

## **COUNCIL**

### **Legislative reform programme**

---

**Meeting:** 29 July 2015

**Status:** for noting

**Lead responsibility:** Alistair Bridge,  
Director of Strategy

**Council Champions:** Fiona Peel,  
Paul Carroll

**Project manager:** Marie Bunby

**Project Board:** SMT

**Project team members:** Simon Grier

### **Purpose**

---

1. The purpose of this paper is to update and seek Council's views on our legislative reform programme.

### **Recommendations**

---

2. We recommend that Council:
  - 2.1 **notes** the paper; and
  - 2.2 **notes** our intention to organise a workshop in the autumn to enable Council to have a fuller discussion about the nature of the legislative reform that we should seek to achieve

### **Strategic objective**

---

3. We included the legislative reform programme in our business plan for 2015/16. We are seeking to achieve legislative reform in line with our strategic plan 2014/17, which includes the strategic objective of "Regulatory change – implementing a targeted and proportionate system of regulation".

### **Risks**

---

4. The following risks are associated with the issue, as identified in the corporate risk register:
  - 4.1 There is a risk that in the absence of legislative reform we cannot implement key strategic projects, such as our reviews of business and student regulation. The fact that we cannot regulate all businesses according to the functions they carry out is particularly problematic. In particular, this affects our ability to:

- 4.1.1 ensure that individual registrants working for unregistered businesses are free to exercise their professional judgement in meeting our standards of practice; and
- 4.1.2 respond fully to the Francis Inquiry by ensuring that unregistered businesses have an appropriate working environment and processes for dealing with whistleblowing and customer complaints.
- 4.2 There is a risk of public criticism if we have difficulties in fulfilling our regulatory remit. For example, reducing the time it takes to conclude Fitness to Practise (FTP) cases will be more difficult in the absence of legislative change.

## Background

---

- 5. The Law Commission published its final report and draft bill on the regulation of health and social care professionals in April 2014. The Government published its response in January 2015, accepting the majority of recommendations in full and some in part. Since then the Department of Health ('the Department') has been working with regulators to develop the proposals put forward by the Law Commission with a view to introducing to Parliament the Professional Accountability Bill ('the Bill').
- 6. The Government decided not to introduce the Bill in the first session of this Parliament. However, the Department is continuing to work on the Bill and there is the possibility that it could be introduced in the second session of this Parliament, which will start in spring 2016.
- 7. The Chair, together with the chairs of the other healthcare regulators, is going to be meeting Ben Gummer, Parliamentary Under-Secretary of State for Quality in the Department. This could provide more clarity about the likely prospects for the Bill.
- 8. Other regulators generally remain supportive of the widespread reform that the Bill would bring. Most regulators are not seeking to change their existing legislation through section 60 orders as an alternative, recognising that this would divert the Department's resources from developing the Bill. However, some regulators in need of urgent reform are pursuing section 60 orders. For example, the General Dental Council is currently working with the Department on a section 60 order that would enable it to introduce case examiners.
- 9. If the Bill is not introduced to Parliament in the next session then we are likely to see waning support among regulators for pursuing wholesale reform through the Bill. The Department would then need to prioritise proposals for section 60 orders put forward by the different regulators.

10. In the meantime, we are working with the other regulators to build support for the Bill and as part of this, the General Medical Council is organising a seminar with patient groups in the autumn. Lord Hunt is also seeking to introduce a private member's bill that would implement the Law Commission's Bill. While this is unlikely to succeed, it will help to maintain awareness of the benefits that legislative change would bring.

## Analysis

---

11. We need to develop a clear position on the legislative reform that we would like to see and consider how best to achieve this. We have been focused on working with the Department to develop the Bill as a means of modernising our system of regulation.
12. We are keen to achieve the legislative change that would enable us to speed up our FTP process by introducing:
  - 12.1 threshold criteria – to enable us to filter out cases where there is no risk to patient safety or public confidence in the professions;
  - 12.2 consensual disposal – to enable us to resolve a case without proceeding to a full hearing where the registrant is willing to accept the proposed sanction; and
  - 12.3 voluntary erasure – to enable us to remove a registrant from the register without proceeding to a full hearing where, for example, the person in question wishes to retire for health reasons.
13. We wish to reform our system of business regulation so that all businesses carrying out restricted functions are required to register and comply with our business standards. This would enable us to better protect the public by ensuring a consistent approach to those activities that tend to be within the control of businesses as opposed to individual registrants, namely supervision and training, investment in and maintenance of equipment and ensuring that commercial incentives do not undermine patient care.
14. We would like to be able to move away from requiring all students to register with us. This is on the basis that our review of student regulation showed that we could manage the risks to the public without requiring students (at least at undergraduate level) to register.
15. More recently, Council has indicated that it would like to consider more wholesale reform of our legislation. In particular, our work to develop our illegal practice strategy highlighted the flaws in the legislation governing the supply of contact lenses and other aspects of optical practice:

- 15.1 suppliers of contact lenses are required to verify the contact lens specification of a potential customer, but there is no obligation on the practitioner who issued the specification to provide this verification;
  - 15.2 cosmetic contact lenses must be supplied under supervision whereas powered contact lenses may be supplied under supervision or general direction, meaning that a registrant does not have to be on the premises or in a position to intervene;
  - 15.3 the substitution of contact lenses is not precluded, although our research shows that certain types of substitution can present risks to the public; and
  - 15.4 dispensing of spectacles to patients with learning disabilities is not currently regulated.
16. Also, our Standards Strategic Review has highlighted the need for us to ensure that we have a flexible regulatory framework that facilitates rather than holding back developments in the sector that would be good for patients and the wider public. At present, however, we have rigid controls on who can carry out restricted functions. In particular, functions can be carried out by registrants with particular protected titles. An alternative would be for there to simply be a requirement for all registrants to comply with our standards of practice, meaning that a registrant would then have to operate within their own scope of practice. In a situation where all optical businesses were regulated effectively, providing more flexibility about how restricted functions could be carried out within a business might be a more proportionate way of protecting the public.
17. We intend to organise a workshop in the autumn to enable Council to explore these issues in more detail. At this stage, we recommend to continue to pursue reform of our legislation by working with the Department on the Bill. This could potentially include more widespread reform than we have considered hitherto. Depending on whether the Bill is given a slot in the next session of Parliament, we could consider other avenues, including section 60 orders, a private member's bill on a discrete area, such as business regulation, or potentially a new Opticians Act.
18. We will need to think carefully about how best to make the case for legislative reform. For example, we would need to show how our proposals:
- 18.1 support the government's goal of improving access to GPs by creating a more flexible regulatory framework that enables the optical workforce to upskill and make a bigger contribution to improving eye health;
  - 18.2 would enable our registrants to save the NHS money by being better able to do some of the work undertaken currently in hospitals, which are under increasing strain as the population ages;
  - 18.3 reduce red tape on optical businesses by removing outmoded and unnecessary burdens; and

- 18.4 introduce a more modern, targeted system of regulation that is safer, quicker and cheaper to fund.

### Impacts

---

19. The following implications have been identified:
- 19.1 Reserves – we will need to take into account the potential impact on reserves in deciding how to proceed;
  - 19.2 Budget – we have budgeted to pursue the legislative reform programme in the current financial year, but if we wish to change the scope of this work programme we might require additional resources;
  - 19.3 Legislation – identifying the need for and approach to achieving legislative change is the focus of this work programme;
  - 19.4 Resources – we have appointed David Rowland to take up a new role, Head of Policy and Research, and he will be starting on 1 September. He will be leading this work programme, although in considering the resources required to pursue legislative reform we will need to take into account the need to involve colleagues from across the organisation;
  - 19.5 Equality, diversity and inclusion (EDI) – would need to be considered in developing proposals for legislative change;
  - 19.6 Human Rights Act – would need to be considered in developing proposals for legislative change; and
  - 19.7 Sustainability – would need to be considered in developing proposals for legislative change.

### Devolved nations

---

20. We need to be mindful of the need to engage with stakeholders across all the nations, including the devolved administrations, to ensure that we understand and take into account their perspectives in developing proposals for reform. This is reflected in stakeholder engagement strategy.

### Communications

---

21. We have developed a public affairs strategy with a view to raising awareness among key opinion formers of the need for legislative reform. We are writing to members of the Health Select Committee and engaging with Department of Health officials. We will also need to engage with ministers and their advisors, which we intend to do once we have made further progress in developing our proposals for reform.

### Timeline for future work

---

22. We will organise a policy workshop in the autumn to enable Council to discuss this programme in more detail.