

Government plans to modernise the deregulation framework for the healthcare professions

Lords Oral Question **Tuesday 10th June 2014**

Background

In April 2014, the UK Law Commissions published a Bill that if passed would make considerable changes to the legislation on medical regulation. The publication of the Bill follows a review that the UK Law Commissions were commissioned by the Department of Health to do in 2011¹, looking at the legislation that underpins the health and social care professional regulators. The BMA provided evidence to this review. The Law Commissions have now published a draft Bill which would make their recommended changes².

The UK health departments are currently considering the Law Commissions' Bill and whether it will take parts or all of the recommendations forward. The Government did not announce in the Queen's Speech that it would be bringing forward a Bill in this legislative session. Although no legislation was announced and given the significance of reform, we would welcome as much time as possible for scrutiny of any proposals. We will continue to engage with the Department of Health on this.

This briefing is UK wide as all four UK governments supported the review undertaken by the Law Commission. Many consultees supported a UK wide approach to regulation, as the public has shared expectations about health and social care professionals across the UK.

The Law Commission proposals

Broadly the provisional proposals from the UK Law Commissions are for:

- a single UK statute for the regulation of health and social care professionals
- the government role to be having regulation making powers and default powers, e.g. for there to be regulation of new professions and the creation of new regulatory bodies
- giving broad powers for the regulators including legal rule making powers
- the removal of the role of the Privy Council
- a three tier structure
 - regulations
 - rules
 - default powers
- Parliamentary accountability

In our submission to the Law Commission, the BMA broadly welcomed any move to allow the regulators greater autonomy to adapt their approach to regulation, provided that there is appropriate accountability in place. Withdrawing direct oversight from Privy Council and Government scrutiny could enable the General Medical Council (GMC) to make changes to the way they operate in a much more timely fashion³.

One standardised framework

The current legal framework means that there is a different piece of legislation for each of the different health and social care professions. The regulation of doctors is covered by the Medical Act 1983 but overall there are nine statutes covering regulation on health and social care professionals. Whilst there are similarities between these legislative frameworks, there are also a number of inconsistencies.

Each of the nine professions governed by healthcare regulators is different, especially in terms of the educational standards at entry and ongoing professional practice. The BMA believes that whilst there may be some benefits in introducing greater consistency between regulators on issues such as a framework for determining fitness to practice, there must also be enough flexibility for to ensure that each regulator can reflect its profession in terms of structure, career path, diversity and the significance of the consequences of a professional's actions. Any single Act of Parliament must have the required flexibility, otherwise we would have concerns that a single Act could prevent the GMC from innovating in the application and development of the new legislations is restricted by the progress of other regulators.

Allowing regulators greater autonomy & removing the role of the Privy Council

At present, in formal legislative terms, the Privy Council is required to approve new rules and regulations made by the regulators, with default powers to intervene in cases of regulatory failure. However in practice, the Law Commission considers that the Privy Council does not perform as a truly independent function and lacks the resource to undertake an active role in this regard⁴.

However, the governments can and do take a more proactive role in overseeing the regulators and this relationship should be made more transparent rather than through the actor of the Privy Council.

The BMA broadly welcomes the move to allow the regulators greater autonomy to adapt their approach to regulation, provided that there is appropriate accountability in place. Withdrawing the formal role of direct oversight of the Privy Council could enable the GMC to make timely changes to the way it operates.

Governance for the regulatory Councils

The BMA believes that for the medical profession, the GMC should be able to determine the size and composition of its Council. However in June 2012, the Department of Health consulted on the size of the GMC council and proposed to cut the size to 8 members and move to a system of appointing the chair⁵. The BMA does not believe that these proposed changes improve the effectiveness or efficiency of the GMC. These proposals are predicated on a limited evidence base, drawn largely from the business sector and are not appropriate for a regulatory authority that has to command the respect and confidence of both the public and the profession.

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References

¹ Full details of the consultation project are available at: http://lawcommission.justice.gov.uk/areas/Healthcare_professions.htm

² Law Commission of England and Wales, Scottish Law Commission, Northern Ireland Law Commission, (April 2014) *Regulation of Health Care Professionals*, available at: http://lawcommission.justice.gov.uk/docs/lc345_regulation_of_healthcare_professionals.pdf

³ GMC Response to the Law Commission Consultation: Regulation of health care professionals; regulation of social care professionals in England (May 2012), available at:

http://www.gmcuk.org/GMC_Response_to_the_Law_Commission_Consultation.pdf_49039467.pdf

⁴ Law Commission of England and Wales, Scottish Law Commission, Northern Ireland Law Commission, (April 2014) *Regulation of Health Care Professionals*, available at: http://lawcommission.justice.gov.uk/docs/lc345_regulation_of_healthcare_professionals.pdf (P23)

⁵ [Changes agreed to the constitution of the General Medical Council and General Dental Council](#)