Department of Health

Professional Standards Authority for Health and Social Care - Draft Fees Regulations

Consultation response

February 2015

Title:

Response to the consultation on the Professional Standards Authority for Health and Social Care - Draft Fees Regulations

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Document Purpose:

Consultation response

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Target audience:

Regulatory Bodies

GPs

Nurses

Doctors

Pharmacists

Dentists

Midwives

Chiropodists/Podiatrists

Dieticians

Royal Colleges

Social care providers

General public

Patients

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Professional Standards Authority for Health and Social Care – Draft Fee Regulations

Consultation Response

Prepared by Professional Standards Branch, Strategy and External Relations Directorate, Department of Health

Contents

Acronyms Used in This Document

Acronym	Meaning
ALB	Arm's-Length Body/Bodies
CHRE	Council for Healthcare Regulatory Excellence
DH	Department of Health
GDC	General Dental Council
GMC	General Medical Council
GOC	General Optical Council
GPhC	General Pharmaceutical Council
HCPC	The Health and Care Professions Council
HMT	Her Majesty's Treasury
IA	Impact Assessment
NHS	National Health Service
NI	Northern Ireland
NMC	The Nursing and Midwifery Council
OITO	One in, two out
PSNI	Pharmaceutical Society of Northern Ireland
RB	Regulatory Body
RCM	Royal College of Midwives
RCN	Royal College of Nurses
RPC	Regulatory Policy Committee

Executive summary

- In 2010, the Department of Health conducted a review of its Arm's-Length Bodies[1] as part of the wider changes to the NHS. The study found no compelling reason for the Professional Standards Authority (then the Council for Healthcare Regulatory Excellence), to continue to be funded by the Government and Devolved Administrations. Instead, the review recommended that the Professional Standards Authority ("the Authority") be funded through a compulsory levy (or fee) on the Regulatory Bodies (RBs) it oversees.
- The Health and Social Care Act 2012[2] provided for the Authority to be funded by the RBs. This required that, subject to the approval of Parliament, the Privy Council must make regulations requiring each RB to pay periodic fees to the Authority. The regulations must also set out the functions of the Authority to be included in the fee and the methodology for determining the level of fees to be paid by each RB.
- Our consultation sought views on a proposed draft of these regulations and on the Authority's fee-setting methodology. This document sets out a summary of the responses received to our consultation and our response.
- The regulations have been updated in light of the comments received as part of the consultation and the Order will be published at www.parliament.uk.
- This document is published alongside an updated Impact Assessment that assesses the costs and benefits of the options (including a Small and Micro-sized Business Assessment) and an assessment of the impact on equality.

[1] Liberating the NHS: Report of the arm's length bodies review - https://www.gov.uk/government/publications/liberating-the-nhs-report-of-the-arms-length-bodies-review

[2] http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted

Consultation Process

- The public consultation ran for eight weeks, closing on 28 November 2014.
- The consultation was sent directly to the main stakeholders involved.
- The consultation was also posted on www.gov.uk and on DH's Citizenspace page[3].
- 22 responses were received in total.
- We received a response from the Authority and responses from the RBs overseen by the Authority.
- Additionally, we received responses from three unions, three Royal Colleges and several representative or trade bodies, some of which are in the Devolved Administrations. We did not receive any responses from individuals. A full list of respondents can be found at Annex A.
- The responses took a variety of formats. Some respondents used the standard format suggested, answering each of the consultation questions in turn. Others provided a brief statement of agreement or disagreement with the consultation; whilst some provided substantial responses that did not follow the standard format.

The Department would like to thank all of those who responded to this consultation and is grateful to them for their input.

[3] http://consultations.dh.gov.uk/

Consultation Responses

General Comments

- Seven of the 22 respondents disagreed with the policy intent to make the Authority self-funding.
- The NMC said that they strongly disapprove of the Department's preferred option (and the legal drafting that would bring effect to it) for implementing a levy on the RBs in order to fund the Authority and stated that the consultation and supporting documents were not fit-for-purpose. They said that the supporting evidence and rationale were inadequate and that they believe the proposed way forward is untimely and unfair. They said that they believe the impact assessment is compromised and that potential equality impacts have not been given due consideration.
- Another three respondents, though not questioning the policy, disagreed with the timing of these proposals. Some of the RBs were concerned that they would be unable to raise the money necessary in time to pay for the first tranche of fees for the Authority, particularly in light of the fact that the RBs each have defined processes to go through to adjust their fees (should they need to pass on the cost of the Authority's fees to their registrants).
- Three respondents expressed concerns that the policy intent of moving away from Government funding may compromise the Authority's independence.
- There was also some concern about a perceived lack of appraisal of alternative methods for setting the Authority's fees.
- Several respondents expressed an interest in ensuring appropriate accountability for the fee-setting process generally and for how the fee money raised will be forecast, segregated and used by the Authority.
- The GOC said that they thought it would be appropriate for the Authority to be given a duty to consult the RBs annually on their strategic and business plans, budget, and proposed levy (insofar as the matters covered are to be funded from within the levy) and be required to report to RBs annually on business and financial performance generally, and performance against their strategic and business plans.

Government Response:

Policy

Whilst we recognise that by becoming self-funding the Authority does indeed obtain a greater degree of independence from Government; the Government's policy intention (as set out in the 2010 ALB Report) was not to give the Authority more independence per se, but to realise savings and to increase accountability and transparency across Government, while reducing the number and associated costs to the taxpayer of public bodies. Part of this involved abolishing arm's-length bodies, streamlining their functions or transferring functions that can be better delivered by other organisations.

This policy intention was enshrined in legislation in the Health and Social Care Act 2012 which was consulted upon and has been through due parliamentary process. Whilst there has been some delay in enacting the provisions to make regulations under section 224 of that Act, the Government has always been clear that these regulations would be made and that the Authority would be funded by a levy on the Regulatory Bodies.

This consultation therefore was about the process by which the Authority will raise fees on

the Regulatory Bodies it oversees; it is not about the policy as to whether the Authority should be self-funding or about the role of the Authority. DH have been in discussions with the Regulatory Bodies about this since 2012.

Having considered the concerns raised in the consultation regarding the threat to the independence of the Authority we do not see this as an issue as the fees are set by the Privy Council, not the Authority.

Timing

Whilst the regulations do not specify that the cost to cover the Authority's fees must be passed to registrants, we accept that the ability for the RBs to absorb those costs will differ from regulator to regulator.

However the intent to require the RBs to pay a fee to the Authority to fund its function to oversee their performance was announced in 2010 with the ALB Review, carried forward through the Health and Social Care Act 2012. DH has been in regular contact with the Authority and the RBs since then. Indeed some of the RBs have already put plans in place to raise their fees to take account of the future fee for the Authority.

We recognise that the legislative changes needed to enable fee changes may take time for some of the RBs to fully implement, due to the nature of their fee collection cycle.

We believe that it is important to realise the Government's policy intention to realise savings and to increase accountability and transparency across Government, while reducing the number and associated costs to the taxpayer of public bodies. However, whilst the legislative process for this Order will continue, we have changed the implementation date for the fee scheme to 1 August 2015 in recognition of the time pressure on the RBs.

Options Appraisal

A number of options were analysed by the Department as part of the policy development process, including:

- Fees split equally across each of the nine RBs
- An option containing a minimum entry fee
- Fee based on the number of Section 29 (Fitness to Practice) cases
- Fees based on a number of registrants plus a fixed fee per RB
- Fees based on the income of the RBs
- Fees based on a combination of RB income and registrant numbers
- A percentage of the fee based on number of registrants plus a fixed fee plus a percentage based on number of Section 29 cases

In 2012, the Authority (then the Council for Healthcare Regulatory Excellence) consulted with the RBs on the following four options:

- Option 1:Do nothing
- Option 2: Apportion by number of registrants
- Option 3: Apportion by fee income of RB
- Option 4: Apportion by combination of number of registrants and fee income per RB

No particular fee model was preferred by the RBs. However, most of the options outlined above were found to contain an element of cross-subsidy in funding stream across the nine RBs. Cross-subsidy is not directly prohibited by the HM Treasury guidance 'Managing Public

Money', but is normally classified as a form of taxation and therefore is considered inappropriate in most cases. Consequently, a number of the options were not included in the detailed analysis as they could have clouded the analysis of options that were genuinely workable.

Additionally, the "do nothing" approach was not an option, as the Government's policy intention to take this forward was enshrined in the Health and Social Care Act 2012.

The only viable option was a fee methodology based on the number of registrants per regulator. This option was deemed to be fair as the model recognises that those RBs who have more registrants will pay more, as the evidence shows that they use a greater amount of the Authority's resource in relation to section 29 cases, as demonstrated in the Impact Assessment, which are a major driver of cost for the Authority.

The full Impact Assessment which accompanied the consultation document has been reviewed by the Regulatory Policy Committee (RPC)[4] and has been deemed fit-for-purpose.

Accountability process

The proposals for the setting of the fee process should be read in conjunction with the relevant primary legislation – Section 224 of the Health and Social Care Act 2012. This inserts a new section 25A into the National Health Service Reform and Health Care Professions Act 2002 which sets out the process that the Privy Council must follow in determining the fee and the amount each RB must pay. This includes a duty on the Authority to consult with the Regulatory Bodies before submitting its proposal for funding to the Privy Council. As part of this consultation exercise, the RBs can raise any concerns that they have about the proposed fee. We believe that this provides sufficient opportunity for the RBs to comment on the Authority's plans and adequate information to allow the Privy Council to take a view on the appropriate size of the levy.

As a matter of administrative good practice, we would expect the Authority to attach the RBs' responses to the consultation to the proposal it makes to the Privy Council.

[4] See: https://www.gov.uk/government/organisations/regulatory-policy-committee

Responses to the Consultation Questions

Question 1: Do you agree that the functions listed in Table 1 should be covered by the fee? Please provide the rationale behind your response and any amendments to the included functions you would suggest.

Option	Total	Percentage
Yes	15	68%
No	5	23%
Not sure	2	9%
Not Answered	0	0%

- There was broad consensus that the functions listed in Table 1 (see Annex B) should be covered by the fee, with the Authority itself agreeing that the table accurately reflected their current functions.
- The General Pharmaceutical Council commented that the regulations, once made, should be amended to reflect the additional powers of the Authority as proposed in the Law Commission's Regulation of Health and Social Care Professions Etc. Bill, should it be enacted.
- The Council of the Pharmaceutical Society NI agreed that the functions listed in Table 1 should be covered by the fee chargeable in relation to the Authority. However, they noted that the Privy Council role at Section 25C (2) (a), re: assistance to the Privy Council in its appointment function in relation to a Regulatory Body, does not apply to the PSNI as the appointments to its Council are a matter for the Department of Health Social Services and Public Safety NI, in conjunction with the NI Minister.
- The Council also commented that, in relation to the Authority having the power at Section 29 (4) to refer cases to the High Court, there need to be proper controls and safeguards in place for the use of funds in relation to this power to ensure that registrants are not charged twice, to defend and prosecute the same case, specifically in the circumstances where the Authority were unsuccessful.

Government Response:

As the majority of respondents agreed with the list of functions included in the table, we will proceed as drafted in the consultation.

We note and agree with PSNI's comment about the Privy Council's role in relation to PSNI.

The PSNI is right to note that, if fees are passed on to registrants, registrants will effectively (albeit indirectly) be charged for the cost of the Authority referring a case to the High Court under section 29 of the NHS Reform and Healthcare Professions Act 2002. The Authority will incur a cost when exercising this function and so the anticipated cost will be included in the proposal the Authority makes to the Privy Council regarding the amount of funding it requires. However we do not agree that the registrants affected will be charged twice to defend and prosecute the same case. This is because:

- Under Method 1, the fee will be determined on the basis of the total funding assessed to be required by the Authority and the proportion of a Regulatory Body's number of registrants as against the total number of registrants across all bodies. If the fees are passed onto registrants, an individual registrant who is subject to a disciplinary hearing referred to the Court will be indirectly funding only a fraction of the Authority's actual costs.
- If the Authority does refer a case, then under section 29(7), it is the RB, and not the individual registrant, who will be the respondent. The registrant should not incur further direct costs at this stage.

Question 2: Do you agree that the functions listed in Table 2 should be excluded from the fee?

Option	Total	Percentage
Yes	16	73%
No	0	0%
Not sure	1	5%
Not Answered	5	23%

- The majority of respondents agreed that the functions listed in Table 2 (see Annex B) should be excluded from the fee.
- Whilst the HCPC were content that the consultation had identified those functions of the Authority which do not relate to its statutory role in overseeing the nine statutory RBs of health and care professionals, they said that they thought there was a lack of information in the consultation document as to the methodology which will be used to ensure that the Authority's costs are apportioned correctly.
- The Chartered Society of Physiotherapy said that they support the exclusion relating to establish voluntary registers, as not all RBs may choose to create voluntary registers and any functions of the Authority that attract an overarching fee must be consistent across all the RBs.

Government Response:

As the majority of respondents agreed with the functions listed in Table 2 being excluded from the levy, we are going to proceed as drafted in the consultation.

Question 3: Do you agree that method 1 – apportionment of the fee according to the number of registrants - is currently the only viable option available for determining the fees? Please explain the rationale for your response.

Option	Total	Percentage
Yes	8	36%
No	9	41%
Not sure	1	5%
Not Answered	4	18%

- Slightly more respondents disagreed with Method 1 than those that were in agreement, though a significant number of respondents did not directly answer the question or were unsure of their answer.
- The HCPC disagreed with the method put forward on the basis that that they believe it would unfairly penalise them for keeping registration fees low. They said that the proposed method means that RBs with fewer registrants, but with higher fees (and therefore higher income), will be in a better position to absorb the cost without increasing pressure on existing fee levels. They suggested several alternative options for setting the fee, including a fee based on regulator income, a combination of regulator income and registrant numbers and a fee based on operational metrics to reflect the actual costs to the Authority.
- The HCPC said that, under Method 1, they would have to raise their registrant fees. Given that each profession renews its registration every two years, staggered over a two year registration cycle, it would be a full two years before the HCPC realises the benefit of an increase in its fees. Therefore they may need to contemplate a more significant initial increase in order to ensure that they have sufficient funds to pay the levy. The HCPC also requested that DH allocates resources to support them to urgently progress changes to their Rules which would help ensure that they have sufficient income to pay the Authority's fee whilst minimising the impact, where possible, on registration fees.
- The NMC, RCN and the RCM were concerned that the fee-setting methodology would unduly disadvantage nurses and midwives; saying that, under this method, the NMC would carry a disproportionate amount of the cost given that it regulates almost as many individuals as all the other RBs combined.
- Indeed the NMC put forward in its response a number of alternative methods for calculating the fees, including funding via a levy based on a flat rate paid by each RB, funding based on the income of each RB and funding via a levy based on an end-of-year invoice from the Authority.
- The NMC argued that that number of registrants used in the Impact Assessment was not defined. Similarly, the GMC also commented that there is a need for the regulations to provide clarity on the specific date(s) at which the registrant volumes for fee calculation will be taken.
- The RCM disagreed with choosing method 1. They said that, as there are some commonalities in the role that the Authority exercises with all RBs, there should be a

common fee for this element of their activity and only part of the fee should be determined on the basis of the number of registrants.

- The GMC said that, of the options proposed, Method 1 was the best approach. However, they added that they did not agree that the regulatory attention required of the Authority for each RB is proportionate to the number of their registrants. GMC therefore supported the Authority's commitment to consider in future if additional management information would provide a more appropriate alternative.
- Similarly, the Optical Confederation commented that the proposed approach does not take into account the risk posed by different professions and hence the need for regulatory oversight; nor their respective earnings and ability to pay.
- The General Optical Council said that it was difficult to comment on the fee-setting methodology without seeing what the amount payable would be.
- The General Pharmaceutical Council said that Method 1 did not take into account the differing costs per registrant of each RB and their respective regulatory burdens.
- Pharmacy Voice questioned how apportioning the fee to the number of registrants will work equitably given that different fees are currently levied for each group of registrants.
- PSNI said that Method 1 was fair and proportionate. They said that the same principle applies for each of the RBs in relation to fitness to practise whereby all registrants pay an equal contribution to the registration or retention fee whether they themselves are involved in fitness to practise proceedings.

Government Response:

We believe that Method 1 is an equitable and workable methodology which is in line with guidance on managing public money. The Government is therefore proceeding with Method 1 as a methodology for determining fees.

The exact level of activity deployed by the Authority in any given year will vary between RBs in relation to complaints, incidents, audits and reviews. Equally, the level of benefit gained by RBs from the Authority will vary. It would also be problematical to predict with any accuracy the risk posed by the RBs' registrants and hence the amount of regulatory oversight needed at any given point in time.

We consider Method 1 to be fair as the model recognises that those RBs who have more registrants will pay more, as the evidence shows that they use a greater amount of the Authority's resource. For example, there is a strong relationship between registrant numbers and s29 cases, which are a major driver of cost.

Costs

The money raised from the fee will be used only to fund those activities of the Authority that directly relate to the oversight of the RBs. This work includes promoting standards and assessing their performance, conducting audits, scrutinising their decisions and reporting to Parliament. They do this to promote the health, safety and well-being of users of health and social care services and the public.

As set out above, Method 1 was deemed to be fair as the model recognises that those RBs who have more registrants will pay more because the evidence shows that they use a greater amount of Authority resource.

The exact cost per RB would depend on the Authority's budget for the year, divided by the total numbers of registrants across the RBs. We have made an estimation of illustrative costs in the Impact Assessment. Our best estimate, based on figures provided by the Authority at that time and information available on the RBs' websites, was that the cost per registrant of the Authority's fee would be in the region of £2.47 per year. Based on updated financial information provided by the Authority the current estimate of that figure is now £2.92 per year, though the final fee will be determined by the Privy Council following the prescribed process.

Concerns about the Authority significantly expanding its budget and increasing charges to the RBs will be addressed by the accountability processes described in the Health and Social Care Act 2012. As set out above, this inserts a new section 25A into the National Health Service Reform and Health Care Professions Act 2002 which sets out the process that the Privy Council must follow in determining the fee and the amount each regulatory body must pay. This includes a duty on the Authority to consult with the RBs before submitting its proposal for funding to the Privy Council. As part of this consultation exercise, the RBs can raise any concerns that they have about the proposed fee.

We recognise the concern raised by the HCPC around the potential need for changes to the RBs' rules to accommodate registrant fee changes and any related budgeting issues. We will work with the RBs to ensure that these legitimate concerns are properly addressed.

Number of registrants

The number of registrants used in the Impact Assessment was based on the number of registrants published on each of the RB's websites. We agree that, going forward, there is merit in having clarity on the date(s) at which the registrant volumes for fee calculations would be determined. However, this will be a matter for the Authority to take forward in discussions with the RBs, rather than form part of the regulations.

In terms of the definition of a registrant this is given in the Order. In short, we see a registrant as being an individual whose name appears on a register maintained by the RB that is responsible for regulating the profession to which that person belongs.

The Authority has committed to looking at what other Management Information could be used to set the fees going forward. Note that any change to the fee-setting methodology would require a further change to the regulations and a full consultation process.

Policy

As set out above, the Authority continuing to be funded by Government is not a viable option, as the intention to make the Authority self-funding through a levy on the RBs is set out in the Health and Social Care Act 2012.

Impact on equality

The issue of the levy impacting on equalities issues is covered in the response to Question 6 below and in the separate Equalities Impact Assessment.

Question 4: Do you agree that the regulations should specify that the demand for payment should include a period of notice?

Option	Total	Percentage
Yes	16	73%
No	0	0%
Not sure	1	5%
Not Answered	5	23%

- No respondents disagreed with this proposal, though a number of respondents did not answer the question.

Question 4a: If so, do you agree that this period should be 15 days?

Option	Total	Percent of All
Yes	4	19%
No	9	43%
Not sure	2	10%
Not Answered	6	29%

- Though some respondents agreed with the timeframe proposed, the majority disagreed, saying that 15 days was too short a timeframe.

Question 4b: If not please specify a different period and explain why it is preferred

- Many respondents said that they would prefer the regulations to state a longer period of either 28 or 30 days, given that this is the standard accepted payment term for invoices.
- The GDC said that they wanted the notice period to be 60 days.
- The Authority requested a payment period of 10 days in the spirit of the government commitment to prompt payments.

Government Response:

We accept the 30 days is standard practice for invoices and have updated the Order accordingly.

Question 5: Do you agree that interest due on late payment should be set as drafted?

Option	Total	Percentage
Yes	8	36%
No	3	14%
Not sure	3	14%
Not Answered	8	36%

- Around a third of respondents agreed with this proposal, the same amount did not answer the question.
- The Royal Pharmaceutical Society did not comment on the intention to levy interest on late payments, other than to recognise that this was common practice for other statutory payments and obligations. The Authority also said that terms were usual and that they saw no exceptional circumstance necessitating a variation.
- The General Optical Council said that they had no objection to the intention to levy interest for late payment, as long as the proposal is in line with other public bodies. They also suggested that DH may also consider an early payment discount as an alternative.
- Some respondents said that they thought that charging interest on late payments could be inappropriate, where the RBs pass the cost on to registrants. The British Dental Association commented that this could set a dangerous precedence for public services.

Government Response:

Levying interest is common practice for statutory payments and obligations and so we are proceeding as drafted. However in line with comments received in the consultation, we have extended the payment period to 30 days. As well as being in line with standard practice, this extended payment period should assist the Regulatory Bodies in meeting their obligations.

Question 6: Do you agree with the Department's assessment that the implementation of this policy will not have an adverse impact on equality?

Option	Total	Percentage
Yes	6	27%
No	8	36%
Not sure	4	18%
Not Answered	4	18%

- Just over a third of respondents thought that the policy would have an adverse impact on equality. Around a quarter agreed with the Department's assessment. Almost a fifth of respondents did not answer the question and the same amount said that they were unsure.
- The NMC, RCN and the RCM believed that, if Method 1 is applied to the fee-setting methodology, there would be a disproportionate impact on the NMC. Both bodies expressed concern that if the NMC passes the fees onto registrants, Method 1 may be indirectly discriminatory on gender grounds and may therefore have an adverse impact on equality.
- The HCPC said that they believed that there will be some impact on the basis of equality in that there will be differences in the demographic and socio-economic profile of the different professions that each RB regulates. They said that a large majority of HCPC's registrants are female and a significant proportion will work part-time hours and will accordingly be lower paid. The HCPC say that the proposed method of apportioning the Authority's fee is very likely to necessitate an increase in the registration fee and would therefore adversely impact upon this group of registrants with less ability to pay.
- The GOC commented that many of their registrants earn far less than other healthcare professions and expressed concern that the GOC could end up contributing more than its fair share of the Authority's levy. They said that this would impact on optometric and optical registrants and the public either through higher fees for registrants and charges to the public, or reduced capacity for effective regulation by the GOC.
- UNISON expressed concerned that no equality impact analysis of the fee calculation method had been carried out. They said that if Method 1 is applied, this is likely to have a disproportionate impact on the NMC and HCPC. Given the NMC's and the HCPC's high proportion of female registrants (approximately 90% and 75% respectively) and assuming that the Authority's fees will substantially be passed onto registrants, they say that there is a prima facie case to answer that Method 1 is indirectly discriminatory on gender grounds, and therefore has an adverse impact on equality. UNISON believes that Method 2 would be the less discriminatory option.
- The GDC however point out that the impact on equality would depend on how the RBs choose to apportion the fees.
- The GMC said that they will consider the equality impacts of how they fund the payment of the fees to the Authority.
- Pharmacy Voice said that they were very concerned that if the Regulatory Bodies have to fund the Authority, then the link between funding and purpose will be lost. They stated that

the Authority needs to be able to enforce change upon any RB who, for whatever reason, is failing to adequately protect the public.

Government Response:

When developing this policy, DH has had due regard to the need to:

a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equalities Act 2010.
b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

We understand from the consultation responses that some of the RBs are intending to raise registrant fees to cover the Authority's levy. We are also aware that some of the RBs have already factored the future fee into their recent fee rises. The RBs can choose how to apportion the costs in relation to their registrants, for example by adjusting existing fees to ensure that no group of persons who share a relevant protected characteristic is disadvantaged. Indeed some of the RBs already differentiate according to certain job titles or other factors.

Furthermore, whilst registrant costs will always have a greater impact on some individuals than others, the cost of the levy itself represents only a very small percentage of the overall registrant fee and, as a standalone cost, would be highly unlikely to have a significant impact on an individual basis. As set out in the separate Impact Assessment and in the separate Equality Analysis, we estimate that the cost per registrant will be an additional £2.47 per individual, per year. We accept that a registrant's ability to absorb this cost will vary according to their individual circumstances. However, we believe that this cost makes up a small percentage of the annual overall fee and is unlikely,in itself, to have a significant detrimental impact on an individual. For example, £2.47 represents only 2.05% of the overall NMC fee (£120 per annum as of March 2015).

The Family Test

Since the publication of the consultation, the Prime Minister announced the Family Test for Government policy-makers[5]. We have therefore also assessed the impact that our policy will have on families. For the reason described above, we do not believe that our policy will impact on any of the following factors:

- Family formation
- Families going through key transitions
- Family members' ability to play a full role in family life
- Families before, during and after couple separation
- Families whose relationship is at risk of deterioration or breakdown

[5] https://www.gov.uk/government/publications/family-test-assessing-the-impact-of-policies-on-families

Question 7: Do you have any comments on the draft regulations?

- The Authority requested that the legislation references that any surplus collected in one year and not used in-year may be carried over into the following year to offset fees, without being regarded as profit. Similarly, the NMC said that a mechanism needs to be put in place to ensure that end-of-year surplus would be returned to the RBs or carried forward to the following year with a subsequent reduction in the levy.
- The GMC said that clarity is needed on the handling of any dispute in the levy amount to avoid RBs facing accruing interest charges on levy amounts that were legitimately under dispute and pointed out some typographical errors in the draft regulations.
- The GPhC made a number of comments in relation to the draft regulations. They said that the regulations do not specify what the "chargeable period" will be and said that they would like the regulations to set out that the fees will be payable in line with the RBs' existing financial years and not solely on a period aligned to the Authority's arrangements. They also commented that they feel that requesting information on the number of a RB's registrants would be disproportionate as the calculation is based on the actual number of registrants as described in Regulation 5. They also raised the issue of whether the definition of "persons" in the draft regulations includes registered pharmacies. Finally, GPhC said that Regulation 7 is not sufficiently specific and therefore grants the Privy Council a wide power to re-determine the amount of the fee. If the Regulations are to contain this power for the Privy Council then they would like to see a requirement for published guidance on the situations when redetermination may occur and the process that will be followed in making the re-determination.
- The NMC said that they consider that the 'One-in, Two-out' (OITO) criteria must apply to the Department's proposal given the direct impact on their business and the burden it will place on them and their registrants. The NMC also said that they believe that they and the other RBs come under the definition of a 'business' as set out in the Better Regulation Framework[6].

Government Response:

It is not the intention of these regulations for the Authority to profit from any surplus fees. Given the steps that need to be gone through under Section 25A of the NHS Reform and Health Care Professions Act 2002 in order to set the fee for a chargeable period, it is our expectation that any surplus in fees one financial year will be factored into the Authority's assessment of its funding requirements for the following financial year and therefore should result in lower fees for that subsequent financial year.

As set out above, the dispute mechanism for the fee-setting process is enshrined in the Health and Social Care Act 2012 at Clause 224.

The initial chargeable period will be from 1 August 2015 to 31 March 2016 and then on a 12 month cycle from 1 April to 31 March. We have considered shorter periods but believe that this would impose an unfair burden on the Authority, the Regulatory Bodies and the Privy Council.

With regards to a redetermination of fees as set out in Regulation 7, we would expect that this power will only be used by the Authority or the Privy Council in exceptional circumstances. Any redetermination will be subject to a full consultation process. In terms of procedural safeguards

[6] https://www.gov.uk/government/publications/better-regulation-framework-manual

against abuse of the redetermination procedures, administrative law remedies (e.g. Judicial Review) will be available to the RBs.

The typographical errors identified in the draft regulations have been amended.

Better Regulation

A full initial IA was published alongside the consultation. The Regulatory Policy Committee have scrutinised the IA and have assigned a 'green' rating, meaning that the IA is fit-for-purpose. The RPC agreed with the Department's assessment that the OITO criteria do not apply to this policy and also that the nine healthcare RBs are not considered as a 'business' for the purposes of the 'Better Regulation Framework'.

Annex A - Summary of Respondents

1. British Dental Association
2. General Dental Council
3. General Medical Council
4. General Optical Council
5. General Osteopathic Council
6. General Pharmaceutical Council
7. HCPC
8. Institute of Physics and Engineering in Medicine
9. Medical and Dental Defence Union of Scotland
10. Medical Protection Society
11. Nursing and Midwifery Council
12. Optical Confederation
13. Pharmaceutical Society NI
14. Pharmacy Voice
15. Professional Standards Authority
16. Royal College of Nursing
17. Royal Pharmaceutical Society
18. The Chartered Institute of Physiotherapy
19. The Royal College of Midwives
20. UNISON
21. Unite the Union
22. *One respondent wished to remain anonymous*

Annex B – Functions included in the fee

Table 1: Functions included in the fee

Section*	Title
25 and Schedule 7	**The Professional Standards Authority for Health and Social Care** i) promote the interest of patients and other members of the public in relation to the performance of the regulatory bodies ii) promote best practice in the performance of professional regulation functions iii) formulate principles of good professional self regulation and encourage regulatory bodies to conform iv) promote co-operation between regulatory bodies
25A	**Funding of the Authority** Process for determining the periodic fees to be paid by the regulatory bodies
25B	**Power of the Authority to advise regulatory bodies etc.** Advice to the regulatory bodies in relation to their statutory functions This excludes advice provided by the Authority for which a separate fee may be charged
25C	**Appointments to regulatory bodies** The Authority may assist the Privy Council with any of its appointments functions in relation to a regulatory body.
26	**Powers and duties of the Authority: General** The Authority may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the performance of its functions to the extent that such functions are exercised in relation to the regulatory bodies. It may: i) investigate and report on the performance of each regulatory body ii) where a regulatory body performs functions corresponding to that of another, investigate and report how the performance of those functions compares ii) make recommendations to a regulatory body to change the way it performs its functions

26B	**Duty to inform and consult the public** i) publication of information about the authority and the exercise of its functions ii) seek views of members of the public and organisations which appear to represent the interests of service users on matters relevant to the functions of the Authority
28	**Complaints about regulatory bodies** The Authority may investigate complaints about the regulatory bodies it oversees (**Note this section has not yet been commenced)**
29	**Reference of disciplinary cases by Authority to court** The Authority may refer a case to the relevant court if it considers a decision about a practitioners fitness to practise is unduly lenient or should not have been made
Schedule 7, paragraphs 15(1)-(4), 16(1), (1B) & (2)*	**Governance functions** Accounting, reporting and planning requirements imposed on the Authority. **These functions are only included to the extent to which they relate to the regulatory bodies.*
Schedule 7, paragraphs 16(3) and (4)*	**Parliamentary accountability** If required to do so, the Authority must lay a report on any matter as requested by the UK Parliament, the Northern Ireland Assembly, or the Scottish Parliament. **These apply only in so far as such work related to regulatory bodies.*

Table 2: Functions excluded from the fee

Section	Title
25B(1)	Power of the Authority to advise regulatory bodies and to generate income from this that is outside of the fee arrangements
25G	Power of the Authority to accredit voluntary registers

25H	Accreditation of voluntary register: impact assessment
25I	Functions of the Authority in relation to accredited voluntary registers
26A	Powers of Secretary of State and devolved administrations (to request advice etc)