has been removed following a finding of impairment must be considered by a fitness to practise panel (recommendation 45). However, we would want to extend this to also include those cases where removal has been agreed between the regulatory body and the registrant following an admission of impairment by the registrant. This is essential for public protection to ensure that any fitness to practise issues that were outstanding at the time the removal was agreed are

appropriately considered and that restoration is not granted if the registrant is not currently fit to practise, which might not involve a fitness to practise panel making a finding of impairment (but rather an admission on the part of the registrant).

The Law Commissions' recommendations concerning business and premises regulation (recommendations 98, 99, 100 and 101)

3.31 The regulation of business and premises allows the regulatory bodies to have powers beyond the regulation of an individual practitioner to regulate certain businesses and premises which provide health care services and in which health care providers work. Such regulation aims to ensure that health and social care businesses are carried out in accordance with proper standards of practice and are fit to provide health care services to the public and service users.

3.32 The Government believes that business and premises regulation is a beneficial and necessary tool for regulatory bodies and the health care system as a whole. This is particularly relevant in those areas of practice that often fall outside the NHS and within commercial settings, such as the prescribing and dispensing of glasses and contact lenses, or the dispensing of medicines. It complements the regulation of individual practitioners and maintains high standards for the provision of health care services, and ultimately contributes to public protection.

3.33 Currently, only the legislation for three regulatory bodies makes provision for some form of business or premises regulation: the GDC, the GOC and the GPhC.

3.34 The GPhC regulates pharmacies in Great Britain by maintaining a register of premises at which a retail pharmacy business is being conducted and determining standards to be met in relation to the safe and effective practice of pharmacy at registered pharmacies. The GPhC must also establish an inspectorate to enforce these standards and secure compliance with relevant legislation through wide ranging inspection powers, supported by enforcement and sanctions provisions. The Law Commissions recommend (recommendation 98) that the premises regulation provisions of the Pharmacy Order 2010 should be retained, with some minor amendments. The Government agrees with this recommendation on the basis that such regulation ensures the protection and safety of the public of the services provided by registered pharmacies. We also accept the minor changes suggested in the Law Commissions' report at paragraph 11.16. We propose to give effect to these minor amendments, including some additional refinements, as part of the first stage of the Pharmacy Rebalancing Programme in one of three planned section 60 Orders, which are due to go out for consultation later this year. We propose to reflect Part 3 of the Pharmacy Order, as amended under that programme, as part of a future Government Bill.

3.35 The GOC legislation provides for a register of corporate bodies that use protected titles, which are discussed later in this chapter. These bodies must satisfy the GOC that they meet certain requirements, including that they are fit to carry on a business as an optometrist or dispensing optician and that a majority of the directors are registered professionals.

3.36 Under the Dentists Act 1984, a majority of the directors of a corporate body carrying on the business of dentistry must be registered dentists or dental care professionals. It is a criminal offence to carry on such a business in contravention of this requirement. It is also an offence for a person erased or suspended from the register to be a director of a corporate body carrying on such a business.

3.37 The Law Commissions considered these current models should be retained and, in recommendation 99, that the new framework should also allow for the GOC and GDC to introduce new systems of business regulation. The Government accepts this recommendation as it considers such provision beneficial in terms of allowing for the update and reform of current models. This will enable the GDC and the GOC to accommodate the changing needs of business regulation and public protection concerns in response to the diverse and fast-moving markets, in particular internet sales. It is important that regulation is able to respond quickly and flexibly to new public protection risks. However, in line with our response to recommendation 9, the power to introduce new systems of business and premises regulation for the GDC and GOC should be exercised by the Privy Council.

3.38 The Law Commissions also considered there should be some flexibility in the legal framework that would potentially allow all regulatory bodies, including those who currently do not have such regulation, the ability, through regulations made by the Secretary of State, to introduce new systems of business and premises regulation (recommendation 101). The benefits of this would be to allow a holistic approach to regulation and also allow regulatory bodies to address any future issues that affect public safety but which are not the direct responsibility of an individual registrant.

3.39 The Government considered the benefits of this recommendation against the need to introduce additional regulation into a new framework that has the overall aim of simplifying regulation. Of the regulatory bodies who currently do not have any business regulation, we are not aware of any current plans to seek this and have not identified any need for any such regulation at this time. We appreciate there may be some long term benefit in accommodating the introduction of new business and premises regulation for all regulatory bodies. However, this can be achieved through the current section 60 powers under the Health Act 1999, or any new replacement power under a future framework. We therefore consider it would be difficult to justify the inclusion of a provision that is unlikely to be used and so do not intend to take this recommendation forward.

3.40 The Law Commissions also considered whether regulatory bodies should have the power to establish or finance a consumer complaints service. They concluded it would not be appropriate for regulatory bodies to have the power to run their own consumer complaints services as it would create a potential conflict of interest with their regulatory functions. The Law Commissions felt that having the power to finance a consumer complaints service was a different matter, however, provided the service was run by an independent organisation (recommendation 100). They considered this would particularly benefit those sectors where there were limited alternative avenues for consumer complaints and allow the regulatory bodies to concentrate on their core regulatory functions.

3.41 The Law Commissions highlighted that consumer complaints services could impact on businesses and the NHS, who would need to engage with such a scheme and that such schemes may not always be appropriate for all regulatory bodies, for example those with predominately public sector workers or where there were already sufficient avenues to cater for complaints. They recommended, therefore, that this power should only be exercised with the approval of the PSA, which would act as an additional safeguard to ensure the power to fund such a service was used in accordance with the objective of public protection and maintaining public confidence in the profession, as well as being proportionate to the risks highlighted above.

3.42 The Government is conscious that the future landscape of consumer redress schemes is currently under consideration further to a number of reviews. Recommendation 34 of the Keogh Report on Cosmetic Interventions[16] has proposed the Health Service Ombudsman's remit be extended to cover private healthcare. A further recommendation from the Public Administration Select Committee's inquiry has suggested a People's Ombudsman, which proposes a single Public Service Ombudsman in England. Robert Gordon, a former director general in the Scottish Government, is leading a Cabinet Office review on changes to the ombudsmen landscape and the Government will be responding in due course. While the scope and remit of the ombudsman's role in health and social care is under wider consideration, it would not be appropriate for the Government to form conclusions about the role of consumer redress schemes and how such schemes should be operated or funded. Once we are in a more informed position with regards to the outcome of the above reviews and the role of the ombudsman, we will be able to properly consider and respond to this recommendation.

The Law Commissions' recommendation concerning midwifery (recommendation 125)

3.43 Under current legislation, midwifery has its own profession-specific and distinct regulation under the Nursing and Midwifery Order 2001. This provides for a statutory Midwifery Committee, rules to regulate the practice of midwifery (the Nursing and Midwifery Council (Midwives) Rules 2012)[17] and the establishment of local supervising authorities to monitor and support all midwives.

3.44 Supervisors of midwives are experienced practising midwives who have undertaken additional education and training to support, guide and supervise midwives. Every midwife must have a named supervisor of midwives, who must meet with them at least once a year to review their practice and to identify their education needs. Midwives must have 24-hour access to a supervisor.

---

[16] https://www.gov.uk/Government/publications/review-of-the-regulation-of-cosmetic-interventions.
[17] S.I. 2012/3025.

3.45 The Law Commissions' view is that the new framework should allow the existing system of supervision to continue and also for its future reform, if this was thought appropriate. Having reviewed the current legislation, the Law Commissions consider that more detail should be included on the face of the enabling legislation. It should also be noted that in accordance with recommendation 115, with which the Government agrees, the statutory status of the Midwifery Committee would be abolished, although the NMC would retain powers to continue with such a committee if they wished to do so.

3.46 The Government appreciates the position regarding midwifery is not in line with the overall aim of the new framework to have greater harmonisation and consistency of regulation across the professions.

3.47 On 11 December 2013 the Parliamentary and Health Service Ombudsman published its report *Midwifery supervision and regulation: recommendations for change*[18], which was commissioned following investigations into complaints relating to local midwifery supervision and regulation at Morecambe Bay NHS Foundation Trust. In response, the Government has asked the NMC to carry out a review of the regulation of midwifery. The findings and recommendations of the NMC's review of the supervision and regulation of midwives will have a bearing on the Government's response to this recommendation. Therefore, we are not in a position to provide a response to this recommendation until we have had an opportunity to consider the NMC's report.

The Law Commissions' recommendations concerning protected titles and functions and associated offences and prosecutions (recommendations 116-118)

3.48 As well as providing for who can register with a regulatory body, the governing legislation sets out the titles and activities that can only be used or carried out by registered professionals, together with the associated criminal offences. The current legislation sets out over 70 protected titles, such as dentist, surgeon or midwife, and provides for the protection of certain functions, and restricts these functions to certain registered practitioners.

3.49 Patients and the public recognise health and care professional titles as indicating competence and fitness to practise. There is a risk to patient safety and public protection when unqualified people pass themselves off as registered professionals. Tackling title misuse is an important part of a regulatory body's role in protecting patients and the public.

3.50 The Law Commissions considered the appropriateness of the existing protected titles and functions, and the ability of a regulatory body to bring prosecutions relating to misuse of a protected title or function.

---

[18] http://www.ombudsman.org.uk/reports-and-consultations/reports/health/midwifery-supervision-and-regulation-recommendations-for-change

3.51 The Government agrees with the Law Commissions that protected titles and functions are sufficiently fundamental to the overall regulatory framework that they should be set out on the face of any future Government Bill, with a regulation making power to enable amendments where appropriate (recommendation 116). The Law Commissions' report also highlighted that further work would be needed for the purposes of any future Government Bill and recommended that the Government undertake a full review of protected titles and functions and relevant offences (recommendation 117).

3.52 The protection of titles and functions, and regulatory bodies' approach to enforcing this protection, is a key aspect of ensuring public confidence in the professions. We have also noted the Council for Healthcare Regulatory Excellence's (now the PSA) review of the misuse of protected titles and functions, published in February 2010. The review's findings focussed on how the regulatory bodies could act in the interests of public protection to tackle misuse of titles and functions, rather than on legislative change.

3.53 We note the Law Commissions' concerns about the current legislation and the Government accepts that the protection of titles and functions is a complex area. However, we are not convinced that there is a need for a full review of the existing structure and therefore propose to carry out further work with stakeholders to determine how to take forward the statutory provisions on protected titles, functions and offences in any future Government Bill.

3.54 The practical difficulties and cost of bringing prosecutions for misuse of protected titles and functions, and false representations as to being registered or licensed to practice, mean that there is an inconsistent approach to prosecutions across the regulatory bodies. Some bring private prosecutions, but there are other options available, in addition to referral to the police and the Crown Prosecution Service (CPS), such as referral to their internal fitness to practise procedures, referral to another regulator, NHS Protect, trading standards agencies or other UK prosecution agencies. Others may not bring prosecutions at all and instead tackle the issues by raising awareness, particularly with employers, of the importance of checking the register.

3.55 Furthermore, the discrepancies between the regulatory bodies' current legislation makes it more difficult and more costly for some regulatory bodies to bring prosecutions. Some prosecutions require proof of intent to deceive on the part of the defendant and others are 'strict liability' offences, which do not require proof of intent. We will consider this issue further as part of our work on protected titles, functions and offences.

3.56 The Law Commissions concluded that the decision about whether to undertake a prosecution in any individual case should be left to the discretion of each regulatory body. It therefore proposed (recommendation 118) that regulatory bodies should continue to have the ability to bring a private prosecution if they decide it appropriate to do so (which assumes a prosecution by the CPS is not being brought or sought). This however would not apply in Scotland, where all prosecutions are brought in the name of the Lord Advocate or the Procurator Fiscal. The Law Commissions also proposed that regulatory bodies should be required to set out their policy on bringing

prosecutions in a publicly available document, which should include any procedures and criteria that will apply (except in Scotland).

3.57 The Government agrees that regulatory bodies should continue to have the ability to bring private prosecutions as this is an important measure for use by regulatory bodies in deterring the misuse of protected titles and functions and false representations. We also agree that each regulatory body should be required to publish a statement of policy on bringing prosecutions. This should set out any procedures and criteria that would apply, including when to bring a private prosecution and when to refer a case to the CPS.

Law Commissions' recommendation		*Government view*	*Remarks*
24	Each regulator should be required to keep a register for each profession it regulates. The Government should have regulation-making powers to alter the structure of the registers.	Accept	We agree that each regulatory body should be required to keep a register for each profession it regulates and that flexibility should be provided for in the form of a regulation-making power to enable amendments in secondary legislation to respond to changes to the system as may be required in the future by establishing or abolishing registers or parts of registers.
25	Each regulator should be required to appoint a registrar.	Accept	The role of the registrar in ensuring a clear line of accountability for the contents of a professional register is key to maintaining public confidence in professional regulation and so we agree with this recommendation. However, we would anticipate that any future Government Bill dealing with professional regulation matters should include powers enabling the registrar to delegate his or her functions to a member of staff, of the regulatory body or another officer for example an assistant registrar.
26	Separate parts of the General Medical Council's and Nursing and Midwifery Council's registers should be established for general practitioners and specialist medical practitioners, and for first and second level nurses.	Accept in principle	The Government accepts this recommendation but intends carry out further work in relation to the second level nurse and SCPHN parts of the NMC register.
27	The Government should have regulation-making powers to enable the introduction of compulsory student registration for any regulated profession.	Accept	Establishing a student register is only one of a number of regulatory tools available to regulate students. As structures surrounding the education and training of the different professions vary widely, student registration may or may not be required depending on the profession and what other regulatory tools may already be in place. We agree that we should retain the flexibility to introduce such a scheme, in any future Government Bill. Further detail about the recommendations related to education and training requirements can be found at recommendations 45 – 54 and Chapter 4 of this document.

Law Commissions' recommendation		*Government view*	*Remarks*
28	The regulators' powers to keep voluntary registers should be removed. The Professional Standards Authority should retain its powers to set standards for and accredit voluntary registers kept by others.	Accept in part	The scheme of voluntary registers accredited by the PSA was implemented in 2013. The use of voluntary registers for healthcare professionals is therefore still relatively new. We agree that the PSA should continue to have the power to set the standards for and accredit voluntary registers kept by others. We will review the powers of the regulatory bodies to hold voluntary registers when there is greater experience of their use.
29	All registrants should intend to practise the profession in order to be registered.	Do not accept	We are not persuaded that registration should be directly linked to an intention to practise in the profession in the UK in the sense of providing treatment or care directly to patients or clients. We would intend maintenance of registration to be linked to meeting the requirements around demonstrating ongoing fitness to practise within the scope of a registrant's practice.
30	The Government should have regulation-making powers to require a regulator to keep a supplementary register of professionals who do not intend to practise.	Do not accept	In line with our response to recommendation 29, we agree with the principle that healthcare professionals should be able to be registered with a regulatory body even in some circumstances where they are not practising in the UK in the sense of providing treatment or care directly to a patient or a client. However we are not persuaded that the creation of supplementary registers would be in the interests of public protection, indeed such registers could have the potential to create public confusion. It is also our opinion the creation of a non-practising register for those who do not intend to practise is contrary to one of the main aims of the Bill, which is to provide for a single register, or parts of a register where specified, for each regulated profession.
31	The Government should have regulation-making powers to establish barring schemes, to be run by the regulators. Such a scheme could be introduced in respect of a prescribed health or social care profession, a specified field of activity, a role involving supervision or management, and prescribed title.	Accept	The Government agrees that prohibition orders may have utility in the future in regards to specific areas of practice which are currently unregulated or in emerging areas of risk.

Law Commissions' recommendation		*Government view*	*Remarks*
32	The regulators should be able to register professionals on a full, conditional (in fitness to practise cases) or temporary basis. The Government should have regulation-making powers to introduce other forms of registration (including provisional registration).	Accept in part	In line with our response to recommendation 24, we agree with the Law Commissions' recommendation that the Government should have the flexibility to alter the scope of regulation by introducing (or altering or potentially removing) other forms of registration as may be required (for example provisional registration). However we are not persuaded that the Government should retain the ability to introduce a general conditional registration regime for a profession outside of the fitness to practise context. In the interests of clarity we intend that conditional registration should refer only to conditions imposed on registration as part of the fitness to practise procedures.
33	The regulators should have powers to register practitioners on a temporary basis or annotate their registers if the Secretary of State advises that an emergency has occurred.	Accept	With the aim of ensuring adequate public protection and sufficient care during an emergency, we agree that the regulatory bodies should be provided with a power to register practitioners on a temporary basis or annotate their registers in the case of an emergency. This will ensure appropriate numbers of individuals who are fit, proper and suitably experienced or qualified to undertake activities that may be required as part of the regulated profession in the particular situation and provide appropriate individuals with the ability to order medication.
34	In order to be registered an applicant must be appropriately qualified, be fit to practise, have adequate indemnity or insurance arrangements (except social workers) and pay any prescribed fee. The regulators would have rule-making powers to specify the precise detail under each of these headings.	Accept	We agree with the Law Commissions' proposed conditions for registration and support the aim of bringing consistency across the regulatory bodies in this area, given the disparate registration requirements within the current legislative framework. We will consider the appropriate legislative provision to achieve this in any future framework.

Law Commissions' recommendation		*Government view*	*Remarks*
35	The Government should have regulation-making powers to make provision for the treatment of exempt applicants (under the EU Qualifications Directive) for registration in a professionals register in relation to proficiency in English.	Accept in part	We support the principle of allowing the regulatory bodies to carry out language controls on exempt applicants (under the EU Directive on the Mutual Recognition of Professional Qualifications) and we are looking at how best to implement this. We also consider that this is a priority item in terms of patient safety and public protection and are in the process of enabling the GDC, NMC, GPhC and PSNI (subject to those bodies making any necessary supporting rules) to carry out language controls via amendments to their existing governing legislation (similar to that already in place for the GMC). We also intend to introduce language controls for the HCPC, the GOC, the GCC and the GOsC and are considering how best to achieve this. We will need to consider how best to transpose any changes that we are implementing to the current legislation in any future regulatory framework.
36	Each registrar should be required to deal expeditiously with applications for registration or renewal.	Accept	We agree that the regulatory bodies should be required to deal with registration applications expeditiously. The PSA should continue to monitor the performance of the regulatory bodies in this regard as part of its annual performance review.
37	The regulators should be required to publish their registers and have powers to keep their registers up to date. There should be a duty to remove practitioners who have died, remove entries where the person is no longer entitled to be registered and restore entries in certain cases.	Accept	We agree with the Law Commissions' proposal that registers should be published but that there should be no prescription about the format of how they are published. The underlying principle should be ensuring that any register is accessible. We also agree that practitioners who have died should be erased from the register, entries should be removed where the person is no longer entitled to be registered and entries should be restored where the registration conditions have been met.

Law Commissions' recommendation		*Government view*	*Remarks*
38	Where a regulator has reasonable grounds for believing that an entry in the register has been fraudulently procured or incorrectly made it may remove that entry. A right of appeal should lie to a registration appeals panel and to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.	Accept	Where a fraudulently procured or incorrectly made entry or annotation to an entry has been made into a register or part of a register regarding a professional qualification, we agree that the registrar should have the power to remove such an entry or annotation. For example where an individual has made an application to be registered as a doctor and has submitted false documentation as proof of education and training or identity, that person would immediately be removed from the register on the basis that the individual should never have been on the register. However in instances of other types of registration, for example specialist registration, where the qualification would not be a requirement of full registration but would nevertheless be an entry on a specialist register or an annotation to the full register (see our response to recommendation 40) and had been procured fraudulently, we would seek to enable not only the registrar to remove such an entry but also for the matter to be referred into the fitness to practise procedures to consider whether there are any elements of misconduct which may give rise to an allegation of impaired fitness to practise. Where necessary, an interim order would be available. We agree that any right of appeal for a person who has been removed from a register in these circumstances should lie with the relevant higher court. Other decisions to remove entries which do not have the effect of removal from a register would lie with a registration appeals panel. We will need to consider carefully how these proceedings would operate if a referral had also been made to the fitness to practise procedures.
39	Each entry in the public register must contain the registrant's name, reference number, registration status, date of registration and primary qualification, and (where appropriate) the part of the register in which the person has been entered.	Accept	The registers are a key tool in ensuring public protection by providing to employers and service users a definitive source of information as to whether a person is suitably qualified to provide healthcare services. We agree with the Law Commissions that, at a minimum, an entry in the register must include the registrant's name, reference number, registration status, date of registration and primary qualification, and (where appropriate) the part of the register in which the person has been entered.

Law Commissions' recommendation		*Government view*	*Remarks*
40	The regulators should have powers to include additional qualifications or specialisms in the public register but only if there is a risk to the public if the register is not so annotated and such annotation is a proportionate and cost-effective response to the risks posed.	Accept	We agree that the regulatory bodies should have the power to include additional qualifications or specialism in the public register where this would support public protection, we would wish to enable a sufficiently wide reading of public protection to include not only protecting, promoting and maintaining the health, safety and well-being of the public but also promoting and maintaining public confidence in the profession and promoting and maintaining proper professional conduct and standards. We endorse the principles identified by the Law Commissions that annotated information should be proportionate and cost-effective in the pursuit of these objectives. It should not be seen as an opportunity for registrants to advertise their services.
41	Public registers should indicate all current sanctions imposed on a registrant, cases where impairment has been found but no sanctions imposed, current interim orders and consensual disposals. The public register should include details of all previous sanctions (except warnings which are over five years old).	Accept in part	We agree that public registers should show current sanctions but are considering the appropriate maximum length of time that each sanction should be annotated to an entry into the register and the extent to which previous sanctions should be shown.
42	The regulators should be required to maintain lists of persons whose entry has been removed following a finding of impairment or voluntary removal.	Accept	We agree on the basis that the reference to voluntary removal is read in the light of our response to recommendation 67, namely that it should be limited to removals agreed between the regulatory body and the person outside of the fitness to practise proceedings.
43	The regulators should be required to publish all fitness to practise decisions.	Accept	We agree that substantive fitness to practise decisions should be published where a sanction has been imposed, or in the case of voluntary removal (in the fitness to practise context), agreed undertakings and warnings.
44	The regulators should be required to establish registration appeals panels and provide a further right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.	Accept	We agree with this recommendation as well as the general principle that the procedures in relation to the constitution of registration appeals panels and their proceedings should reflect the approaches taken in relation to fitness to practise and interim orders panels where appropriate.

Law Commissions' recommendation		*Government view*	*Remarks*
45	All applications for restoration to the register in cases where a registrant's entry has been removed following a finding of impairment must be considered by a fitness to practise panel. In other cases, regulatory bodies should be required to establish in rules a process for considering applications for restoration.	Accept in part	We agree with the main proposal contained in this recommendation although we would want to ensure that any removal from the register during the fitness to practise procedure which might not involve a fitness to practise panel making a finding of impairment (but rather an admission on the part of the registrant) should also be subject to a restoration hearing before a fitness to practise panel. However as set out in Chapter 1 the Government intends to consider further the safeguards and oversight arrangements around delegation of powers to the regulatory bodies and within this will need to consider the proposal for the use of rules under this recommendation
98	The draft Bill should retain the premises regulation provisions of the Pharmacy Order 2010 (with some minor amendments).	Accept	We agree that the premises regulation provisions of the Pharmacy Order 2010 should be retained within any future Government Bill. We also agree that there should be some minor changes to the GPhC's powers to regulate premises as suggested by the Law Commissions and accept the minor amendments made.
99	The Government's regulation-making powers should include the ability to introduce a new system of business regulation, including business registration, for the General Optical Council and General Dental Council.	Accept in part	We agree that there should be provision within any future Government Bill for the introduction of new systems of business regulation for the GOC and the GDC. In line with our response to recommendations 8 and 9 above, we consider the power to introduce new systems of business regulation should remain with the Privy Council.
100	The regulatory bodies should have power to finance an independent consumer complaints service. The approval of the Professional Standards Authority should be required in order to exercise this power.	To be considered	Once the Government is in a more informed position with regards to the role of the Ombudsman in health and social care, we will be able to properly consider the role of consumer redress schemes and respond to this recommendation.
101	The Government's regulation-making powers should include the ability to introduce new systems of business and premises regulation for any regulator.	Do not accept	We do not consider such provision is necessary. Of the regulatory bodies who currently do not have any business regulation, we are not aware that any currently have plans to seek this. We have also not identified any need for any such regulation at this time. Should any regulatory body subsequently need to introduce any business or premises regulation, this could be done through the current section 60 powers under the Health Act 1999 or any replacement power under a future Government Bill.

Law Commissions' recommendation		*Government view*	*Remarks*
116	The protected titles and functions, and relevant offences, should be set out on the face of the draft Bill. The Government's regulation-making powers should include the ability to amend or remove any of these titles and functions.	Accept in principle	The Government accepts this recommendation in principle. We consider that protected titles and functions and relevant offences are sufficiently fundamental to the overall scheme that it would be preferable for them to be set out on the face of any future Government Bill with a regulation making power to enable amendments as appropriate.
117	The Government should consider undertaking a full review of the existing protected titles and functions, and relevant offences.	Do not accept	The Government notes the Law Commissions' concerns about the current legislation and accepts that the protection of titles and functions is a complex area, but we are not yet convinced of the need for a full review of the existing framework.
118	The regulators should continue to have the ability to bring prosecutions (except in Scotland) and would be required to set out their policy on bringing prosecutions in a publicly available document.	Accept in principle	We agree that the regulatory bodies should continue to have the ability to bring private prosecutions and that each regulatory body should be required to publish a statement of policy on bringing prosecutions. This should set out any procedures and criteria that would apply, including when to bring a private prosecution and when to refer a case to the CPS.
125	The Government should be given regulation-making powers to make provision for the general supervision of midwives by the Nursing and Midwifery Council, and determine the functions and powers of local supervising authorities.	To be considered	The findings and recommendations of the NMC's review of the supervision and regulation of midwives will have a bearing on the Government's response to this recommendation. Therefore, we are not in a position to provide a response to this recommendation until we have had an opportunity to consider the NMC's report.

4. Education, Standards and Practice

4.1 Excellent health and social care depends on a highly skilled and educated workforce, working together with compassion and respect for people. The Law Commissions' report acknowledges the overlap between the different organisations which have varying degrees of responsibility for ensuring proper standards of professional education. The report refers to the education institutes, Royal Colleges, the NHS and system regulatory bodies (such as the CQC) and notes that the regulatory bodies' ability to monitor and deliver in this area is heavily reliant on others. The Government notes from the Law Commissions' report that consultation responses varied on how co-operation and collaboration should be reformed in this area. Some argued that the regulatory bodies should be required to promote greater collaboration in education and training and others felt there should be a greater demarcation of responsibilities.

4.2 The Government recognises the important roles that each organisation contributes to education and training. The organisations mentioned in the Law Commissions' report are directly responsible for the provision and quality control of education. In addition, other key organisations include the professional bodies, employer organisations, charity organisations and national skills academies (health and social care) and employer organisations. At a national level, the four Governments set the education and training outcomes for health and social care for their respective systems and secure resources as necessary. Each of the four countries has separate arrangements for national workforce and education planning, which also link to broader national education organisations such as the higher education funding councils for each country.

4.3 For health care in England, Health Education England (HEE) ensures that the health care workforce has the right skills and training to improve the care patients receive. It provides national leadership on education, training and workforce development in the NHS and works closely with Local Education and Training Boards (LETBs) - the 13 regional structures in the health education and training system of the NHS in England. They are the vehicle for education providers and professions to work with HEE to improve the quality of education and training outcomes so that they all meet the needs of service providers, patients and the public. The 2012 Department of Health publication *Developing the Healthcare Workforce: From design to delivery* outlines the roles for HEE and LETBs in more detail[19].

4.4 For social care in England, the Department of Health and the Department for Education have joint responsibility for improving social work qualifying courses and

[19] https://www.gov.uk/Government/publications/developing-the-healthcare-workforce-from-design-to-delivery

continuing professional development, with specific focus on adult and children's social work respectively. The HCPC has responsibilities over the approval of social worker qualifying courses and quality assuring continuing professional development, with support from the College of Social Work which is developing a continuing professional development framework.

4.5 In Scotland, NHS Education for Scotland (NES) is responsible for developing and delivering education and training for those who work in NHS Scotland; in Wales, the National Assembly for Wales works closely with its Health Boards to deliver education and training for those who work in NHS Wales; and in Northern Ireland, the role of education and training is led by the Department of Health, Social Services and Public Safety (DHSSPS). Similar arrangements to England are in place for social care.

4.6 The regulatory bodies have UK wide roles, with the exception of the GPhC (Great Britain only), PSNI (Northern Ireland), and the HCPC in relation to social workers (England), and set the standards of education and training for the professions they regulate. Most are required to establish standards and requirements for qualifications leading to initial registration, ensuring that students are equipped with the knowledge and skills essential for professional practice, and that the qualifying exams secure the necessary standards of proficiency. This is done through the regulatory bodies undertaking a wide range of activities such as inspections, auditing, performance reviews and surveys. Most regulatory bodies have powers to oversee post-registration qualifications and the GMC also approves programmes and sets education standards for provisional registration, where registrants must then undertake a foundation programme after graduating from medical school, in order to reach full registration.

The Law Commissions' recommendations concerning education (recommendations 46 – 51)

4.7 In recommendation 46, the Law Commissions propose that the regulatory bodies should be required to set the standards for education, training and experience, and have broad powers to approve a wide range of matters such as institutions, examinations or other tests, courses, programmes, environments, training posts and individuals. The Law Commissions propose that the regulatory bodies should be given greater autonomy to determine their own approaches to how they undertake their functions of regulating education and training. However, the Law Commissions recognise that there are a small number of tasks that should be mandated and which require a more detailed statutory framework. The regulatory bodies would be required to set and maintain standards in these areas in addition to their duties to approve the qualifications required for registration. The regulatory bodies would also be able to set requirements and rules relating to prior experience, vocational training and education other than formal approved education schemes.

4.8 The Government sees benefit in the flexibility of the Law Commissions' recommendations in respect of education and training and agrees that some tasks should be mandated. We also consider that further work is required to determine the appropriate scope of the regulatory bodies' powers. The regulatory bodies have made clear that they support increased autonomy in this area. But we need to assess the potential impact of this approach, for example, in terms of pressure on small and

medium sized enterprises and the third sector which may arise from the proposal allowing regulatory bodies to set standards for practice placements. We will also seek to ensure that any duties do not undermine or limit the responsibilities of education providers and employers to enable education and training that meets the changing needs of services, patients and local communities.

4.9 Due to the many organisations involved in the education and training system and wider health and care workforce, the Government supports the Law Commissions' view that co-operation between organisations is vital. The Law Commissions have recommended that regulatory bodies should have a duty to co-operate with each other (recommendation 96). As we say in paragraph 2.41, we are undertaking further policy development in this area which will include discussions with relevant stakeholders.

4.10 The Law Commissions propose that regulatory bodies should have powers to refuse, withdraw or suspend its approval of education providers and attach conditions and issue warnings if standards are not met (recommendation 47). The Government supports this flexibility which would allow regulatory bodies to respond swiftly and proportionately.

4.11 The report recommends that regulatory bodies would be able to establish systems for inspecting and reporting on education and training providers and that there should be a general power for the regulatory bodies to require information (recommendation 48). The Law Commissions also propose that regulatory bodies be given powers to charge fees for any aspect of their educational activity (including payment to employers of inspectors – see paragraph 6.14 of their report). Many of these proposals are in line with existing legislation but provide a greater level of consistency across all regulatory bodies. However, we would need to assess financial impacts on the wider system as a result of any fee charges.

4.12 Recommendation 49 focuses on transparency of regulatory body activity, proposing that they publish lists of approved institutions, examinations, tests, courses, programmes, environments, posts and individuals, including practice placements where regulatory bodies approve this aspect of education. The Government supports this recommendation as it is in line with our views on greater transparency and information sharing.

4.13 In terms of regulatory bodies having powers to require information about student sanctions on fitness to practise (recommendation 50), the Government supports this but recognises that not all regulatory bodies will use such powers. The Law Commissions recommend that regulatory bodies should have powers to approve national assessments of students (recommendation 51). The Government recognises, as above, that not all regulatory bodies will use such powers. However the option could be there for future consideration.

4.14 The Government recognises that more flexible legislation will provide wider scope to implement future policies without the need for as many Government legislative changes – creating a clear, modern and effective framework for now and the future. The Government will consider the Law Commissions' recommendations alongside other education and training proposals to see if the proposed framework can serve for

the longer term – for example, to complement any policy or legislative proposals arising from implementing Sir David Greenaway's *Shape of Training Review* on changes to medical education.

4.15 We broadly accept the Law Commissions' recommendations on education and training. However, the detailed policy will require further refining by continuing and building on the discussions that the Law Commissions have had with the Government, the regulatory bodies and other key stakeholders. Our responses to particular recommendations are outlined in the table below.

The Law Commissions' recommendations concerning standards (recommendations 52 and 53)

4.16 Most of the current legislation requires regulatory bodies to issue standards of conduct, performance and ethics. These are the minimum standards which professionals must meet in order to become registered, and must continue to meet to maintain their registration.

4.17 We recognise that the Law Commissions' consultation document raised concerns about the quantity of codes, standards and guidance produced by the regulatory bodies, and the lack of clarity about the legal status of such documents, and we agree that it is important that regulatory bodies provide clear statements of the standards expected by professionals. However, we think that the current approach generally works well because the regulatory bodies provide detailed advice which is tailored to particular situations, rather than being high level and therefore difficult to apply in practice. We therefore agree that regulatory bodies should be required to set the standards for the professions they regulate and that a failure to comply with standards should be able to be taken account of in fitness to practise proceedings, and that the regulatory bodies should have powers to give guidance on these standards as they see fit (recommendation 52).

4.18 We also agree that the format, scope and content of the standards of conduct, performance and ethics should be a matter for the regulatory body to determine, following consultation with relevant parties. We also agree that the legislation should allow for regulatory bodies to produce joint guidance with other regulatory bodies, or professional bodies, if they so wish.

4.19 Regulatory bodies are required to ensure ongoing standards of conduct and practice through continuing professional development (CPD). Most must put into place requirements for CPD which enable registrants to demonstrate that they keep their knowledge and skills up to date. As set out below our view is that regulatory bodies should have a duty to seek assurance of the ongoing fitness to practise of their registrants. There are currently a range of approaches to fulfilling this duty. Because of the differing nature of each profession, a one-size-fits-all approach is not appropriate and so there should be flexibility in the type and level of evidence required to fulfil this role. In line with our response to recommendation 54, relating to licence to practise and revalidation, regulatory bodies should be required to set standards of continuing professional development and make associated rules as they see fit.

The Law Commissions' recommendation concerning licence to practise and revalidation (recommendation 54)

4.20 The Government agrees with the principles outlined by the Law Commissions regarding the continuing role of the regulatory bodies in setting and assuring the professional standards required of their registrants, but we do not agree with the two-tier approach outlined by the Law Commissions at paragraph 6.50 of their report and our current intention is to take a different legislative approach to that proposed in the Law Commissions' Bill.

4.21 It is the Government's view, which is accepted by the regulatory bodies and the Law Commissions, that seeking assurance of the continued fitness to practise of registrants, in terms of meeting the standards of conduct, knowledge and skills relevant to their practice, is a fundamental aspect of professional regulation.

4.22 This is why, in December 2012, we introduced medical revalidation. Doctors in the UK became the first in the world to have regular assessments to ensure that their training and expertise are up-to-date and that they are fit to carry out their roles. Medical revalidation is a process where an assessment is made, on a regular basis (usually every 5 years), about the continued fitness to practise of a doctor. This assessment is made by a senior doctor linked to the doctor's practice (a responsible officer) and is based upon the outcome of annual appraisals, where the doctor's portfolio of evidence, together with information held in local clinical governance systems, is discussed. All doctors wishing to practise in the UK must be registered with the GMC and hold a licence to practise, and it is this licence to practise that is renewed through the revalidation process.

4.23 We see models such as medical revalidation as making a major contribution to the quality of care that patients receive, giving them added confidence that the practitioners who treat them are regularly assessed against professional standards. In *Enabling Excellence*, the Government reinforced its commitment to supporting the GMC with its model of revalidation, as well as encouraging all other regulatory bodies to assess the need for, and look to develop their own, similar models.

4.24 As noted previously because of the differing nature and size of each profession, the Government believes a one-size-fits-all approach assuring the continued fitness to practise is not appropriate. Regulatory bodies need flexibility around how they seek assurance of the ongoing fitness to practise of their registrants and the type and level of evidence needed to achieve this. Our proposed approach to a future Government Bill is to impose a duty on each regulatory body to seek assurance of the continued fitness to practise of their registrants and to give regulatory bodies the flexibility to develop their own models to discharge this obligation that are proportionate to the risks associated with their professions.

4.25 The Law Commissions agree with the principle of evaluating the continued fitness to practise of registrants, although it makes a direct link in the draft Bill between this evaluation process and revalidation. We are concerned this could lead to an assumption that all such models will follow similar lines to that of the GMC, where a licence to practise is renewed following some form of revalidation process. For the

reasons outlined above, we feel a comparison or reference to a specific model, such as medical revalidation, would be confusing and unhelpful to regulatory bodies and registrants. Indeed, we have seen no evidence from any of the non-medical regulatory bodies that they intend to develop models around the renewal of a licence to practise. The models being developed by the regulatory bodies share the underlying principles of the GMC medical revalidation process but are based, in the main, around registrants providing assurance they are meeting the standards set in their respective professional codes, in particular standards of continued professional development.

4.26 We intend, therefore, that the framework of a future Government Bill will make clear the regulatory bodies' fundamental duty to seek assurance of the professional standards of their registrants and provide the necessary powers to implement a range of models to discharge this duty. This would include the ability to require information from registrants and to share this with relevant people and/or bodies to validate registrant claims. Consequently, the Government does not accept the need for regulation making powers to introduce further models of revalidation that mirror the GMC. We accept, however, that the current GMC model goes beyond our proposed framework so provision will be made for this model to continue, with the flexibility to amend it as it becomes appropriate.

Law Commissions' recommendation		*Government view*	*Remarks*
46	The regulators should be required to set the standards for education, training and experience, and have broad powers to approve matters such as institutions, examinations, tests, courses, programmes, environments, posts and individuals.	Accept in part	We broadly agree that the regulatory bodies should be required to set standards for education, training and experience and we will continue discussions with stakeholders to determine the appropriate scope of the recommended powers and the co-operation and consultation duties between the organisations and individuals involved such as Health Education England (HEE), education institutions, professionals and the organisations that represent these groups. We want to assess the impact of the recommendations on small and medium sized enterprises and the third sector e.g. setting standards for practice placements, and any financial impacts on the health and care system as a result of fee charges. We will work with the regulatory bodies, HEE and other organisations involved, to look further into the processes that may benefit from consultation and/or seeking advice from relevant organisations. In terms of greater autonomy for regulatory bodies to be able determine their own approaches on how they undertake their functions of regulating education and training, further work will be required to identify and assess what tasks may need to be mandatory.
47	The regulators should have powers to refuse, withdraw or suspend approval of education providers, attach conditions to any approvals and issue warnings.	Accept	We agree more flexible powers are required, allowing regulatory bodies to respond earlier. A wider range of regulatory sanctions would enable a more proportionate regulatory response to problems.
48	The regulators should be given a power to appoint one or more persons to inspect an education or training provider and report on any relevant matter. There should be a general power for the regulators to require information from the education or training provider.	Accept	The Government accepts this recommendation in full. We agree more flexible powers are required, allowing regulatory bodies to respond more swiftly and with a wider range of options.
49	The regulators should be required to publish a list of approved institutions, examinations, tests, courses, programmes, environments, posts and individuals. The regulators should also be required to publish a list of approvals that have expired or have been withdrawn.	Accept	This is in line with our views on greater transparency between organisations and with the public, and in this case for students considering or attending courses/institutions.
50	The regulators should have powers to require information from an education or training provider about student fitness to practise sanctions.	Accept	The Government accepts this recommendation in full. We recognise that not all regulatory bodies will use such powers, but the option could be available if required.

Law Commissions' recommendation		*Government view*	*Remarks*
51	The regulators should have powers to approve national assessments of students.	Accept	The Government accepts this recommendation in full. We recognise that not all regulatory bodies will use such powers, but some have confirmed that it could be a future consideration.
52	The regulators should be required to set the standards for the profession(s) they regulate. Where a registrant fails to comply with the standards, that failure may be taken into account in fitness to practise proceedings. The regulators would have powers to give guidance on these standards as they see fit.	Accept in principle	We agree that regulatory bodies should be required to set the standards for the profession(s) they regulate, and that they should have discretion over how this is done. We agree that a failure to comply with standards may be taken account of in fitness to practise proceedings.
53	The regulators should be required to set standards of continuing professional development, and should have the power to make rules setting out the circumstances in which registrants will be regarded as having failed to comply and the consequences.	Accept	We agree that ensuring continuing standards of conduct and practice is an important aspect of professionals' regulation. Regulatory bodies should be required to set standards of continuing professional development and make associated rules.
54	The Government should have regulation-making powers to introduce or authorise systems of revalidation for any of the regulated professions.	Accept in principle	Our intention is that there should be an over-arching duty on regulatory bodies to seek assurance from registrants of their continued fitness to practise, and flexibility in the legislation to enable them to fulfil this role in a way that is appropriate in relation to the professions they regulate.

5. Fitness to Practise

The Law Commissions' recommendations concerning fitness to practise (recommendations 55 to 93, 109, and 119-123)

5.1 To practise in one of the regulated health and care professions, a person must be registered with the relevant regulatory body and comply with the standards of conduct, performance and behaviour they set. Where there is concern about a registrant's ability to comply with, or an alleged breach of, those standards, the regulatory bodies can investigate whether that person is fit to practise and, if necessary, take appropriate action. We refer to these steps as the fitness to practise procedures.

5.2 Criticisms have been made that current fitness to practise procedures are convoluted, time consuming and expensive[20]. For example, the GDC's fitness to practise procedures accounted for 78%[21] of its expenditure in 2013 while for the NMC it was 77%[22] and for the GMC it was 58%[23]. Additionally, the median time taken to conclude those cases which were investigated and subsequently referred to a fitness to practise panel ranged between 45–109 weeks[24] depending on the regulatory body. The fitness to practise procedures have also been described as stressful for both the registrants[25] involved and for witnesses[26]. As part of the wider review of the regulation of health and social care professionals, the Law Commissions reviewed the existing fitness to practise frameworks and made recommendations to address these issues.

5.3 The key steps in fitness to practise procedures involve: the initial consideration of allegations and information (the preliminary consideration stage); investigation of these; decisions as to whether to refer a matter to a panel to consider the individual's fitness to practise or whether to dispose of the case by some other means (such as a warning or undertakings); procedures for panel consideration and determinations; the imposition of restrictions on practice in appropriate cases; and the subsequent monitoring and review of these. Procedures are required to enable interim restrictions on a person's practice to be imposed pending the final outcome of the fitness to practise procedures. The legislation needs to set out grounds for determining whether an individual's fitness to

---

[20] See for example Health Committee, *2013 accountability hearing with the Nursing and Midwifery Council, Fifth Report of Session 2013-14*, HC699, December 2013 and Health Committee*, 2013 accountability hearing with the General Medical Council, Tenth Report of Session 2013-14*, HC 897, March 2014.
[21] General Dental Council Annual Report and Accounts 2013.
[22] Preliminary comments from NMC in response to DH themed meetings relating to draft Professional Regulation Bill, 27 March 2014.
[23] GMC Annual Report and Accounts 2013.
[24] PSA Annual Report and Accounts and Performance Review Report 2012–2013, Volume II Performance Review Report 2012–13.
[25] *The GMC and vulnerable doctors*, BMJ 2013;347:f6287.
[26] Research works, May 2013, *Public Response to Alternatives to Final Panel Hearings in Fitness to Practise Complaints*, PSA website.

practise is impaired, together with how fitness to practise and interim orders panels are constituted and the governance arrangements which underpin fitness to practise proceedings. The Law Commissions have made recommendations which set out the structure for reformed and more consistent fitness to practise procedures and our response to these recommendations is discussed in more detail below.

The Law Commissions' recommendations concerning making a referral to the fitness to practise procedures (recommendations 56 and 62)

5.4 If a person has a concern that a registrant is not fit to practise, they must be able to make a referral to the relevant regulatory body. We agree with the Law Commissions' assessment that the regulatory bodies should be able, in the interests of operational efficiency, to develop formats and templates for making a referral about a registrant's fitness to practise. However, we also agree that there will be circumstances where a person may be unable to use these templates and that the regulatory bodies should not be able to determine that only information presented in the set format can be accepted. There will also be certain circumstances where a person will only be able to make such a referral orally. We agree that this may be appropriate (for example, as a reasonable adjustment), however we do not want to create an expectation that all referrals may be made orally.

5.5 Where a regulatory body has decided not to proceed with an investigation following the preliminary consideration stage, we do not believe it would be appropriate to notify the registrant concerned. Where no regulatory action is being taken, this could have an adverse consequence on the person who made the referral, particularly if they are still a patient or client of the registrant. It may also deter people from making referrals, which would be contrary to the principle of public protection.

The Law Commissions' recommendations concerning deciding which cases to investigate (recommendations 55-61 and 85)

5.6 The Law Commissions have recommended that the regulatory bodies, on receiving information, should be required to determine whether it amounts to an allegation of impaired fitness to practise and, if so, whether to investigate it.

5.7 We agree with the principle that the regulatory bodies should not investigate complaints which do not amount to a fitness to practise concern. It is important to remember that the fitness to practise procedures do not serve as a substitute for an NHS (or other health or care provider's) complaints system. Neither should they act as a proxy for those who employ health or care professionals to deal with a safety concern that requires immediate action, disciplinary or other human resources issues. While the fitness to practise procedures may overlap with these systems, the objectives of the procedures, which have emerged in case law, are to protect public safety, maintain public confidence in the profession and declare and uphold proper professional standards and conduct. The Law Commissions have proposed that this purpose be confirmed in legislation by making them objectives of fitness to practise panels alongside an objective dealing with cases fairly and justly, when exercising their statutory functions. The Government agrees on the importance of these objectives and proposes that their role is formalised, subject to modifications to ensure the right

balance of priorities. As discussed in Chapter 2, we have in mind that there should be an over-arching objective of public protection which involves protecting, promoting and maintaining the health, safety and well-being of the public, promoting and maintaining public confidence in the relevant profession and promoting and maintaining proper professional standards and conduct. We intend that the regulator's panels should be under a duty to have regard to this. We also intend to formally reflect the objective ensuring that the hearing of cases is dealt with fairly and justly.

5.8 These objectives are not achieved by referring all information received by a regulatory body to a fitness to practise panel or by the regulatory bodies exhausting all of their powers and resources in the pursuit of unnecessary investigations regardless of the impact on public protection, registrant and the maker of the referral. Rather we need a proportionate system where concerns are dealt with in the most effective way to protect the public while ensuring that the resources of the regulatory bodies are used appropriately.

5.9 As a result, the Government accepts the recommendations which enable regulatory bodies to begin fitness to practise procedures where concerns come to light, introduce greater clarity regarding what can be considered to be an allegation of impaired fitness to practise and how such information should be considered by the regulatory bodies. The Law Commissions propose that the regulatory bodies should make rules around the procedure to be followed for preliminary consideration. As set out in Chapter 1, the Government wishes to consider the best balance as to which provisions should be on the face of any future Government Bill and which would be suitable for rules. We also agree that convictions resulting in a custodial sentence should be referred directly to a fitness to practise panel. We believe that patients and the public expect that the regulatory bodies should be able to deal rapidly with these type of cases to put measures in place to protect the public without having to undertake an unnecessary investigation to re-establish the case that led to the conviction. This would be in addition to the process described at paragraph 5.24 for automatically removing from the register those convicted of the most serious cases.

5.10 However there are some aspects of these proposals that we would not be minded to adopt. The Law Commissions have recommended changing the ground of misconduct to disgraceful misconduct to distinguish it from clinical matters which would be addressed through the separate ground of deficient professional performance. However, there is an established body of case law about the existing terminology of misconduct which appears to function well. We are not persuaded to change this by introducing disgraceful misconduct. We consider this will lead to arguments around the scope of such provision, and believe that retaining the current terminology avoids this risk.

5.11 Additionally, while we agree that the regulatory bodies should be able to investigate single clinical incidents, we are not persuaded that these can all be described as deficient professional performance, nor that the definition of a single clinical incident should be linked to the term negligence which could cause confusion. We will need to consider how this is framed in any future Government Bill. The Law Commissions have also suggested a number of minor grounds based on penalties in lieu of convictions, administrative penalties and binding over by a court. We believe these minor grounds

could be dealt with as misconduct, if appropriate to do so, and do not think it is necessary to specify them as separate grounds.

5.12 We also believe that it is necessary to ensure that decisions made at this early stage can be changed if further information comes to light or the decision was materially flawed in some way. We want to consider further whether the formal power proposed by the Law Commissions for a registrar to review a decision not to refer an allegation for investigation, as well as those made at the end of an investigation, might also be extended to some additional decisions at this stage (for example those cases which are closed because the allegations are made more than 5 years after the most recent relevant events, and unlikely to be evidenced due to the age of the case) or alternatively whether we can design a more proportionate way to change decisions made at these early stages where necessary.

5.13 We do not agree that, once the regulatory bodies have decided that information they have received does amount to an allegation of impaired fitness to practise and an investigation is required, that they should be required to notify the Government of that decision.

The Law Commissions' recommendations concerning investigating fitness to practise concerns (recommendations 64 and 65)

5.14 The Law Commissions have proposed that the regulatory bodies should have flexibility in how they investigate as well as a broad power to require the disclosure of information to enable them to investigate effectively. The Government accepts the need for flexibility in this respect and the need for adequate powers of disclosure. We will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules.

The Law Commissions' recommendations concerning decisions at the end of an investigation (recommendations 63, 66–71 and 86)

5.15 We agree with the Law Commissions' recommendation that a common test should apply to determine how cases should be dealt with at the end of an investigation. This test, based on the existing practice of some regulatory bodies, should require consideration of whether there is a realistic prospect that a finding of impairment would be made if the case was referred to a fitness to practise panel, to ensure that panels only consider appropriate cases. We agree that including this realistic prospect test on the face of any legislation is desirable.

5.16 The Law Commissions have proposed extending the possible use of consensual disposal instead of referring a matter to a fitness to practise panel, so as to deal with allegations in a proportionate way. Consensual disposal includes enabling the regulatory bodies to agree restrictions with registrants (known as undertakings) which will enable them to practise safely (for example under supervision while re-training). An alternative option for the consensual disposal of a case is to agree with the registrant that they should be removed from the register. Both of these decisions can be taken by the regulatory body without the need for a hearing.

5.17 There are many more referrals made than reach the threshold for an investigation and many more investigations than cases which reach a public hearing. In designing a new system we have to ensure that those cases where action is required from a regulatory body are identified and progressed expeditiously. Where action is more proportionately taken elsewhere (for example by the registrant's employer or another regulatory body), it is essential that the regulatory bodies redirect these cases in a timely and appropriate way. The objective of public protection is not served through regulatory bodies becoming involved in issues not requiring fitness to practise action that, through sheer volume, impede their ability to take appropriate and prompt action in the cases where a restriction on practice may be required.

5.18 We also agree with the Law Commissions that the procedures should guarantee fairness, and that greater consistency is desirable between the various regulatory bodies where it enhances public protection. We have also borne in mind the research commissioned by the PSA[27] which conducted 15 in-depth interviews with people who had made a referral to a regulatory body and given evidence at a public hearing, which found they would have preferred an alternative route to reaching a conclusion which avoided the stress of giving evidence at a hearing exacerbated by the protracted length of time that the current procedures take.

5.19 At the same time, providing the regulatory bodies with greater decision-making powers and allowing them to conclude cases without a public hearing needs to be balanced with safeguards to ensure that decisions are made appropriately and in a transparent way. For example, while providing for greater powers to agree undertakings and removals at the investigation stage, we would in parallel require that the regulatory bodies obtain an admission of impairment from the registrant before these options can be pursued. We would also seek to limit undertakings to only those cases where, if referred to a fitness to practise panel, there is not a realistic prospect that the case would result in a suspension or removal from the register. We would also require the regulatory bodies to refer a case to a fitness to practise panel for consideration where undertakings would not satisfy the public interest, even if they could manage the risk posed by the registrant.

5.20 Additionally, we note that the Law Commissions envisage that removals agreed while a registrant is subject to the fitness to practise procedures should be termed *voluntary removals*. We would like to explore alternative terminology as we would seek to make clear that such removals are a form of regulatory action, with exactly the same standing and safeguards as a removal imposed by a fitness to practise panel at the end of a hearing, but can be agreed even if the allegations would have been unlikely to result in a removal if they had been considered by a fitness to practise panel.

---

[27] *Public responses to alternatives to final panel hearings in fitness to practise complaints,* http://www.professionalstandards.org.uk/library/document-detail?id=703f589e-2ce2-6f4b-9ceb-ff0000b2236b accessed 12 September 2014.

5.21 We would also adopt safeguards, including the Law Commissions' proposal to add decisions to agree undertakings to those subject to the PSA's power to refer decisions to the higher courts to consider and take appropriate action (for example substituting a new decision if they consider it to be insufficient, quashing the decision or remitting the case back for further consideration).

5.22 To ensure transparency, we would also want to make sure that information about fitness to practise action taken in respect of a registrant, is published and available on the registers as appropriate to the case. The level of information would vary depending on the circumstances of the case, particularly in health cases where the registrant's right to confidentiality would need to be taken into account. This transparency requirement would need to extend to agreed removals and undertakings so that both decisions and the circumstances in which they were reached were publicly available. We believe that this is an important part of maintaining confidence in the regulatory system.

5.23 For those cases where the realistic prospect test is satisfied, we agree that the case should be referred to a fitness to practise panel, except where undertakings or removal are in the public interest and are agreed.

5.24 We also accept the recommendation that some convictions for certain serious criminal offences, such as murder or rape, are incompatible with continued registration. In such circumstances we agree that a regulatory body should be able to remove the registrant's name from the register more quickly. We agree that the power should include the safeguards proposed by the Law Commissions, namely that the registrant would have a right to make representations to the regulatory body as well as a right of appeal on the factual basis of an error in law or finding of fact. We would want to ensure that the list of convictions to which this expedited procedure applies could be changed in the future and so also accept the Law Commissions' recommendations that the list should be capable of being amended by secondary legislation.

5.25 For cases where the realistic prospect test has not been met but there are some remaining concerns, we also agree with the Law Commissions that the regulatory bodies should have powers to close an investigation with advice or issue a warning to the registrant. This would enable the regulatory bodies to take action, short of a restriction on practice, to help the registrant improve their practice or to formally mark that their conduct or performance has fallen below the standards expected although not sufficiently so as to require a restriction on practice.

5.26 Where the regulatory body has decided that the realistic prospect test has been met and a case referred to a fitness to practise hearing we agree with the Law Commissions that there will be circumstances where the regulatory body may wish to cancel that referral. This may be because new information comes to light that means that a hearing is no longer appropriate or it has been possible to agree undertakings since the time of the referral but before the hearing itself had commenced. We will need to consider further the circumstances in which it may not be appropriate to cancel a referral but rather proceed on the basis of a consent order process (see paragraph 5.35).

5.27 A further recommendation relates to enabling the regulatory bodies to conduct mediation. However the Law Commissions express serious misgivings in their report

about the prospect of mediation and proposes that any mediation process should be reserved to a Government regulation making power. We share these misgivings and do not propose that mediation should have a place within the fitness to practise procedures. The regulation making power is therefore unnecessary.

5.28 Under the proposed framework, any decision made at the end of an investigation, other than referral to a fitness to practise panel, would be subject to a formal power for the registrar to review it, and potentially substitute a new decision, if new information had come to light or the original decision was materially flawed. We agree that such a power is necessary and, as discussed above, we would consider extending this power to certain additional decisions at the preliminary consideration stage. We also believe that it should apply to a decision by a regulatory body to cancel a referral to a fitness to practise panel hearing.

The Law Commissions' recommendations concerning temporary restrictions on practise while fitness to practise procedures are ongoing (recommendations 119-123)

5.29 The Law Commissions have recommended that the regulatory bodies should be able to seek an interim order to temporarily restrict the practice of a registrant during the course of fitness to practise procedures. We believe that it is essential for public protection that such restrictions can be imposed at any stage during that process. We also agree that it should be possible for an interim order to be imposed if such a step was in the wider public interest, or in the interests of the registrant.

5.30 Given the nature of interim orders, which are imposed prior to any allegations being fully considered, we also agree that safeguards are required to ensure fairness to the registrant concerned. These safeguards include the right to appeal an interim order, the duty on a regulatory body to review interim orders periodically and the need for the higher courts to consider any application to extend an interim order beyond 18 months, although we would enable interim orders panels to extend orders up to that point.

5.31 Additionally, due to the fact that the parties do not have the opportunity to test the evidence put before an interim orders panel, and no determinative findings of fact are made (unlike before a fitness to practise panel) we agree with the Law Commissions that interim orders hearings should normally be held in private.

The Law Commissions' recommendations concerning fitness to practise hearings (recommendations 72-89)

5.32 Ensuring the impartiality of fitness to practise panels by increasing the separation between the regulatory body's role as investigator and the panel's role as adjudicator

has been a long term policy objective for this and previous Governments[28]. As a result, we welcome the Law Commissions' recommendations regarding the requirement to have a separate body or person for the purposes of appointments to the pool of available panellists and the proposals regarding the constitution of panels. We agree that the Government should have a regulation making power to enable the regulatory bodies to adopt systems with a greater degree of separation (whether on the Medical Practitioner Tribunal Service or other model) as appropriate. However we see the role of the PSA as overseeing the efficacy of the fitness to practise procedures as a whole via its annual performance review rather than having a new specific power to progress separation and so would not propose to introduce that element of the Law Commissions' recommendations.

5.33 We also agree that it is important for public confidence in the system of health and care professional regulation to ensure that fitness to practise hearings are held in public unless the particular circumstances of the case outweigh the public interest in holding a public hearing. For the same reason we think it is important that lay representation on panels is assured, and would propose to go further than the Law Commissions have recommended and prohibit a registrant majority on a panel. This will ensure that the public can have confidence in the impartiality of panel decisions and underline that the regulatory bodies act in the interests of public protection, not the professional group(s) that they regulate. In exercising their statutory functions, we also agree that panels must not only have regard to the regulatory bodies' general objectives, but also that they must deal with cases fairly and justly. However we would want to consider further the meaning of the term fairly and justly in this context, and whether any definition is needed on the face of any legislation.

5.34 The report also makes recommendations, with which we agree, in relation to the procedures applicable in respect of fitness to practise hearings (for example the rules of evidence, and that the civil standard of proof be applied). We agree that vulnerable witnesses should be entitled to special measures in certain circumstances and that a registrant should not be able to cross-examine the alleged victim in a case involving allegations of a sexual nature. We would however want to consider further whether this is best achieved on the face of any legislation.

5.35 We agree that the current hearing procedures are cumbersome and welcome the proposals to streamline these although we will wish to consider the best balance in terms of which provisions should be in any future Government Bill and which would be suitable for rules. We support the principle of enabling greater pre-hearing case management and determining matters on the papers where the parties agree. Where the registrant accepts the facts, admits impairment and there is no dispute over the appropriate outcome, a mechanism that enables independent panellists to determine

---

[28] See *Trust, Assurance and Safety — The Regulation of Health Professionals in the 21st Century*, Cm 7013, London: the Stationery Office, 2007.

cases on the papers (similar to a consent order process in the civil courts) offers a much faster way of imposing appropriate restrictions on the registrant's practice, and removes the stress for witnesses in having to give oral evidence as well as for the registrant. As with any other determination by a fitness to practise panel, any cases dealt with on the papers would be subject to exactly the same publication and disclosure requirements as those following a public hearing. We also believe that there is greater scope to enable panels to hold hearings on the papers in suitable cases where a registrant has waived the right to a hearing and fairness and public protection is ensured and would seek to explore providing powers in this regard. In both cases, those considering the papers would always retain the right to convene a full hearing, either where they do not agree with the terms of the proposed outcome or otherwise consider that a full hearing is required. Additionally, even if there was no dispute over the facts or appropriate outcome, it would be open to the regulatory body to opt for an oral public hearing if they felt there were issues that needed to be aired at an oral public hearing. The safeguard of PSA scrutiny would also apply. If the PSA considered a decision was insufficient for public protection, it could refer the decision to the relevant higher court.

5.36 We do not agree with the recommendation to enable the registrant or the person who made the allegation to request which of the four UK countries they would like the hearing to be held in. We believe this proposal could raise a series of operational difficulties, not least if the registrant and the person who made the allegation make competing requests which would frustrate the progress of the case. Rather we would seek to provide a discretion for the regulatory bodies to determine the location of a hearing as may be appropriate for their registrant populations and those who access their services.

5.37 At the end of an investigation, the Law Commissions have proposed that fitness to practise panels be able to issue a warning as an action short of a restriction on practice. While we agree with this, we do not think that issuing a warning should be possible where impairment has been found as this could cause confusion regarding the status of warnings issued at the end of an investigation or where impairment has not been found. Rather, we would look to introduce a distinct sanction where a panel has found impairment, similar to the 'caution order' currently available to panels of the NMC and HCPC. We will need to consider the terminology further. We do not agree that fitness to practise panels should be able to agree undertakings with a registrant on behalf of the regulatory body. Instead, we think that, if the regulatory body and the registrant were able to reach an agreement that conditions were the appropriate outcome, the panel would be able to impose this through the consent order process.

5.38 The Law Commissions have identified fitness to practise adjudication as a particular area where greater consistency is required between the regulatory bodies. We agree with the principle that the fitness to practise procedures need to deliver consistent outcomes so that where public protection is at risk, the appropriate sanction is agreed or imposed. However we are not yet persuaded by the Law Commissions' recommendation that the Secretary of State should have a power to issue guidance, potentially including model rules, to the regulatory bodies to which the regulatory bodies must have regard. As set out in Chapter 1 the Government intends to consider further the safeguards and oversight arrangements around delegation of powers to the regulatory bodies and within this will need to consider the best approach to take in

relation to the Law Commissions' proposals for rule-making powers concerning fitness to practise hearings.

The Law Commissions' recommendations concerning rights of appeal (recommendations 93 and 109)

5.39 The Law Commissions' recommendations maintain the position that registrants should have a right to appeal against decisions made by fitness to practise panels and we agree with this. However, we would want to consider further the Law Commissions' proposal around the jurisdiction in which such an appeal should be brought (England and Wales, Scotland or Northern Ireland), and whether that should be based on the registrant's registered address, the location in which the relevant fitness to practise hearing took place or another criterion.

5.40 The Law Commissions have also suggested that the PSA should be able to refer a decision of a fitness to practise panel to the relevant higher court if they consider the decision to be insufficient to protect the public. We agree with this but think that the power to refer should be linked more closely to the objectives of the regulatory bodies, to reflect all the elements of our proposed over-arching objective (see paragraph 5.7). This is the approach we are currently taking in changes we are making to the Medical Act 1983 reforming the way that the GMC makes decisions about doctors' fitness to practise via a section 60 order (The General Medical Council (Fitness to Practise etc.) and the Professional Standards Authority for Health and Social Care (Referrals to Court) Order 2014). We would intend to consolidate this approach in any future unified health and care professional regulation legislation. A further issue that has arisen relates to whether the PSA should be able to refer a decision to remove a registrant from the register (whether the removal is by agreement with the regulatory body or imposed by a fitness to practise panel). We do not believe that the PSA should be able to make referrals in these circumstances. As removal gives the maximum level of public protection it cannot be said to be 'insufficient', particularly as we intend to require an admission of impairment. Additionally, the court considering the case, even with evidence of 'under prosecution', would be unable to take any effective action. As a result we are not persuaded that providing this power for the PSA in these circumstances is necessary.

5.41 Instead, we would want to ensure that any decision made to remove a registrant who is subject to the fitness to practise procedures from the register is made in a transparent way and that the only route to return to the register is by the way of restoration hearing before a fitness to practise panel which could consider the original concerns and any further information. This would be supported by an explicit power for the regulatory bodies to investigate the fitness to practise of persons applying for restoration.

5.42 Where greater separation between the roles of investigating fitness to practise concerns and adjudicating on cases has been achieved (such as the establishment of the Medical Practitioners Tribunal Service by the GMC), we also agree that the relevant regulatory bodies should have a right to appeal decisions on the same grounds as the PSA can make a referral to the relevant higher court. We agree with the Law Commissions that this is best achieved through a Government regulation making power to ensure that such a right of appeal is only available where such separation has been put in place.

The Law Commissions' recommendations concerning reviewing sanctions placed on a registrant's practice (recommendations 91-92)

5.43 Reviewing conditions placed on a registrant's practice or a suspension order gives a fitness to practise panel the opportunity to continue with or change the restriction depending on the circumstances. For example, if the conditions are not effectively managing the concerns about the registrant's fitness to practise, further restrictions (including potentially a removal) might be imposed, ensuring that risks to patient safety and public protection are managed effectively. Conversely, if a registrant has met any conditions and is fit to return to unrestricted practice earlier than expected, a review hearing enables those restrictions to be lifted. As review hearings involve an assessment of current circumstances, the regulatory bodies also have a role in monitoring restrictions on an on-going basis.

5.44 We agree with the Law Commissions that fitness to practise panels should be required to review conditions and suspensions, and also consider that, in addition to any other reviews, a review should always take place before the restriction is lifted unless the panel imposing the order does not consider such a review is needed (for instance where a short term suspension has been imposed for declaratory purposes only) and there is no reason to subsequently direct that one must be held. We would also seek to enable a panel considering a review case to have the full range of options available to the fitness to practise panel which considered the substantive case when deciding what sanction, if any, may be appropriate.

5.45 In relation to conditions, if a registrant had failed to comply with any conditions (referred to as a breach), the regulatory body would have the option of either treating that breach as a new allegation of impaired fitness to practise or, if more minor, taking the matter to a review hearing for consideration. In the case of the former, the regulatory body could also trigger an early review, to allow consideration of the effect of the breach on any other conditions that may be in force, for example.

5.46 As we do not intend to enable fitness to practise panels to agree undertakings, these would not fall within the review powers of fitness to practise panels, but would rather be monitored on an on-going basis by the regulatory bodies themselves. If the regulatory body believed that a registrant was not complying with the undertakings then we would want to enable this to be treated as a new allegation. If, however, the undertakings no longer safely managed the concerns about the registrant (and new undertakings could not be agreed which would address this), we would envisage the regulatory body being able to refer the original allegations to a fitness to practise panel for consideration.

The Law Commissions' recommendation concerning guidance to fitness to practise panels and interim orders panels (recommendation 90)

5.47 In addition to recommending that the regulatory bodies' objectives should also apply to panels, the Law Commissions have proposed enabling the regulatory bodies to issue guidance to panels. We agree in principle with this recommendation although believe who issues this guidance in practice may vary between regulatory bodies (for example it may be issued by the council of the regulatory body or, where greater separation has been achieved, potentially by the person or body appointed to undertake the

adjudication function if the council decided that was appropriate). However, we think it would go too far to require the panels to have regard to that guidance as recommended by the Law Commissions and we consider it should be advisory only. We would seek to incorporate this into a general rather than specific power for the regulatory bodies to provide them with the necessary flexibility.

Summary

5.48 The fitness to practise framework proposed by the Law Commissions aims to achieve a consistent approach to how the regulatory bodies deal with concerns about health and care professionals and to establish more effective, proportionate and streamlined procedures which allow for flexibility where appropriate while ensuring both transparency in, and oversight of, decision-making. These procedures will include review powers and appropriate oversight by the courts so that changing circumstances can be taken into account as may be appropriate, or certain key decisions can be reconsidered or challenged where they are wrong or new information comes to light.

5.49 Although there are a small number of areas where we do not accept the Law Commissions' recommendations, overall the recommendations envisage a much leaner process enabling the regulatory bodies to take swifter action to ensure public protection. We welcome this ambition.

Law Commissions' recommendation		*Government view*	*Remarks*
55	A person's fitness to practise a regulated profession should be regarded as impaired by reason only of: (1) deficient professional performance; (2) disgraceful misconduct; (3) the inclusion of the person in a barred list; (4) a determination by a relevant body to the effect that the person's fitness to practise is impaired; (5) adverse physical or mental health; (6) insufficient knowledge of the English language; (7) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence; (8) the person having accepted or been dismissed with an admonition under section 302 of the Criminal Procedure (Scotland) Act 1995, been discharged under section 246(2) or (3) of that Act, accepted a conditional offer under section 302 of that Act, or accepted a compensation offer under section 302A of that Act; (9) the person having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992; or (10) the person having been bound over to keep the peace by a magistrates' court in England or Wales.	Accept in part	We agree with the Law Commissions that there is an established body of case law surrounding the existing terminology of 'misconduct' which appears to function well. However we are not persuaded to change this by introducing 'disgraceful misconduct'. We consider this will lead to arguments around the scope of such provision. We believe that retaining the current terminology avoids this risk. Additionally, although we agree that concerns arising from single clinical incidents may need to be captured by the grounds of impairment, we would want to consider how best to provide for this in any legislation. We also believe that the grounds listed at 8–10 could be dealt with as misconduct and do not consider it is necessary to specify them as separate grounds.
56	A regulator should have the power to initiate fitness to practise proceedings where an allegation suggesting impaired fitness to practise is made to the regulator or the regulator otherwise has reason to believe that a registrant's fitness to practise is impaired. There should be no set format for allegations.	Accept in part	We agree with the recommendation but do not want to create an expectation that the regulatory bodies must always accept allegations made orally. While it may be necessary for the regulatory bodies to deal with an oral allegation if an individual is otherwise unable to make a referral, we agree with the Law Commissions' analysis that, in the interests of efficiency, the regulatory bodies will also want to develop standard formats. We will need to consider carefully how to achieve this balance. There may be a number of reasons why a person is unable to use such formats or templates and we would expect the regulatory bodies to have systems in place to make reasonable adjustments to accommodate these.

Law Commissions' recommendation		*Government view*	*Remarks*
57	The regulators should be required to refer allegations for preliminary consideration in accordance with rules. The rules may make provision about the procedure for preliminary consideration. Members of regulatory bodies and fitness to practise panels should be prohibited from this task.	Accept in part	The Government accepts the needs for clear processes in this respect but, as set out in Chapter 1, we will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements. We agree with the principle that members of regulatory bodies and fitness to practise panels should be prohibited from undertaking the task of preliminary consideration and think that interim order panellists should also be explicitly prohibited.
58	An allegation should not proceed if it is received more than five years since the most recent events giving rise to the allegation, except where the allegation relates to certain convictions, determinations by other regulatory bodies, inclusion on a barred list or where the regulator considers that it is in the public interest for the case to proceed.	Accept	We also think it is necessary for decisions made under this 5-year public interest test to be subject to the power to review investigation stage decisions.
59	The regulators should not be able to refer for investigation any case that does not amount to an allegation, is vexatious, has been made anonymously and cannot be otherwise verified, and where the complainant refuses to participate and the allegation cannot be verified.	Accept	We also think that an explicit reference enabling the regulatory bodies not to proceed with a case that is about matters which could never impair a registrant's fitness to practise is required.
60	The regulators should be required to refer allegations concerning convictions resulting in custodial sentences directly to a fitness to practise panel and have powers to specify in rules any other categories of cases that must be referred directly.	Accept in part	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.
61	Following a decision to proceed with an investigation or make a direct referral to a fitness to practise panel, the regulators should be required to notify the registrant, the complainant, the Government, and any employer. The regulators should have powers to notify any other person where it is in the public interest to do so. The regulators would be required to make rules about notification requirements.	Accept in part	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements. We do not think it is appropriate for independent statutory bodies to be required to notify the four UK health departments of the decision to take forward an investigation at this (or any other) stage of the fitness to practise procedures nor is it a proportionate use of resources.

Law Commissions' recommendation		*Government view*	*Remarks*
62	The regulators should be required to notify the registrant and the complainant once a decision has been made to close a case following initial consideration, except where this is not in the public interest.	Accept in part	We do not think that there should be a requirement on the regulatory bodies to notify the registrant of a referral which they have decided not to take forward at the preliminary consideration stage unless there is a public interest in doing so. Being required to notify the registrant may have adverse consequences for the relationship between the person making the referral (who may still be a patient or client of the registrant) and the registrant, which would not be justified if no further action was being taken.
63	A regulatory body must remove automatically any registrant who has been convicted of murder, trafficking people for exploitation, blackmail (where a custodial sentence is imposed), rape and sexual assault (where a custodial sentence is imposed), and certain offences against children. There should be a right to make representations to the regulator and a right to appeal to the higher courts on the factual basis of an error in law or finding of fact.	Accept	We agree that registrants convicted of certain serious criminal offences should be automatically removed from the register and will need to consider what should be included in the list of serious criminal offences.
64	The regulators should be required to make rules specifying their investigation process. The regulators would have discretion over the content of the rules, except that members of the regulatory body and fitness to practise panellists would be prohibited from the task of investigation.	Accept in part	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.
65	The regulators should be given a power to require the disclosure of relevant information by any person (including the registrant) in fitness to practise proceedings. However, a person cannot be required to supply any information or documents which are prohibited by or under any enactment. The regulators should have powers to seek an order for disclosure from the High Court in England and Wales, the Court of Session in Scotland or the High Court in Northern Ireland.	Accept	The Government accepts this recommendation in full.
66	The regulators must refer a case to a fitness to practise panel if there is a realistic prospect that the panel will find that the professional's fitness to practise is impaired and it is in the public interest to refer to a panel.	Accept	We agree subject to our response to recommendation 67.

Law Commissions' recommendation		*Government view*	*Remarks*
67	Following the conclusion of an investigation and where the case is not being referred to a fitness to practise panel, the regulators should have powers to: (1) take no further action; (2) give advice on any matter related to the allegation to the registrant and to any other person or body involved in the investigation, in respect of any matter related to the investigation; (3) give a warning to the registrant regarding their future conduct or performance; (4) agree with the registrant that they will comply with such undertakings as the regulatory body considers appropriate; or (5) grant a registrant's application for voluntary removal. The Government's regulation-making powers should include the ability to add new powers and remove any powers from this list.	Accept in part	We agree with the recommendation and would want to make it clear that the options of closure with or without advice or issuing a warning are only available where the realistic prospect test is not met. Conversely we would want to make it clear that undertakings may only be agreed where the realistic prospect test is met, the registrant admits impairment and the public interest will be satisfied by disposal by such means, and there is not a realistic prospect of a panel imposing a suspension or removal order. We believe that the terminology should reflect that removal in this manner is a form of regulatory action rather than simply the registrant leaving the register of their own accord and will want to explore alternatives to the term 'voluntary removal'. We also do not agree that there should be a specific provision enabling the regulatory bodies to provide advice to a third party involved in the investigation. If a regulatory body felt action was required against another registrant, we would expect this to be dealt with as a separate fitness to practise allegation rather than incidental to another case. If the matter were a broader issue than a professional's individual fitness to practise we would want any future Government Bill to ensure that this information is suitably passed on to the appropriate organisation.
68	The Professional Standards Authority's power to refer fitness to practise decisions to the higher courts should be extended to include consensual disposals.	Accept in part	We agree that undertakings should be subject to the PSA's power of reference but do not see any value in extending the power to voluntary removal (see our comments on terminology in recommendation 67) because under any future Government Bill we would ensure that such removal achieves the maximum public protection in any event. We will want to consider further the scope of this referral power and whether it relates to the decision to agree undertakings itself and/or whether the undertakings which have been agreed are sufficient to protect the public.

Law Commissions' recommendation		*Government view*	*Remarks*
69	The Government's regulation-making powers should include the power to introduce mediation for one or more of the regulators.	Do not accept	We share the Law Commissions' analysis of the appropriateness of mediation in the fitness to practise context. It is not clear how mediation sits with the objective of the fitness to practise procedures to protect the public, uphold proper standards of conduct and behaviour and maintain confidence in the relevant profession. We also agree with the Law Commissions that mediation is likely to only be of utility where a referral has been made that does not amount to an allegation of impaired fitness to practise, as otherwise the regulatory body should be obliged to pursue regulatory action. Because of these reasons, the Law Commissions have proposed that any mediation scheme should be controlled by a Government regulation making power. However we do not think that such a power is required as we do not consider that mediation should have any statutory footing within the context of the fitness to practise procedures.
70	The regulators should have powers to review decisions: (1) not to refer an allegation for an investigation following initial consideration; (2) not to refer a case to a fitness to practise panel and to take no further action; and (3) to dispose of a case following investigation by giving advice, issuing a warning, agreeing undertakings, granting voluntary erasure, or referring to mediation where applicable. A regulatory body should have power to undertake a review on its own initiative or on the application of the registrant, the maker of the allegation, the Professional Standards Authority or any other person who, in the opinion of the regulator, has an interest in the decision. A review must take place if the regulatory body considers that the decision may be materially flawed or that there is new information which may have led to a different decision. A review cannot take place if more than two years have elapsed since the decision was made, unless a review is necessary in the public interest. The regulator may, as a result of the review, substitute a new decision, refer the allegation for reconsideration or decide that the original decision should stand.	Accept	We agree with the recommendation in principle but want to ensure that any review mechanism is not unduly onerous (particularly at the preliminary consideration stage). We also wish to include a public interest criterion that must be satisfied both when determining whether to undertake a review, and then during the review process itself. We also wish to ensure that powers of review will apply to any other decisions where this is warranted and believe that any explicit power to review should include a decision to cancel a referral to a fitness to practise panel hearing.

Law Commissions' recommendation		*Government view*	*Remarks*
71	A regulator should have the power to cancel a referral to a fitness to practise or an interim orders panel, if it no longer considers that there is a realistic prospect of a finding of impairment or it considers that it is no longer appropriate for the registered professional to be subject to fitness to practise proceedings.	Agree	We agree subject to the power being subject to the provisions for review of investigation stage decisions. We also think that regulatory bodies should be able to cancel referrals to interim orders panels where an interim order is no longer considered necessary. We are also considering whether a public interest test should be involved in taking this decision. We would want to enable the regulatory bodies to cancel a referral if a consensual disposal outcome had been agreed after a case had been referred to a fitness to practise panel although we need to give further consideration to the consent order process and at what point it would inappropriate to cancel the referral and proceed on that basis instead.
72	The Professional Standards Authority should oversee the regulators' progress towards introducing greater separation between investigation and adjudication, and provide best practice advice.	Accept in part	Achieving separation between investigation and adjudication requires legislative change and we agree with the Law Commissions' proposed Government regulation powers which will enable the establishment of a separate appointment process for panellists and further legal protections (such as those which are in the process of being introduced for the GMC). We agree that the PSA should, via their annual performance review, continue to oversee the regulatory bodies' fitness to practise procedures including that the processes are transparent, fair, proportionate and focused on public protection and we see the separation between the investigation and adjudication functions as an important element of this. But we do not propose to give them a new specific power in relation to overseeing such separation.
73	The Government should have regulation-making powers to introduce a separate adjudication system for any of the regulators, based on the Medical Practitioners Tribunal Service.	Accept in part	We agree with this recommendation in the main, however the Law Commissions propose that where greater separation has been achieved, any guidance for fitness to practise panellists should be provided by the body that has been established to undertake the adjudication function. We think that more discretion should be possible so that the regulatory body's council could continue to issue guidance itself if desired.

Law Commissions' recommendation		*Government view*	*Remarks*
74	All fitness to practise hearings should be conducted by a panel of at least three members (including at least one lay member). Members of the regulatory bodies (including those from other regulators), members of the Professional Standards Authority's board, and investigators should be prohibited from membership of fitness to practise panels. The regulators would have rule-making powers on other aspects of panels, such as the appointment of advisers and legal chairs.	Accept	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements**.** We agree that the membership of a fitness to practise panel should consist of at least one lay and one registrant member. We would also want to prohibit a registrant majority. This would mean that where a panel was constituted of three members, two would be lay. We may also want to expand the list of persons prohibited from sitting on a fitness to practise panel to secure, as far as possible, the separation between the investigation and adjudication of fitness to practise cases.
75	The regulators should be required to establish a person or body responsible for appointments, appraisal and continued professional development of fitness to practise and interim order panellists. The Professional Standards Authority should produce good practice guidance and set standards for the appointments processes used by the regulators.	Accept in part	We agree that in the interests of greater separation, the appointment by a body or person separate from the council to manage the appointment of persons to serve as panellists at hearings is desirable. However we believe significant further work needs to be done to give effect to this and that greater flexibility is required regarding the management of the pool of panellists once appointed. The intention would be to enable those regulatory bodies with greater separation of function, such as the Medical Practitioners Tribunal Service model (currently being introduced for the GMC), to delegate such responsibility to that committee/body while enabling those bodies that have not yet achieved that separation to put the appointment functions in the hands of the appointments person or body but to continue to provide training and guidance for their panellists (without interfering in decision-making in individual cases) as well as constitute individual panels. The PSA's annual performance review includes standards relating to the appointment, appraisal and training of fitness to practise panellists and we would expect the PSA to continue in this role.

Law Commissions' recommendation		*Government view*	*Remarks*
76	The regulators should have powers to make rules about the circumstances in which hearings are not required and the decisions can be made on the papers. Such decisions could only be made where both parties consent and the decision-maker agrees that it is not necessary to hold a hearing.	Accept in part	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements. While we agree with the principle that there are circumstances where decisions can be reached by a fitness to practise panel considering a case on the papers, we would want these to be set out on the face of any legislation. We agree that one of the circumstances where a hearing might be held on the papers would include where both parties have consented to the outcome and the decision maker agrees it is not necessary to hold a hearing. We are also considering whether there should be scope for appropriate cases to be considered on the papers where the practitioner does not request a hearing. We consider that determinations of cases on the papers should only be made where it is fair to do so and would ensure relevant safeguards.
77	The regulators should have powers to establish rules for pre-hearing case management.	Accept in part	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.
78	Case managers should be required to act independently of the parties and given powers to give directions to secure the just, expeditious and effective running of proceedings before fitness to practise panels. Rules may provide that a panel can draw appropriate inferences from the failure by a party to comply with directions issued by a case manager.	Accept	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.
79	The regulators must comply with an interested party's request that a fitness to practise hearing takes place in the UK country in which the registrant resides or where the incident took place, unless the regulatory body considers that there are reasons that justify refusing the request.	Do not accept	We do not think that this is appropriate given the potential for disputes about the best venue, operational difficulties and costs that may arise. For instance, if both the registrant and the maker of the allegation made competing requests, this could frustrate the progress of cases. As a result we would not take forward this recommendation, but the regulatory bodies would retain their existing discretion as to where to hold hearings.
80	Fitness to practise panels should not admit evidence that would not be admissible in civil proceedings in the UK country where the hearing takes place, unless such evidence is relevant and it is fair to admit it.	Accept	The Government accepts this recommendation and will need to consider how best to achieve this in either the statute or in rules.

Law Commissions' recommendation		*Government view*	*Remarks*
81	The civil standard of proof should apply to all fitness to practise hearings.	Accept	The Government accepts this recommendation and will need to consider how best to achieve this in either the statute or in rules.
82	Fitness to practise hearings should be held in public, unless the particular circumstances of the case outweigh the public interest in holding the hearing in public. Interim order hearings and cases where the health of the registrant is under consideration should be held in private unless a registrant requests a public hearing, and where the panel considers that it is not against the public interest for the hearing to be held in public.	Accept	The Government accepts this recommendation and will need to consider how best to achieve this in either the statute or in rules.
83	Any person giving evidence before a fitness to practise panel (including the practitioner) should be entitled to special measures, if: (1) the person is under 18 (unless the person opts out and this would not diminish the quality of their evidence); (2) the quality of evidence given by the person is likely to be diminished as a result of physical disability, learning disability, mental health problems, an illness or health condition, or a dependency on drugs or alcohol, or fear or distress in connection with testifying; or (3) the proceedings relate to matters of a sexual nature and the person is an alleged victim. In deciding whether or not the quality of evidence is likely to be diminished, the panel must take into account the views of the person concerned. Panels should have powers to offer special measures to a person not entitled to them if this is in the public interest.	Accept	We agree in principle that special measures should be available for vulnerable witnesses and as set out in Chapter 1, will need to consider how best to achieve this either in the statute or in rules as well as suitable oversight arrangements.
84	The registrant should not be permitted to personally cross-examine the alleged victim in a case involving allegations of a sexual nature. There should be provision for a representative to be appointed for this purpose. The only exception should be if the witness gives written consent and the allegation does not amount to a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999.	Accept	The Government accepts this recommendation and will need to consider how best to achieve this in either the statute or in rules.

Law Commissions' recommendation		*Government view*	*Remarks*
85	Fitness to practise panels should have the general objective of dealing with cases fairly and justly (and meet the objectives set out in clause 3 of the draft Bill). The parties should be required to co-operate with the panel, and panels would be entitled to draw inferences where parties failed to comply with this duty.	Accept in part	We agree that fitness to practise panels should deal with cases fairly and justly and that they should have regard to the regulatory bodies' over-arching objective as set out in Chapter 2. The Government will need to consider how best to achieve this either in the statute or in rules. We would also want to make it clear, in line with the Tribunals, Courts and Enforcement Act 2007, that we would require any rules to be made in accordance with an overriding objective (in addition but taking precedence to the over-arching objective) to be fair and just. However we do not agree with the Law Commissions proposed definition as to what is fair and just and wish to consider the correct approach within the context of professional regulation and whether any extended definition is necessary. For instance, we do not agree that a panel should use any special expertise that an individual member might have in its decision-making as this may result in one panel member's view being given disproportionate weight. We will also wish to consider the proposal for a general duty of co-operation further as any duty would need to respect a person's right not to incriminate himself or herself, and also recognise that the proceedings are adversarial and that the parties must be entitled to present their cases as they wish to do so.
86	Consistency should be imposed on certain matters concerning due process and the powers of fitness to practise panels (such as the right to representation, witness summons and powers to join cases).	Accept	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.
87	The regulators should be required to make rules on the procedures to be followed in fitness to practise hearings.	Accept	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.

Law Commissions' recommendation		*Government view*	*Remarks*
88	The Government should be given a power to give guidance about the content of fitness to practise hearings rules, including in the form of model rules.	Do not accept	We agree with the principle that the fitness to practise procedures need to deliver consistent outcomes so that where public protection is at risk, the appropriate sanction is agreed or imposed. However we are not yet persuaded by the Law Commissions' recommendation that the Secretary of State should have a power to issue guidance, potentially including model rules, to the regulatory bodies to which the regulatory bodies must have regard. As set out in Chapter 1 the Government intends to consider further the safeguards and oversight arrangements around delegation of powers to the regulatory bodies and within this will need to consider the best approach to take in relation to the Law Commissions' proposals for rule-making powers concerning fitness to practise hearings.
89	All fitness to practise panels should have the same powers to impose sanctions or otherwise dispose of cases. The sanctions would be advice, warnings, conditions, suspension and removal from the register. All panels would be able to agree undertakings and voluntary removal, and issue immediate orders pending the outcome of any appeal to the higher courts. The Government would have regulation-making powers to amend the powers available to panels.	Accept in part	We agree that all fitness to practise panels should have the same powers to impose sanctions, but disagree with the range of the powers recommended. Advice and warnings should only be available where there is no finding of impairment. As noted above, we do not think this should extend to third parties (see recommendation 67). Warnings should not be available as a disposal option where a panel has determined that a registrant's fitness to practise is impaired as it raises questions regarding the status of a warning issued at the investigation stage or where a panel has found no impairment. As an alternative we propose to adopt a distinct sanction similar to that available to the NMC and HCPC of a 'caution order' in the event that a panel does find impairment but does not consider that conditions, a suspension or removal are appropriate sanctions. We will need to consider the terminology further. Generally we do not agree that panels should be able to agree consensual disposals on behalf of the regulatory bodies but rather that disposals by panels can be in the form of consent orders.

Law Commissions' recommendation		*Government view*	*Remarks*
90	The regulators should have powers to publish guidance for fitness to practise and interim order panels. The panels would be required to have regard to such guidance.	Accept in part	We believe that regulatory bodies should be able to issue advisory guidance to fitness to practise and interim orders panels to assist them with interpreting the application of the statute and reflecting developments in case law. We consider that this guidance should be advisory only and we do not think that there needs to be an explicit power to issue it, or a duty to have to regard to it. The duty to consult would apply to any such guidance and we would expect it be published.
91	Fitness to practise panels should be required to review conditions, suspensions and undertakings as directed in the original order or agreement, or if new evidence comes to light indicating that a hearing is desirable. The options available to a panel should be to confirm the order, extend or reduce the period of the order, revoke or vary any conditions or impose any other sanction or consensual disposal. In the case of undertakings, the panel should have the ability to change the agreement with the registrant in the same way.	Accept in part	We agree that panels should be required to review sanctions imposed by fitness to practise panels, and also consider that they should be required to do so before the expiry of any order rather than only as directed, unless the original order specifies that it does not need to be reviewed (for example in the case of a short suspension). Undertakings will not be subject to review by fitness to practise panels. In line with our response to recommendation 89, we do not agree that panels should be able to agree consensual disposals on behalf of the regulatory bodies but that they may agree to consent orders.
92	Fitness to practise panels must review an indefinite suspension order (health only cases) where the person concerned so requests, and at least 24 months have elapsed since the previous review. The options available to a panel would be to confirm the order, terminate the order or impose any other sanction (except removal) or consensual disposal.	Accept in part	In line with our response to recommendation 89, we do not agree that panels should be able to agree consensual disposals on behalf of the regulatory bodies but that they may agree to consent orders.
93	Practitioners should continue to have a right of appeal against certain decisions of a fitness to practise panel to the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.	Accept in part	We agree that practitioners should continue to have a right of appeal to the relevant court and are considering how the question of which jurisdiction the appeal should be heard in is determined and whether this should be dependent on where the substantive fitness to practise hearing took place or another criterion.
109	The Professional Standards Authority should have a power to refer to the higher courts certain fitness to practise decisions which fail to achieve sufficient protection of the public. This power should be exercised alongside a regulator's power to refer cases (in cases when the regulator has been granted such a right by virtue of establishing a sufficiently independent adjudication procedure). The Authority would be able to refer the case if the regulator decides not to.	Accept	We agree and would develop the Law Commissions' approach so that the grounds of the PSA's power to make a reference and any potential right of appeal for the regulatory bodies more closely matches the objectives.

Law Commissions' recommendation		*Government view*	*Remarks*
119	Interim orders should be made or reviewed by an interim orders or fitness to practise panel. Interim orders panels must consist of at least three members (including at least one lay member). Panellists should be appointed by the same body or person that is responsible for fitness to practise panel appointments. Members of an interim order panel will be prohibited from sitting on a fitness to practise panel in relation to the same case.	Accept	We agree with this recommendation however the prohibition against certain persons sitting on an interim orders panel similar to that discussed in relation to fitness to practise panels at recommendation 74 would also apply.
120	The test for an interim order should be that it is necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registrant.	Accept	The Government accepts this recommendation in full.
121	Interim orders should be imposed for up to 18 months and must be reviewed every six months (or sooner if the person makes a request in the first three months or if new evidence becomes available which justifies an earlier hearing).	Accept in part	We agree that interim orders must be reviewed every six months but do not think that enabling a registrant to request a review within the first three months is proportionate. Rather we would enable the registrant to request an early review only after three months have elapsed since the first review. We agree that a review should be possible at any time new evidence becomes available to justify an earlier hearing.
122	Applications to extend orders should continue to be decided by the higher courts.	Accept	We agree but intend to introduce greater flexibility to enable an Interim Orders Panel to extend an interim order up to a maximum 18 months (which is the existing maximum length of time an interim order can be imposed for) whereby a further extension should be decided by the higher courts.
123	Registrants should have a right of appeal against decisions of interim orders panels.	Accept	The Government accepts this recommendation and is considering how the question of which jurisdiction the appeal should be heard in is determined and whether this should be dependent on where the substantive fitness to practise hearing took place or another criterion.

6. The Role of the PSA

6.1 The role of the PSA is to: promote the interests of patients and other members of the public in the way that the regulatory bodies carry out their work; promote best practice in professional regulation; formulate principles relating to good self-regulation and encourage co-operation between the regulatory bodies, and between them and other bodies that exercise corresponding functions. It oversees the work of the nine UK health and social care regulatory bodies. As the Law Commissions note at paragraph 12.2 of their report, the PSA regards itself as *an oversight and audit body with the aim of improving professional regulation*.

6.2 The PSA fulfils this role by reviewing the systems, processes and outcomes of each regulatory body, sharing good practice and knowledge with them and advising the four UK Governments' health departments on issues relating to professional regulation. The PSA also has functions in relation to the accreditation of voluntary registers for unregulated health professionals, healthcare workers and, in England, social care workers. It also provides advice to the Privy Council on whether the process adopted by each regulatory body for appointments to their council has been open, fair and transparent.

6.3 The PSA does not have any managerial control over the regulatory bodies it oversees and the regulatory bodies are not accountable to the PSA.

6.4 The legal framework for the PSA is contained in the National Health Service Reform and Health Care Professions Act 2002. As discussed in Chapter 1, the Law Commissions' approach is to consolidate and simplify, with some amendments, the legislation for the regulatory bodies and the PSA. The Government agrees that the PSA should be included in any single statute that provides the framework for professional regulation.

6.5 Currently, the PSA is funded by the four UK health departments, but under the reforms introduced by the Health and Social Care Act 2012, the PSA will be financed mainly through a levy on the regulatory bodies that it oversees, giving it greater independence from Government. The appropriate legislative changes for this are intended to come into effect from April 2015.

6.6 The Law Commissions recommend there should be express provision to encourage joint working between regulatory bodies as a way of removing any doubt about their powers to collaborate with each other (recommendation 94). In recommendation 95, discussed in Chapter 2, the Law Commissions take this further by proposing a regulatory body should have powers to delegate any of its functions, other than the power to make rules, to another body. As an added impetus, the Law Commissions recommend the PSA should have a general function to promote co-operation between regulatory bodies by identifying opportunities and monitoring their progress towards this. The Government fully supports the view of the Law Commissions in this respect and will look to ensure a future Government Bill provides clarity around the powers available to regulatory bodies for joint working where this is appropriate, in line with our approach to joint working set out in Chapter 2.

6.7 In their report, the Law Commissions suggest that, because of their oversight role, the PSA is ideally placed to promote best practice between the regulatory bodies and that lessons learnt through this will drive efficiency improvements and consistency. Because of this, the Law Commissions recommend the PSA should have the added function of overseeing the economic and business performance of the regulatory bodies, to help improve their efficiency (recommendation 102). The Government accepts the intention behind this recommendation, which will maintain a focus of regulatory bodies on cost-effectiveness, but we would not want to extend the remit of the PSA beyond its current role of oversight and review. We agree the PSA is very well placed to promote and encourage best practice in economic efficiency, but we do not see it having a role in any operational decisions about how a regulatory body manages its finances.

6.8 Although it has not yet been necessary to bring them into force, the PSA has powers, where it considers it desirable for public protection, to direct regulatory bodies to make statutory rules. The Law Commissions see this power as a valuable tool that, when added to their new role to oversee regulatory bodies' rule-making processes, allows the PSA to intervene directly with a regulatory body where necessary (recommendation 103). The Law Commissions feel this provision for direct action by the PSA will be important under their proposed new framework that would give regulatory bodies greater autonomy in rule-making. However, as set out in Chapter 1, the Government intends to consider further the balance between primary legislation and rules, regulations and accompanying safeguards and oversight arrangements, and within this it will need to consider the PSA's role further.

6.9 The Government can currently request the PSA to provide advice on, investigate or report on any matters related to any of its functions. The Law Commissions agree this should continue under a new framework but add that the PSA needs additional powers to require relevant bodies to provide any information it feels is necessary when it is undertaking an investigation (recommendation 104). The Government agrees there is a continuing need for this function and that the PSA is ideally placed to fulfil the role and we will ensure the PSA has the appropriate powers to obtain all necessary information in a future Government Bill. The Law Commissions also recommend Government regulation-making powers should allow the extension of the remit of the PSA to include giving advice on social care matters to the devolved administrations and overseeing the Care Councils in Scotland, Wales and Northern Ireland (recommendation 105). The Government does not consider that such a bespoke power is required. The intention is that a section 60 order would be used to allow the PSA to provide these functions for the devolved administrations if, and when, required (or replacement powers – see Chapter 1).

6.10 The PSA already performs an important role within the regulatory system and the proposed new framework will, in a number of areas, increase its responsibilities. The Law Commissions have highlighted the need to ensure the PSA is adequately resourced to fulfil this expanded role (recommendation 106). The Government is putting in place legislation that will allow the PSA to be financially independent through a levy on regulatory bodies that is calculated to take account of the differing resources needed for it to fulfil its functions in relation to each regulatory body. The PSA will be

able to continue to raise funds through commissions from bodies other than the regulatory bodies, such as the four UK administrations and overseas Governments.

6.11 The board of the PSA is made up of a combination of appointments by the Privy Council and each of the administrations in Scotland, Wales and Northern Ireland. The process for nominating candidates for appointment is performed by the PSA following the best practice standards it promotes to the regulatory bodies. The Law Commissions proposed that the Privy Council role in the process is removed and the approval of appointments becomes the responsibility of Government. In line with our response set out in Chapter 1 to recommendation 8, the Government does not agree with the removal of the Privy Council role in this appointments process. We consider that the PSA board should continue to consist of a chair who is appointed by the Privy Council. Of the six non-executive members, three should be appointed by the Privy Council and one each by the Scottish Ministers, Welsh Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland.

6.12 The Law Commissions' recommendation 108 relates to complaints. It states that the Government should have the power to make regulations to enable the PSA to investigate complaints about the way in which a regulatory body has exercised its functions. The Law Commissions feel this could be an important means of holding regulatory bodies to account. The Government agrees with this in principle and we intend to make similar provision in a future Government Bill.

Law Commissions' recommendation		*Government view*	*Remarks*
102	The Professional Standards Authority's general functions should be extended to include promoting economic efficiency and cost effectiveness by the regulators.	Accept in part	We agree the PSA is very well placed to promote and encourage best practice in economic efficiency, but we do not see them having a role in any operational decisions about how a regulatory body manages its finances.
103	The draft Bill should consolidate and implement the Professional Standards Authority's power to direct a regulator to make rules to achieve an effect specified in the direction.	Accept in part	In line with our response to recommendation 3, the Government intends to consider further the balance between primary legislation and rules, and accompanying safeguards and oversight arrangements, and within this it will need to consider the PSA's role further.
104	The Professional Standards Authority should be required to provide advice or undertake an investigation on any matters relevant to its functions when requested to by the Government. When undertaking an investigation the Authority should have a power to require information.	Accept	The Government agrees there is a continuing need for this function and that the PSA is ideally placed to fulfil the role and we will ensure the PSA has the necessary powers to obtain all necessary information in a future Government Bill.

Law Commissions' recommendation		*Government view*	*Remarks*
105	The Government regulation-making powers should include the ability to extend the remit of the Professional Standards Authority to include giving advice on social care matters to the devolved administrations and overseeing the Care Councils in Scotland, Wales and Northern Ireland. This would be subject to the approval of the relevant devolved administrations.	Accept in principle	The current agreement with the devolved administrations is that a section 60 order will be used to allow the PSA to provide these functions for the devolved administrations if, and when, required (or replacement powers – see Chapter 1).
106	The Government must ensure that sufficient resources are available to fund the Professional Standards Authority's new role.	Accept	The Government is putting in place legislation that will allow the PSA to be financially independent through a levy on regulatory bodies and through commissions from bodies other than the regulatory bodies.
107	The Government should have powers to make appointments to the Professional Standards Authority's board. The administration of appointments would be undertaken by the Professional Standards Authority in accordance with its guidelines and standards.	Do not accept	The Government does not agree with the removal of the Privy Council role in this appointments process. We feel the PSA board should continue to consist of a chair who is appointed by the Privy Council. Of the six non-executive members, three should be appointed by the Privy Council and one each by the administrations in Scotland, Wales and Northern Ireland.
108	The Government should have the power to make regulations to enable the Professional Standards Authority to investigate complaints about the ways in which a regulator has exercised its functions.	Accept	The Government agrees with this in principle and will make provision for similar powers in a future Government Bill.

Appendix - Full Table of Responses

Law Commissions' recommendation		*Government View*	*Remarks*
1	There should be a single statute which provides the framework for all the regulatory bodies and the Professional Standards Authority.	Accept	The Government accepts this recommendation in full on the understanding that the Law Commissions' recommendation does not include the PSNI (see recommendation 6).
2	The new legal framework should give the regulators greater operational autonomy, impose greater consistency between the regulators in certain key areas where it is in the public interest to do so, such as in fitness to practise adjudication.	Accept in part	We accept the principles of this recommendation but in each case will wish to consider where the right balance between autonomy and consistency lies in accordance with the principles discussed in Chapter 1 and referred to in our remarks on recommendation 3.
3	The regulators should be given powers to make legal rules which are not subject to approval by Government or any Parliamentary procedure. The Professional Standards Authority should oversee the processes adopted by them to make and amend rules.	Accept in part	We accept the principle, as above, that regulatory bodies should have greater operational autonomy but the Government intends to undertake further work to determine the scope of rule-making powers and where these should lie, to fully assess the level of risk associated with delegating these powers and the appropriate safeguarding mechanisms or oversight arrangements, considering the principles set out in paragraphs 1.11 and 1.12.
4	The draft Bill should not interfere with the legislative competence of the devolved assemblies.	Accept	We accept this recommendation in full. We have agreed with the Scottish Government, the Northern Ireland Government and the Welsh Government that a legislative consent motion would be needed for a future Government Bill which sought to enact the Law Commissions' recommendations.
5	The new legal framework should proceed on the basis of a Legislative Consent Motion in Northern Ireland and Scotland.	Accept	As above.
6	The Pharmaceutical Society of Northern Ireland should not be incorporated into the new legislative scheme unless its representational role is removed. The Department of Health, Social Services and Public Safety for Northern Ireland and the UK Government should consider removing the representational role of the Pharmaceutical Society of Northern Ireland and incorporating the Society into the new scheme, or merging it with the General Pharmaceutical Council.	Accept	The Department of Health and the Department of Health, Social Services and Public Safety Northern Ireland agree that the PSNI should not be incorporated into the new legislative scheme unless its representational role is removed. The Northern Ireland Minister for Health has agreed that departmental officials should begin preparatory work to explore options for the future arrangements for the regulation of the Pharmacy profession in Northern Ireland. This will include consideration of the existing Professional Leadership role of the Society.

Law Commissions' recommendation		*Government View*	*Remarks*
7	The order-making power under section 60 of the Health Act 1999 should not be capable of modifying the draft Bill. It should be retained only for the purposes of the Pharmaceutical Society of Northern Ireland and the Medicines Act 1968.	Accept in part	The Law Commissions propose replacing section 60 of the Health Act 1999 with a clause in their draft Bill containing similar powers except so far as it applies to the PSNI and the Medicines Act 1968. For any future Government Bill we would wish to give further consideration as to whether this is the best approach or whether to retain section 60 of the Health Act 1999 and ensure its powers are equally sufficient for future purposes. However, in any event, we agree that section 60 of the Health Act 1999 should be retained for the purposes of the PSNI and the application of the Medicines Act 1968 in Northern Ireland. This is in line with our response to recommendation 6.
8	The formal role of the Privy Council in relation to health and social care professionals regulation should be removed entirely.	Accept in part	It is the Government's view that the Privy Council should retain its powers. The exception is the case of approval of regulatory bodies' rules, which will be subject to the outcome of the Government's further consideration mentioned at recommendation 3. This position on the role of Privy Council is given further consideration under recommendations 9, 10, 16 and 19.
9	The Government should be given regulation-making powers on matters currently within the scope of section 60 of the Health Act 1999 and direct Privy Council order-making powers. The procedure for such regulations would reflect existing arrangements under section 60, including a separate procedure in Scotland on devolved matters where appropriate.	Do not accept	We do not agree that regulation-making powers currently within the scope of section 60 of the Health Act 1999, or direct Privy Council order-making powers (e.g. regulatory body and PSA constitution orders) should be given to the Secretary of State as it is the Government's position that these powers should remain with the Privy Council.
10	The Government should be given powers to notify and then give directions to a regulator, or the Professional Standards Authority, if it has failed or is likely to fail to perform any of its statutory functions. If the body fails to comply with any direction given, the Government should be able to give effect to the direction itself.	Accept in part	The Government's policy is that any default powers should be exercised by the Privy Council.
11	Parliament should consider establishing a specialist Joint Select Committee on health and social care professionals regulation. Otherwise, the Health Committee should consider holding annual accountability hearings with the regulators, co-ordinated with the Professional Standards Authority's performance reviews. The Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly should also consider introducing similar arrangements.	N/A	This recommendation is addressed to the UK Parliament, the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. It will be brought to the attention of each of these respective legislatures and it is for them to consider how to respond.

Law Commissions' recommendation		*Government View*	*Remarks*
12	The regulators' annual reports, strategic plans and accounts should be laid in the UK Parliament, Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly.	Accept in part	We do not agree that it is necessary to change the current position as to the Parliaments in which regulatory bodies are required to lay reports etc. These should reflect devolution arrangements.
13	The main objective of each regulator and the Professional Standards Authority should be to protect, promote and maintain the health, safety and well-being of the public. The regulators and the Authority also have the following general objectives: to promote and maintain public confidence in the profession and to promote and maintain proper standards and conduct for individual registrants.	Accept in part	We accept the principle of the Law Commissions' recommendation but propose that there should be an over-arching objective of public protection, the pursuit of which involves the pursuit of objectives in relation to protecting, promoting and maintaining the health, safety and well-being of the public, promoting and maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct.
14	The regulatory bodies should be required to ensure that, as far as possible, members concentrate on strategic or policy matters rather than operational delivery.	Accept	The Government agrees that councils should be strategic and that any new legislative framework should point councils in a strategic direction.
15	The regulatory bodies should have powers to delegate their functions, apart from making rules, to any staff members or internal bodies.	Accept	The Government agrees that regulatory bodies should have powers to delegate their functions, other than rule making, internally to staff members or other internal bodies. However, delegation should not displace or affect in any way the accountability or responsibility of the delegator.
16	The Government should have a regulation-making power to make provision for the constitution of any regulatory body.	Accept in part	The Government agrees that matters of constitution should not be left to each individual regulatory body. However, it does not agree that the responsibility for provision regarding a regulatory body's constitution should be given to Government through regulation-making powers. Our position, consistent with recommendation 9, is that these powers should be retained by Privy Council.
17	Registrant members should not form a majority on any regulatory body.	Accept	The Government agrees registrant members should not form a majority on any regulatory body.
18	The Government should consider taking steps to ensure that members of the regulatory bodies cannot be removed from office on the basis of ill health alone.	Accept	The Government accepts that members of a regulatory body should not be able to be removed from office on the basis of ill health in circumstances where this would be unlawfully discriminatory. This is a very important issue that we wish to explore further through discussions with the regulatory bodies and others and we will give further consideration to how to address this principle.

Law Commissions' recommendation		*Government View*	*Remarks*
19	The Government should have powers to appoint members of the regulatory bodies following a selection process run by the regulator concerned and confirmation by the Professional Standards Authority that the process adopted has been open, fair and transparent.	Accept in part	The Government agrees that the existing appointment system should be replicated but we do not agree that the Privy Council should be replaced by the Government. It is the Government's position that the Privy Council should retain this role.
20	The Government should consider inviting the Health Committee to oversee the appointment of chairs of the regulatory bodies.	Do not accept	We do not consider that involving the Health Select Committee (HSC) in the appointment of Chairs will add any value to the current process, which is shown to be working well. Involving the HSC would add complexity to the appointments processes and would add significantly to the time taken to appoint a Chair. In addition, HSC involvement could potentially give rise to a conflict of interest since regulatory bodies are accountable to Parliament.
21	A registrant member of a regulatory body should be defined as someone who is or has been registered with any of the professionals' regulatory bodies, including predecessor organisations, or is eligible to be registered. A lay member should mean a member who is not a registrant when appointed.	Accept	We agree with the definitions of registrant and lay members for the purposes of the constitution of a regulatory body.
22	Concurrent membership of the regulatory bodies should be prohibited.	Accept	The Government agrees that concurrent membership should be prohibited as this undermines public confidence in professional regulation.
23	The Government should be required to review the provisions constituting the regulatory bodies and determine whether they conform to the requirements of the draft Bill, and introduce regulations containing any necessary changes.	Accept	The Government agrees with this recommendation in the context of a future Government Bill.
24	Each regulator should be required to keep a register for each profession it regulates. The Government should have regulation-making powers to alter the structure of the registers.	Accept	We agree that each regulatory body should be required to keep a register for each profession it regulates and that flexibility should be provided for in the form of a regulation-making power to enable amendments in secondary legislation to respond to changes to the system as may be required in the future by establishing or abolishing registers or parts of registers.
25	Each regulator should be required to appoint a registrar.	Accept	The role of the registrar in ensuring a clear line of accountability for the contents of a professional register is key to maintaining public confidence in professional regulation and so we agree with this recommendation. However, we would anticipate that any future Government Bill dealing with professional regulation matters should include powers enabling the registrar to delegate his or her functions to a member of staff, of the regulatory body or another officer for example an assistant registrar.

Law Commissions' recommendation		*Government View*	*Remarks*
26	Separate parts of the General Medical Council's and Nursing and Midwifery Council's registers should be established for general practitioners and specialist medical practitioners, and for first and second level nurses.	Accept in principle	The Government accepts this recommendation but intends carry out further work in relation to the second level nurse and SCPHN parts of the NMC register.
27	The Government should have regulation-making powers to enable the introduction of compulsory student registration for any regulated profession.	Accept	Establishing a student register is only one of a number of regulatory tools available to regulate students. As structures surrounding the education and training of the different professions vary widely, student registration may or may not be required depending on the profession and what other regulatory tools may already be in place. We agree that we should retain the flexibility to introduce such a scheme, in any future Government Bill. Further detail about the recommendations related to education and training requirements can be found at recommendations 45 – 54 and Chapter 4 of this document.
28	The regulators' powers to keep voluntary registers should be removed. The Professional Standards Authority should retain its powers to set standards for and accredit voluntary registers kept by others.	Accept in part	The scheme of voluntary registers accredited by the PSA was implemented in 2013. The use of voluntary registers for healthcare professionals is therefore still relatively new. We agree that the PSA should continue to have the power to set the standards for and accredit voluntary registers kept by others. We will review the powers of the regulatory bodies to hold voluntary registers when there is greater experience of their use.
29	All registrants should intend to practise the profession in order to be registered.	Do not accept	We are not persuaded that registration should be directly linked to an intention to practise in the profession in the UK in the sense of providing treatment or care directly to patients or clients. We would intend maintenance of registration to be linked to meeting the requirements around demonstrating ongoing fitness to practise within the scope of a registrant's practice.

Law Commissions' recommendation		*Government View*	*Remarks*
30	The Government should have regulation-making powers to require a regulator to keep a supplementary register of professionals who do not intend to practise.	Do not accept	In line with our response to recommendation 29, we agree with the principle that healthcare professionals should be able to be registered with a regulatory body even in some circumstances where they are not practising in the UK in the sense of providing treatment or care directly to a patient or a client. However we are not persuaded that the creation of supplementary registers would be in the interests of public protection, indeed such registers could have the potential to create public confusion. It is also our opinion the creation of a non-practising register for those who do not intend to practise is contrary to one of the main aims of the Bill, which is to provide for a single register, or parts of a register where specified, for each regulated profession.
31	The Government should have regulation-making powers to establish barring schemes, to be run by the regulators. Such a scheme could be introduced in respect of a prescribed health or social care profession, a specified field of activity, a role involving supervision or management, and prescribed title.	Accept	The Government agrees that prohibition orders may have utility in the future in regards to specific areas of practice which are currently unregulated or in emerging areas of risk.
32	The regulators should be able to register professionals on a full, conditional (in fitness to practise cases) or temporary basis. The Government should have regulation-making powers to introduce other forms of registration (including provisional registration).	Accept in part	In line with our response to recommendation 24, we agree with the Law Commissions' recommendation that the Government should have the flexibility to alter the scope of regulation by introducing (or altering or potentially removing) other forms of registration as may be required (for example provisional registration). However we are not persuaded that the Government should retain the ability to introduce a general conditional registration regime for a profession outside of the fitness to practise context. In the interests of clarity we intend that conditional registration should refer only to conditions imposed on registration as part of the fitness to practise procedures.

Law Commissions' recommendation		*Government View*	*Remarks*
33	The regulators should have powers to register practitioners on a temporary basis or annotate their registers if the Secretary of State advises that an emergency has occurred.	Accept	With the aim of ensuring adequate public protection and sufficient care during an emergency, we agree that the regulatory bodies should be provided with a power to register practitioners on a temporary basis or annotate their registers in the case of an emergency. This will ensure appropriate numbers of individuals who are fit, proper and suitably experienced or qualified to undertake activities that may be required as part of the regulated profession in the particular situation and provide appropriate individuals with the ability to order medication.
34	In order to be registered an applicant must be appropriately qualified, be fit to practise, have adequate indemnity or insurance arrangements (except social workers) and pay any prescribed fee. The regulators would have rule-making powers to specify the precise detail under each of these headings.	Accept	We agree with the Law Commissions' proposed conditions for registration and support the aim of bringing consistency across the regulatory bodies in this area, given the disparate registration requirements within the current legislative framework. We will consider the appropriate legislative provision to achieve this in any future framework.
35	The Government should have regulation-making powers to make provision for the treatment of exempt applicants (under the EU Qualifications Directive) for registration in a professionals register in relation to proficiency in English.	Accept in part	We support the principle of allowing the regulatory bodies to carry out language controls on exempt applicants (under the EU Directive on the Mutual Recognition of Professional Qualifications) and we are looking at how best to implement this. We also consider that this is a priority item in terms of patient safety and public protection and are in the process of enabling the GDC, NMC, GPhC and PSNI (subject to those bodies making any necessary supporting rules) to carry out language controls via amendments to their existing governing legislation (similar to that already in place for the GMC). We also intend to introduce language controls for the HCPC, the GOC, the GCC and the GOsC and are considering how best to achieve this. We will need to consider how best to transpose any changes that we are implementing to the current legislation in any future regulatory framework.
36	Each registrar should be required to deal expeditiously with applications for registration or renewal.	Accept	We agree that the regulatory bodies should be required to deal with registration applications expeditiously. The PSA should continue to monitor the performance of the regulatory bodies in this regard as part of its annual performance review.

Law Commissions' recommendation		*Government View*	*Remarks*
37	The regulators should be required to publish their registers and have powers to keep their registers up to date. There should be a duty to remove practitioners who have died, remove entries where the person is no longer entitled to be registered and restore entries in certain cases.	Accept	We agree with the Law Commissions' proposal that registers should be published but that there should be no prescription about the format of how they are published. The underlying principle should be ensuring that any register is accessible. We also agree that practitioners who have died should be erased from the register, entries should be removed where the person is no longer entitled to be registered and entries should be restored where the registration conditions have been met.
38	Where a regulator has reasonable grounds for believing that an entry in the register has been fraudulently procured or incorrectly made it may remove that entry. A right of appeal should lie to a registration appeals panel and to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.	Accept	Where a fraudulently procured or incorrectly made entry or annotation to an entry has been made into a register or part of a register regarding a professional qualification, we agree that the registrar should have the power to remove such an entry or annotation. For example where an individual has made an application to be registered as a doctor and has submitted false documentation as proof of education and training or identity, that person would immediately be removed from the register on the basis that the individual should never have been on the register. However in instances of other types of registration, for example specialist registration, where the qualification would not be a requirement of full registration but would nevertheless be an entry on a specialist register or an annotation to the full register (see our response to recommendation 40) and had been procured fraudulently, we would seek to enable not only the registrar to remove such an entry but also for the matter to be referred into the fitness to practise procedures to consider whether there are any elements of misconduct which may give rise to an allegation of impaired fitness to practise. Where necessary, an interim order would be available. We agree that any right of appeal for a person who has been removed from a register in these circumstances should lie with the relevant higher court. Other decisions to remove entries which do not have the effect of removal from a register would lie with a registration appeals panel. We will need to consider carefully how these proceedings would operate if a referral had also been made to the fitness to practise procedures.

Law Commissions' recommendation		*Government View*	*Remarks*
39	Each entry in the public register must contain the registrant's name, reference number, registration status, date of registration and primary qualification, and (where appropriate) the part of the register in which the person has been entered.	Accept	The registers are a key tool in ensuring public protection by providing to employers and service users a definitive source of information as to whether a person is suitably qualified to provide healthcare services. We agree with the Law Commissions that, at a minimum, an entry in the register must include the registrant's name, reference number, registration status, date of registration and primary qualification, and (where appropriate) the part of the register in which the person has been entered.
40	The regulators should have powers to include additional qualifications or specialisms in the public register but only if there is a risk to the public if the register is not so annotated and such annotation is a proportionate and cost-effective response to the risks posed.	Accept	We agree that the regulatory bodies should have the power to include additional qualifications or specialism in the public register where this would support public protection, we would wish to enable a sufficiently wide reading of public protection to include not only protecting, promoting and maintaining the health, safety and well-being of the public but also promoting and maintaining public confidence in the profession and promoting and maintaining proper professional conduct and standards. We endorse the principles identified by the Law Commissions that annotated information should be proportionate and cost-effective in the pursuit of these objectives. It should not be seen as an opportunity for registrants to advertise their services.
41	Public registers should indicate all current sanctions imposed on a registrant, cases where impairment has been found but no sanctions imposed, current interim orders and consensual disposals. The public register should include details of all previous sanctions (except warnings which are over five years old).	Accept in part	We agree that public registers should show current sanctions but are considering the appropriate maximum length of time that each sanction should be annotated to an entry into the register and the extent to which previous sanctions should be shown.
42	The regulators should be required to maintain lists of persons whose entry has been removed following a finding of impairment or voluntary removal.	Accept	We agree on the basis that the reference to voluntary removal is read in the light of our response to recommendation 67, namely that it should be limited to removals agreed between the regulatory body and the person outside of the fitness to practise proceedings.
43	The regulators should be required to publish all fitness to practise decisions.	Accept	We agree that substantive fitness to practise decisions should be published where a sanction has been imposed, or in the case of voluntary removal (in the fitness to practise context), agreed undertakings and warnings.

Law Commissions' recommendation		*Government View*	*Remarks*
44	The regulators should be required to establish registration appeals panels and provide a further right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland.	Accept	We agree with this recommendation as well as the general principle that the procedures in relation to the constitution of registration appeals panels and their proceedings should reflect the approaches taken in relation to fitness to practise and interim orders panels where appropriate.
45	All applications for restoration to the register in cases where a registrant's entry has been removed following a finding of impairment must be considered by a fitness to practise panel. In other cases, regulatory bodies should be required to establish in rules a process for considering applications for restoration.	Accept in part	We agree with the main proposal contained in this recommendation although we would want to ensure that any removal from the register during the fitness to practise procedure which might not involve a fitness to practise panel making a finding of impairment (but rather an admission on the part of the registrant) should also be subject to a restoration hearing before a fitness to practise panel. However as set out in Chapter 1 the Government intends to consider further the safeguards and oversight arrangements around delegation of powers to the regulatory bodies and within this will need to consider the proposal for the use of rules under this recommendation
46	The regulators should be required to set the standards for education, training and experience, and have broad powers to approve matters such as institutions, examinations, tests, courses, programmes, environments, posts and individuals.	Accept in part	We broadly agree that the regulatory bodies should be required to set standards for education, training and experience and we will continue discussions with stakeholders to determine the appropriate scope of the recommended powers and the co-operation and consultation duties between the organisations and individuals involved such as Health Education England (HEE), education institutions, professionals and the organisations that represent these groups. We want to assess the impact of the recommendations on small and medium sized enterprises and the third sector e.g. setting standards for practice placements, and any financial impacts on the health and care system as a result of fee charges. We will work with the regulatory bodies, HEE and other organisations involved, to look further into the processes that may benefit from consultation and/or seeking advice from relevant organisations. In terms of greater autonomy for regulatory bodies to be able determine their own approaches on how they undertake their functions of regulating education and training, further work will be required to identify and assess what tasks may need to be mandatory.

Law Commissions' recommendation		*Government View*	*Remarks*
47	The regulators should have powers to refuse, withdraw or suspend approval of education providers, attach conditions to any approvals and issue warnings.	Accept	We agree more flexible powers are required, allowing regulatory bodies to respond earlier. A wider range of regulatory sanctions would enable a more proportionate regulatory response to problems.
48	The regulators should be given a power to appoint one or more persons to inspect an education or training provider and report on any relevant matter. There should be a general power for the regulators to require information from the education or training provider.	Accept	The Government accepts this recommendation in full. We agree more flexible powers are required, allowing regulatory bodies to respond more swiftly and with a wider range of options.
49	The regulators should be required to publish a list of approved institutions, examinations, tests, courses, programmes, environments, posts and individuals. The regulators should also be required to publish a list of approvals that have expired or have been withdrawn.	Accept	This is in line with our views on greater transparency between organisations and with the public, and in this case for students considering or attending courses/institutions.
50	The regulators should have powers to require information from an education or training provider about student fitness to practise sanctions.	Accept	The Government accepts this recommendation in full. We recognise that not all regulatory bodies will use such powers, but the option could be available if required.
51	The regulators should have powers to approve national assessments of students.	Accept	The Government accepts this recommendation in full. We recognise that not all regulatory bodies will use such powers, but some have confirmed that it could be a future consideration.
52	The regulators should be required to set the standards for the profession(s) they regulate. Where a registrant fails to comply with the standards, that failure may be taken into account in fitness to practise proceedings. The regulators would have powers to give guidance on these standards as they see fit.	Accept in principle	We agree that regulatory bodies should be required to set the standards for the profession(s) they regulate, and that they should have discretion over how this is done. We agree that a failure to comply with standards may be taken account of in fitness to practise proceedings.
53	The regulators should be required to set standards of continuing professional development, and should have the power to make rules setting out the circumstances in which registrants will be regarded as having failed to comply and the consequences.	Accept	We agree that ensuring continuing standards of conduct and practice is an important aspect of professionals' regulation. Regulatory bodies should be required to set standards of continuing professional development and make associated rules.
54	The Government should have regulation-making powers to introduce or authorise systems of revalidation for any of the regulated professions.	Accept in principle	Our intention is that there should be an over-arching duty on regulatory bodies to seek assurance from registrants of their continued fitness to practise, and flexibility in the legislation to enable them to fulfil this role in a way that is appropriate in relation to the professions they regulate.

Law Commissions' recommendation		*Government View*	*Remarks*
55	A person's fitness to practise a regulated profession should be regarded as impaired by reason only of: (1) deficient professional performance; (2) disgraceful misconduct; (3) the inclusion of the person in a barred list; (4) a determination by a relevant body to the effect that the person's fitness to practise is impaired; (5) adverse physical or mental health; (6) insufficient knowledge of the English language; (7) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence; (8) the person having accepted or been dismissed with an admonition under section 302 of the Criminal Procedure (Scotland) Act 1995, been discharged under section 246(2) or (3) of that Act, accepted a conditional offer under section 302 of that Act, or accepted a compensation offer under section 302A of that Act; (9) the person having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992; or (10) the person having been bound over to keep the peace by a magistrates' court in England or Wales.	Accept in part	We agree with the Law Commissions that there is an established body of case law surrounding the existing terminology of 'misconduct' which appears to function well. However we are not persuaded to change this by introducing 'disgraceful misconduct'. We consider this will lead to arguments around the scope of such provision. We believe that retaining the current terminology avoids this risk. Additionally, although we agree that concerns arising from single clinical incidents may need to be captured by the grounds of impairment, we would want to consider how best to provide for this in any legislation. We also believe that the grounds listed at 8–10 could be dealt with as misconduct and do not consider it is necessary to specify them as separate grounds.
56	A regulator should have the power to initiate fitness to practise proceedings where an allegation suggesting impaired fitness to practise is made to the regulator or the regulator otherwise has reason to believe that a registrant's fitness to practise is impaired. There should be no set format for allegations.	Accept in part	We agree with the recommendation but do not want to create an expectation that the regulatory bodies must always accept allegations made orally. While it may be necessary for the regulatory bodies to deal with an oral allegation if an individual is otherwise unable to make a referral, we agree with the Law Commissions' analysis that, in the interests of efficiency, the regulatory bodies will also want to develop standard formats. We will need to consider carefully how to achieve this balance. There may be a number of reasons why a person is unable to use such formats or templates and we would expect the regulatory bodies to have systems in place to make reasonable adjustments to accommodate these.

Law Commissions' recommendation		*Government View*	*Remarks*
57	The regulators should be required to refer allegations for preliminary consideration in accordance with rules. The rules may make provision about the procedure for preliminary consideration. Members of regulatory bodies and fitness to practise panels should be prohibited from this task.	Accept in part	The Government accepts the needs for clear processes in this respect but, as set out in Chapter 1, we will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements. We agree with the principle that members of regulatory bodies and fitness to practise panels should be prohibited from undertaking the task of preliminary consideration and think that interim order panellists should also be explicitly prohibited.
58	An allegation should not proceed if it is received more than five years since the most recent events giving rise to the allegation, except where the allegation relates to certain convictions, determinations by other regulatory bodies, inclusion on a barred list or where the regulator considers that it is in the public interest for the case to proceed.	Accept	We also think it is necessary for decisions made under this 5-year public interest test to be subject to the power to review investigation stage decisions.
59	The regulators should not be able to refer for investigation any case that does not amount to an allegation, is vexatious, has been made anonymously and cannot be otherwise verified, and where the complainant refuses to participate and the allegation cannot be verified.	Accept	We also think that an explicit reference enabling the regulatory bodies not to proceed with a case that is about matters which could never impair a registrant's fitness to practise is required.
60	The regulators should be required to refer allegations concerning convictions resulting in custodial sentences directly to a fitness to practise panel and have powers to specify in rules any other categories of cases that must be referred directly.	Accept in part	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.
61	Following a decision to proceed with an investigation or make a direct referral to a fitness to practise panel, the regulators should be required to notify the registrant, the complainant, the Government, and any employer. The regulators should have powers to notify any other person where it is in the public interest to do so. The regulators would be required to make rules about notification requirements.	Accept in part	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements. We do not think it is appropriate for independent statutory bodies to be required to notify the four UK health departments of the decision to take forward an investigation at this (or any other) stage of the fitness to practise procedures nor is it a proportionate use of resources.

Law Commissions' recommendation		*Government View*	*Remarks*
62	The regulators should be required to notify the registrant and the complainant once a decision has been made to close a case following initial consideration, except where this is not in the public interest.	Accept in part	We do not think that there should be a requirement on the regulatory bodies to notify the registrant of a referral which they have decided not to take forward at the preliminary consideration stage unless there is a public interest in doing so. Being required to notify the registrant may have adverse consequences for the relationship between the person making the referral (who may still be a patient or client of the registrant) and the registrant, which would not be justified if no further action was being taken.
63	A regulatory body must remove automatically any registrant who has been convicted of murder, trafficking people for exploitation, blackmail (where a custodial sentence is imposed), rape and sexual assault (where a custodial sentence is imposed), and certain offences against children. There should be a right to make representations to the regulator and a right to appeal to the higher courts on the factual basis of an error in law or finding of fact.	Accept	We agree that registrants convicted of certain serious criminal offences should be automatically removed from the register and will need to consider what should be included in the list of serious criminal offences.
64	The regulators should be required to make rules specifying their investigation process. The regulators would have discretion over the content of the rules, except that members of the regulatory body and fitness to practise panellists would be prohibited from the task of investigation.	Accept in part	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.
65	The regulators should be given a power to require the disclosure of relevant information by any person (including the registrant) in fitness to practise proceedings. However, a person cannot be required to supply any information or documents which are prohibited by or under any enactment. The regulators should have powers to seek an order for disclosure from the High Court in England and Wales, the Court of Session in Scotland or the High Court in Northern Ireland.	Accept	The Government accepts this recommendation in full.
66	The regulators must refer a case to a fitness to practise panel if there is a realistic prospect that the panel will find that the professional's fitness to practise is impaired and it is in the public interest to refer to a panel.	Accept	We agree subject to our response to recommendation 67.

Law Commissions' recommendation		*Government View*	*Remarks*
67	Following the conclusion of an investigation and where the case is not being referred to a fitness to practise panel, the regulators should have powers to: (1) take no further action; (2) give advice on any matter related to the allegation to the registrant and to any other person or body involved in the investigation, in respect of any matter related to the investigation; (3) give a warning to the registrant regarding their future conduct or performance; (4) agree with the registrant that they will comply with such undertakings as the regulatory body considers appropriate; or (5) grant a registrant's application for voluntary removal. The Government's regulation-making powers should include the ability to add new powers and remove any powers from this list.	Accept in part	We agree with the recommendation and would want to make it clear that the options of closure with or without advice or issuing a warning are only available where the realistic prospect test is not met. Conversely we would want to make it clear that undertakings may only be agreed where the realistic prospect test is met, the registrant admits impairment and the public interest will be satisfied by disposal by such means, and there is not a realistic prospect of a panel imposing a suspension or removal order. We believe that the terminology should reflect that removal in this manner is a form of regulatory action rather than simply the registrant leaving the register of their own accord and will want to explore alternatives to the term 'voluntary removal'. We also do not agree that there should be a specific provision enabling the regulatory bodies to provide advice to a third party involved in the investigation. If a regulatory body felt action was required against another registrant, we would expect this to be dealt with as a separate fitness to practise allegation rather than incidental to another case. If the matter were a broader issue than a professional's individual fitness to practise we would want any future Government Bill to ensure that this information is suitably passed on to the appropriate organisation.
68	The Professional Standards Authority's power to refer fitness to practise decisions to the higher courts should be extended to include consensual disposals.	Accept in part	We agree that undertakings should be subject to the PSA's power of reference but do not see any value in extending the power to voluntary removal (see our comments on terminology in recommendation 67) because under any future Government Bill we would ensure that such removal achieves the maximum public protection in any event. We will want to consider further the scope of this referral power and whether it relates to the decision to agree undertakings itself and/or whether the undertakings which have been agreed are sufficient to protect the public.

Law Commissions' recommendation		*Government View*	*Remarks*
69	The Government's regulation-making powers should include the power to introduce mediation for one or more of the regulators.	Do not accept	We share the Law Commissions' analysis of the appropriateness of mediation in the fitness to practise context. It is not clear how mediation sits with the objective of the fitness to practise procedures to protect the public, uphold proper standards of conduct and behaviour and maintain confidence in the relevant profession. We also agree with the Law Commissions that mediation is likely to only be of utility where a referral has been made that does not amount to an allegation of impaired fitness to practise, as otherwise the regulatory body should be obliged to pursue regulatory action. Because of these reasons, the Law Commissions have proposed that any mediation scheme should be controlled by a Government regulation making power. However we do not think that such a power is required as we do not consider that mediation should have any statutory footing within the context of the fitness to practise procedures.
70	The regulators should have powers to review decisions: (1) not to refer an allegation for an investigation following initial consideration; (2) not to refer a case to a fitness to practise panel and to take no further action; and (3) to dispose of a case following investigation by giving advice, issuing a warning, agreeing undertakings, granting voluntary erasure, or referring to mediation where applicable. A regulatory body should have power to undertake a review on its own initiative or on the application of the registrant, the maker of the allegation, the Professional Standards Authority or any other person who, in the opinion of the regulator, has an interest in the decision. A review must take place if the regulatory body considers that the decision may be materially flawed or that there is new information which may have led to a different decision. A review cannot take place if more than two years have elapsed since the decision was made, unless a review is necessary in the public interest. The regulator may, as a result of the review, substitute a new decision, refer the allegation for reconsideration or decide that the original decision should stand.	Accept	We agree with the recommendation in principle but want to ensure that any review mechanism is not unduly onerous (particularly at the preliminary consideration stage). We also wish to include a public interest criterion that must be satisfied both when determining whether to undertake a review, and then during the review process itself. We also wish to ensure that powers of review will apply to any other decisions where this is warranted and believe that any explicit power to review should include a decision to cancel a referral to a fitness to practise panel hearing.

Law Commissions' recommendation		*Government View*	*Remarks*
71	A regulator should have the power to cancel a referral to a fitness to practise or an interim orders panel, if it no longer considers that there is a realistic prospect of a finding of impairment or it considers that it is no longer appropriate for the registered professional to be subject to fitness to practise proceedings.	Agree	We agree subject to the power being subject to the provisions for review of investigation stage decisions. We also think that regulatory bodies should be able to cancel referrals to interim orders panels where an interim order is no longer considered necessary. We are also considering whether a public interest test should be involved in taking this decision. We would want to enable the regulatory bodies to cancel a referral if a consensual disposal outcome had been agreed after a case had been referred to a fitness to practise panel although we need to give further consideration to the consent order process and at what point it would inappropriate to cancel the referral and proceed on that basis instead.
72	The Professional Standards Authority should oversee the regulators' progress towards introducing greater separation between investigation and adjudication, and provide best practice advice.	Accept in part	Achieving separation between investigation and adjudication requires legislative change and we agree with the Law Commissions' proposed Government regulation powers which will enable the establishment of a separate appointment process for panellists and further legal protections (such as those which are in the process of being introduced for the GMC). We agree that the PSA should, via their annual performance review, continue to oversee the regulatory bodies' fitness to practise procedures including that the processes are transparent, fair, proportionate and focused on public protection and we see the separation between the investigation and adjudication functions as an important element of this. But we do not propose to give them a new specific power in relation to overseeing such separation.
73	The Government should have regulation-making powers to introduce a separate adjudication system for any of the regulators, based on the Medical Practitioners Tribunal Service.	Accept in part	We agree with this recommendation in the main, however the Law Commissions propose that where greater separation has been achieved, any guidance for fitness to practise panellists should be provided by the body that has been established to undertake the adjudication function. We think that more discretion should be possible so that the regulatory body's council could continue to issue guidance itself if desired.

Law Commissions' recommendation		*Government View*	*Remarks*
74	All fitness to practise hearings should be conducted by a panel of at least three members (including at least one lay member). Members of the regulatory bodies (including those from other regulators), members of the Professional Standards Authority's board, and investigators should be prohibited from membership of fitness to practise panels. The regulators would have rule-making powers on other aspects of panels, such as the appointment of advisers and legal chairs.	Accept	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements**.** We agree that the membership of a fitness to practise panel should consist of at least one lay and one registrant member. We would also want to prohibit a registrant majority. This would mean that where a panel was constituted of three members, two would be lay. We may also want to expand the list of persons prohibited from sitting on a fitness to practise panel to secure, as far as possible, the separation between the investigation and adjudication of fitness to practise cases.
75	The regulators should be required to establish a person or body responsible for appointments, appraisal and continued professional development of fitness to practise and interim order panellists. The Professional Standards Authority should produce good practice guidance and set standards for the appointments processes used by the regulators.	Accept in part	We agree that in the interests of greater separation, the appointment by a body or person separate from the council to manage the appointment of persons to serve as panellists at hearings is desirable. However we believe significant further work needs to be done to give effect to this and that greater flexibility is required regarding the management of the pool of panellists once appointed. The intention would be to enable those regulatory bodies with greater separation of function, such as the Medical Practitioners Tribunal Service model (currently being introduced for the GMC), to delegate such responsibility to that committee/body while enabling those bodies that have not yet achieved that separation to put the appointment functions in the hands of the appointments person or body but to continue to provide training and guidance for their panellists (without interfering in decision-making in individual cases) as well as constitute individual panels. The PSA's annual performance review includes standards relating to the appointment, appraisal and training of fitness to practise panellists and we would expect the PSA to continue in this role.

Law Commissions' recommendation		*Government View*	*Remarks*
76	The regulators should have powers to make rules about the circumstances in which hearings are not required and the decisions can be made on the papers. Such decisions could only be made where both parties consent and the decision-maker agrees that it is not necessary to hold a hearing.	Accept in part	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements. While we agree with the principle that there are circumstances where decisions can be reached by a fitness to practise panel considering a case on the papers, we would want these to be set out on the face of any legislation. We agree that one of the circumstances where a hearing might be held on the papers would include where both parties have consented to the outcome and the decision maker agrees it is not necessary to hold a hearing. We are also considering whether there should be scope for appropriate cases to be considered on the papers where the practitioner does not request a hearing. We consider that determinations of cases on the papers should only be made where it is fair to do so and would ensure relevant safeguards.
77	The regulators should have powers to establish rules for pre-hearing case management.	Accept in part	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.
78	Case managers should be required to act independently of the parties and given powers to give directions to secure the just, expeditious and effective running of proceedings before fitness to practise panels. Rules may provide that a panel can draw appropriate inferences from the failure by a party to comply with directions issued by a case manager.	Accept	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.
79	The regulators must comply with an interested party's request that a fitness to practise hearing takes place in the UK country in which the registrant resides or where the incident took place, unless the regulatory body considers that there are reasons that justify refusing the request.	Do not accept	We do not think that this is appropriate given the potential for disputes about the best venue, operational difficulties and costs that may arise. For instance, if both the registrant and the maker of the allegation made competing requests, this could frustrate the progress of cases. As a result we would not take forward this recommendation, but the regulatory bodies would retain their existing discretion as to where to hold hearings.
80	Fitness to practise panels should not admit evidence that would not be admissible in civil proceedings in the UK country where the hearing takes place, unless such evidence is relevant and it is fair to admit it.	Accept	The Government accepts this recommendation and will need to consider how best to achieve this in either the statute or in rules.

Law Commissions' recommendation		*Government View*	*Remarks*
81	The civil standard of proof should apply to all fitness to practise hearings.	Accept	The Government accepts this recommendation and will need to consider how best to achieve this in either the statute or in rules.
82	Fitness to practise hearings should be held in public, unless the particular circumstances of the case outweigh the public interest in holding the hearing in public. Interim order hearings and cases where the health of the registrant is under consideration should be held in private unless a registrant requests a public hearing, and where the panel considers that it is not against the public interest for the hearing to be held in public.	Accept	The Government accepts this recommendation and will need to consider how best to achieve this in either the statute or in rules.
83	Any person giving evidence before a fitness to practise panel (including the practitioner) should be entitled to special measures, if: (1) the person is under 18 (unless the person opts out and this would not diminish the quality of their evidence); (2) the quality of evidence given by the person is likely to be diminished as a result of physical disability, learning disability, mental health problems, an illness or health condition, or a dependency on drugs or alcohol, or fear or distress in connection with testifying; or (3) the proceedings relate to matters of a sexual nature and the person is an alleged victim. In deciding whether or not the quality of evidence is likely to be diminished, the panel must take into account the views of the person concerned. Panels should have powers to offer special measures to a person not entitled to them if this is in the public interest.	Accept	We agree in principle that special measures should be available for vulnerable witnesses and as set out in Chapter 1, will need to consider how best to achieve this either in the statute or in rules as well as suitable oversight arrangements.
84	The registrant should not be permitted to personally cross-examine the alleged victim in a case involving allegations of a sexual nature. There should be provision for a representative to be appointed for this purpose. The only exception should be if the witness gives written consent and the allegation does not amount to a sexual offence under section 62 of the Youth Justice and Criminal Evidence Act 1999.	Accept	The Government accepts this recommendation and will need to consider how best to achieve this in either the statute or in rules.

Law Commissions' recommendation		*Government View*	*Remarks*
85	Fitness to practise panels should have the general objective of dealing with cases fairly and justly (and meet the objectives set out in clause 3 of the draft Bill). The parties should be required to co-operate with the panel, and panels would be entitled to draw inferences where parties failed to comply with this duty.	Accept in part	We agree that fitness to practise panels should deal with cases fairly and justly and that they should have regard to the regulatory bodies' over-arching objective as set out in Chapter 2. The Government will need to consider how best to achieve this either in the statute or in rules. We would also want to make it clear, in line with the Tribunals, Courts and Enforcement Act 2007, that we would require any rules to be made in accordance with an overriding objective (in addition but taking precedence to the over-arching objective) to be fair and just. However we do not agree with the Law Commissions proposed definition as to what is fair and just and wish to consider the correct approach within the context of professional regulation and whether any extended definition is necessary. For instance, we do not agree that a panel should use any special expertise that an individual member might have in its decision-making as this may result in one panel member's view being given disproportionate weight. We will also wish to consider the proposal for a general duty of co-operation further as any duty would need to respect a person's right not to incriminate himself or herself, and also recognise that the proceedings are adversarial and that the parties must be entitled to present their cases as they wish to do so.
86	Consistency should be imposed on certain matters concerning due process and the powers of fitness to practise panels (such as the right to representation, witness summons and powers to join cases).	Accept	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.
87	The regulators should be required to make rules on the procedures to be followed in fitness to practise hearings.	Accept	As set out in Chapter 1, the Government will wish to consider the best balance as to which provisions should be in any future Government Bill and which would be suitable for rules as well as suitable oversight arrangements.

Law Commissions' recommendation		*Government View*	*Remarks*
88	The Government should be given a power to give guidance about the content of fitness to practise hearings rules, including in the form of model rules.	Do not accept	We agree with the principle that the fitness to practise procedures need to deliver consistent outcomes so that where public protection is at risk, the appropriate sanction is agreed or imposed. However we are not yet persuaded by the Law Commissions' recommendation that the Secretary of State should have a power to issue guidance, potentially including model rules, to the regulatory bodies to which the regulatory bodies must have regard. As set out in Chapter 1 the Government intends to consider further the safeguards and oversight arrangements around delegation of powers to the regulatory bodies and within this will need to consider the best approach to take in relation to the Law Commissions' proposals for rule-making powers concerning fitness to practise hearings.
89	All fitness to practise panels should have the same powers to impose sanctions or otherwise dispose of cases. The sanctions would be advice, warnings, conditions, suspension and removal from the register. All panels would be able to agree undertakings and voluntary removal, and issue immediate orders pending the outcome of any appeal to the higher courts. The Government would have regulation-making powers to amend the powers available to panels.	Accept in part	We agree that all fitness to practise panels should have the same powers to impose sanctions, but disagree with the range of the powers recommended. Advice and warnings should only be available where there is no finding of impairment. As noted above, we do not think this should extend to third parties (see recommendation 67). Warnings should not be available as a disposal option where a panel has determined that a registrant's fitness to practise is impaired as it raises questions regarding the status of a warning issued at the investigation stage or where a panel has found no impairment. As an alternative we propose to adopt a distinct sanction similar to that available to the NMC and HCPC of a 'caution order' in the event that a panel does find impairment but does not consider that conditions, a suspension or removal are appropriate sanctions. We will need to consider the terminology further. Generally we do not agree that panels should be able to agree consensual disposals on behalf of the regulatory bodies but rather that disposals by panels can be in the form of consent orders.

Law Commissions' recommendation		*Government View*	*Remarks*
90	The regulators should have powers to publish guidance for fitness to practise and interim order panels. The panels would be required to have regard to such guidance.	Accept in part	We believe that regulatory bodies should be able to issue advisory guidance to fitness to practise and interim orders panels to assist them with interpreting the application of the statute and reflecting developments in case law. We consider that this guidance should be advisory only and we do not think that there needs to be an explicit power to issue it, or a duty to have to regard to it. The duty to consult would apply to any such guidance and we would expect it be published.
91	Fitness to practise panels should be required to review conditions, suspensions and undertakings as directed in the original order or agreement, or if new evidence comes to light indicating that a hearing is desirable. The options available to a panel should be to confirm the order, extend or reduce the period of the order, revoke or vary any conditions or impose any other sanction or consensual disposal. In the case of undertakings, the panel should have the ability to change the agreement with the registrant in the same way.	Accept in part	We agree that panels should be required to review sanctions imposed by fitness to practise panels, and also consider that they should be required to do so before the expiry of any order rather than only as directed, unless the original order specifies that it does not need to be reviewed (for example in the case of a short suspension). Undertakings will not be subject to review by fitness to practise panels. In line with our response to recommendation 89, we do not agree that panels should be able to agree consensual disposals on behalf of the regulatory bodies but that they may agree to consent orders.
92	Fitness to practise panels must review an indefinite suspension order (health only cases) where the person concerned so requests, and at least 24 months have elapsed since the previous review. The options available to a panel would be to confirm the order, terminate the order or impose any other sanction (except removal) or consensual disposal.	Accept in part	In line with our response to recommendation 89, we do not agree that panels should be able to agree consensual disposals on behalf of the regulatory bodies but that they may agree to consent orders.
93	Practitioners should continue to have a right of appeal against certain decisions of a fitness to practise panel to the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland.	Accept in part	We agree that practitioners should continue to have a right of appeal to the relevant court and are considering how the question of which jurisdiction the appeal should be heard in is determined and whether this should be dependent on where the substantive fitness to practise hearing took place or another criterion.
94	Any two or more regulators should be able to arrange for any of their respective functions to be exercised jointly. The Professional Standards Authority should be given a general function to promote co-operation between the regulators.	Accept	The Government accepts this recommendation in full, although the Law Commissions' Bill subjects these powers to a 'likelihood of improvement test' so a regulatory body may only enter into such arrangements if it considers they are likely to improve the way in which its functions are exercised. We consider that this test is an unnecessary requirement and therefore would not propose to replicate it in a future Government Bill.

Law Commissions' recommendation		*Government View*	*Remarks*
95	Each regulator should be given an express power to delegate any of its functions (except the power to make rules) to another regulator or any other person. This would not affect any liability or responsibility of the regulatory body for the exercise of its functions.	Accept	The Government accepts this recommendation in full, although the Law Commissions' Bill subjects these powers to a 'likelihood of improvement test' so a regulatory body may only enter into such arrangements if it considers they are likely to improve the way in which its functions are exercised. We consider that this test is an unnecessary requirement and therefore would not propose to replicate it in a future Government Bill.
96	The regulators should be required to co-operate with each other, the Professional Standards Authority and specified "relevant authorities". A similar duty should be placed on the Professional Standards Authority.	Accept	The Government accepts this recommendation but is undertaking further work, in relation to which bodies should be described as relevant authorities for these purposes. A future Government Bill may therefore take a different approach to the Law Commissions in defining such bodies.
97	When a regulator requests the co-operation of a relevant authority (or when such an authority makes a similar request of regulator), the requested party must comply with the request unless doing so would be incompatible with its own duties or would otherwise have an adverse effect on the exercise of its functions. A person who decides not to comply must give written reasons. A similar power should be given to the Professional Standards Authority.	Accept	The Government accepts this recommendation but is undertaking further work, in relation to which bodies should be described as relevant authorities for these purposes. A future Government Bill may therefore take a different approach to the Law Commissions in defining such bodies.
98	The draft Bill should retain the premises regulation provisions of the Pharmacy Order 2010 (with some minor amendments).	Accept	We agree that the premises regulation provisions of the Pharmacy Order 2010 should be retained within any future Government Bill. We also agree that there should be some minor changes to the GPhC's powers to regulate premises as suggested by the Law Commissions and accept the minor amendments made.
99	The Government's regulation-making powers should include the ability to introduce a new system of business regulation, including business registration, for the General Optical Council and General Dental Council.	Accept in part	We agree that there should be provision within any future Government Bill for the introduction of new systems of business regulation for the GOC and the GDC. In line with our response to recommendations 8 and 9 above, we consider the power to introduce new systems of business regulation should remain with the Privy Council.
100	The regulatory bodies should have power to finance an independent consumer complaints service. The approval of the Professional Standards Authority should be required in order to exercise this power.	To be considered	Once the Government is in a more informed position with regards to the role of the Ombudsman in health and social care, we will be able to properly consider the role of consumer redress schemes and respond to this recommendation.

Law Commissions' recommendation		*Government View*	*Remarks*
101	The Government's regulation-making powers should include the ability to introduce new systems of business and premises regulation for any regulator.	Do not accept	We do not consider such provision is necessary. Of the regulatory bodies who currently do not have any business regulation, we are not aware that any currently have plans to seek this We have also not identified any need for any such regulation at this time. Should any regulatory body subsequently need to introduce any business or premises regulation, this could be done through the current section 60 powers under the Health Act 1999 or any replacement power under a future Government Bill.
102	The Professional Standards Authority's general functions should be extended to include promoting economic efficiency and cost effectiveness by the regulators.	Accept in part	We agree the PSA is very well placed to promote and encourage best practice in economic efficiency, but we do not see them having a role in any operational decisions about how a regulatory body manages its finances.
103	The draft Bill should consolidate and implement the Professional Standards Authority's power to direct a regulator to make rules to achieve an effect specified in the direction.	Accept in part	In line with our response to recommendation 3, the Government intends to consider further the balance between primary legislation and rules, and accompanying safeguards and oversight arrangements, and within this it will need to consider the PSA's role further.
104	The Professional Standards Authority should be required to provide advice or undertake an investigation on any matters relevant to its functions when requested to by the Government. When undertaking an investigation the Authority should have a power to require information.	Accept	The Government agrees there is a continuing need for this function and that the PSA is ideally placed to fulfil the role and we will ensure the PSA has the necessary powers to obtain all necessary information in a future Government Bill.
105	The Government regulation-making powers should include the ability to extend the remit of the Professional Standards Authority to include giving advice on social care matters to the devolved administrations and overseeing the Care Councils in Scotland, Wales and Northern Ireland. This would be subject to the approval of the relevant devolved administrations.	Accept in principle	The current agreement with the devolved administrations is that a section 60 order will be used to allow the PSA to provide these functions for the devolved administrations if, and when, required (or replacement powers – see Chapter 1).
106	The Government must ensure that sufficient resources are available to fund the Professional Standards Authority's new role.	Accept	The Government is putting in place legislation that will allow the PSA to be financially independent through a levy on regulatory bodies and through commissions from bodies other than the regulatory bodies.
107	The Government should have powers to make appointments to the Professional Standards Authority's board. The administration of appointments would be undertaken by the Professional Standards Authority in accordance with its guidelines and standards.	Do not accept	The Government does not agree with the removal of the Privy Council role in this appointments process. We feel the PSA board should continue to consist of a chair who is appointed by the Privy Council. Of the six non-executive members, three should be appointed by the Privy Council and one each by the administrations in Scotland, Wales and Northern Ireland.

Law Commissions' recommendation		*Government View*	*Remarks*
108	The Government should have the power to make regulations to enable the Professional Standards Authority to investigate complaints about the ways in which a regulator has exercised its functions.	Accept	The Government agrees with this in principle and will make provision for similar powers in a future Government Bill.
109	The Professional Standards Authority should have a power to refer to the higher courts certain fitness to practise decisions which fail to achieve sufficient protection of the public. This power should be exercised alongside a regulator's power to refer cases (in cases when the regulator has been granted such a right by virtue of establishing a sufficiently independent adjudication procedure). The Authority would be able to refer the case if the regulator decides not to.	Accept	We agree and would develop the Law Commissions' approach so that the grounds of the PSA's power to make a reference and any potential right of appeal for the regulatory bodies more closely matches the objectives.
110	The regulators should be required to carry out a public consultation before they make or issue rules, standards or guidance.	Accept	The Government agrees that regulatory bodies should be required to consult when making rules or issuing standards or guidance. However, our position on occasions where consultation may be dispensed with is different to the Law Commissions and set out at recommendation 111 below.
111	A regulator may dispense with the duty to consult in a particular case if it considers that it would be inappropriate or disproportionate to consult, and approval has been given by the Professional Standards Authority.	Accept in part	As set out in Chapter 1 the Government intends to consider further the balance between primary legislation and rules and regulations and accompanying safeguards and oversight arrangements and within this it will need to consider such consultation duties and the scope (if any) for dispensing with them. The Government agrees that a regulatory body may dispense with the duty to consult where it considers such a step to be disproportionate or inappropriate. We disagree that approval should be required from the PSA on the basis this is an unnecessary restriction and could create a conflict of interest for the PSA in assuring the quality and robustness of the decisions and actions of the regulatory bodies.
112	The regulators should have a power to do anything which is calculated to facilitate, or which is conductive or incidental to, the exercise of their functions.	Accept	We agree with this recommendation in terms of setting out a general power regarding the scope of action regulatory bodies can take when performing their functions.
113	The status of the regulators as bodies corporate should be continued in the new legal framework.	Accept	The Government agrees that the existing status of regulatory bodies as bodies corporate should continue in the new legal framework.
114	The regulators should be able to apply to become registered with the Charity Commission, the Office of the Scottish Charity Regulatory body and the Charity Commission for Northern Ireland.	Accept	The Government agrees that regulatory bodies should continue to be able to apply to become registered with the charity commission if they wish to do so.

Law Commissions' recommendation		*Government View*	*Remarks*
115	The regulators should not be required to establish formal committees.	Accept	We agree with this recommendation on the basis that regulatory bodies should generally be left to decide how they perform their own internal governance arrangements. It should not be for statute to dictate any requirement to have particular committees, although regulatory bodies could retain existing committees if they so wished after the statutory requirement is removed. We also agree that fitness to practise panels, which are necessary to ensure appropriate adjudication standards and which deal with individual cases as opposed to policy matters, should remain a statutory requirement. Similarly the appointments bodies or persons proposed by the Law Commissions should also be a statutory requirement.
116	The protected titles and functions, and relevant offences, should be set out on the face of the draft Bill. The Government's regulation-making powers should include the ability to amend or remove any of these titles and functions.	Accept in principle	The Government accepts this recommendation in principle. We consider that protected titles and functions and relevant offences are sufficiently fundamental to the overall scheme that it would be preferable for them to be set out on the face of any future Government Bill with a regulation making power to enable amendments as appropriate.
117	The Government should consider undertaking a full review of the existing protected titles and functions, and relevant offences.	Do not accept	The Government notes the Law Commissions' concerns about the current legislation and accepts that the protection of titles and functions is a complex area, but we are not yet convinced of the need for a full review of the existing framework.
118	The regulators should continue to have the ability to bring prosecutions (except in Scotland) and would be required to set out their policy on bringing prosecutions in a publicly available document.	Accept in principle	We agree that the regulatory bodies should continue to have the ability to bring private prosecutions and that each regulatory body should be required to publish a statement of policy on bringing prosecutions. This should set out any procedures and criteria that would apply, including when to bring a private prosecution and when to refer a case to the CPS.
119	Interim orders should be made or reviewed by an interim orders or fitness to practise panel. Interim orders panels must consist of at least three members (including at least one lay member). Panellists should be appointed by the same body or person that is responsible for fitness to practise panel appointments. Members of an interim order panel will be prohibited from sitting on a fitness to practise panel in relation to the same case.	Accept	We agree with this recommendation however the prohibition against certain persons sitting on an interim orders panel similar to that discussed in relation to fitness to practise panels at recommendation 74 would also apply.
120	The test for an interim order should be that it is necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registrant.	Accept	The Government accepts this recommendation in full.

Law Commissions' recommendation		*Government View*	*Remarks*
121	Interim orders should be imposed for up to 18 months and must be reviewed every six months (or sooner if the person makes a request in the first three months or if new evidence becomes available which justifies an earlier hearing).	Accept in part	We agree that interim orders must be reviewed every six months but do not think that enabling a registrant to request a review within the first three months is proportionate. Rather we would enable the registrant to request an early review only after three months have elapsed since the first review. We agree that a review should be possible at any time new evidence becomes available to justify an earlier hearing.
122	Applications to extend orders should continue to be decided by the higher courts.	Accept	We agree but intend to introduce greater flexibility to enable an Interim Orders Panel to extend an interim order up to a maximum 18 months (which is the existing maximum length of time an interim order can be imposed for) whereby a further extension should be decided by the higher courts.
123	Registrants should have a right of appeal against decisions of interim orders panels.	Accept	The Government accepts this recommendation and is considering how the question of which jurisdiction the appeal should be heard in is determined and whether this should be dependent on where the substantive fitness to practise hearing took place or another criterion.
124	The UK Government and the Governments in the Channel Islands and the Isle of Man should consider reviewing whether the new legal framework should be extended to the British Islands as a whole.	Accept	We agree with this recommendation in full. The Government will seek to review with the Crown Dependencies whether the new legal framework should be extended to them.
125	The Government should be given regulation-making powers to make provision for the general supervision of midwives by the Nursing and Midwifery Council, and determine the functions and powers of local supervising authorities.	To be considered	The findings and recommendations of the NMC's review of the supervision and regulation of midwives will have a bearing on the Government's response to this recommendation. Therefore, we are not in a position to provide a response to this recommendation until we have had an opportunity to consider the NMC's report.

ISBN 978-1-4741-1367-0