16 May 2023

HCPC response to the Department of Health and Social Care consultation on regulating anaesthesia associates and physician associates

About us

The Health and Care Professions Council (HCPC) is a statutory regulator of 15 health and care professions in the United Kingdom. Our role and remit are underpinned by the Health Professions Order 2001 (HPO 2001). We maintain a register of professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise. Our role is to protect the public.

Response to the consultation

We welcome the opportunity to respond to this consultation which represents an important milestone in the reform of the legislative frameworks for professional healthcare regulation. We congratulate the Department of Health and Social Care (DHSC) for their work in bringing this draft legislation to consultation.

Whilst we understand that the consultation is predominantly focused on bringing anaesthesia associates (AAs) and physician associates (PAs) into regulation under the General Medical Council (GMC), we welcome the Department's invitation for stakeholders to engage with the draft legislation on the basis that it will form a template for the reform of other regulators' legislative frameworks. We have framed our response in this context.

Reform will bring much needed modernisation to the legislative frameworks under which we, and other professional regulators in health and care, operate. Our current legislation is outdated and does not reflect the realities of regulating today. It constrains our ability to adapt and respond to developments, particularly in relation to our fitness to practise processes.

We also welcomed confirmation from the Department in its response to the 2021 consultation *'Regulating healthcare professionals, protecting the public'*, that it intends to consult next on modernising the regulatory regime for both the HCPC and the Nursing and Midwifery Council (NMC). Between us and the NMC, we regulate over a million health and care professionals. A modern legislative regime will make a huge difference to the HCPC's ability to regulate fairly, compassionately and efficiently. We look forward to working with the DHSC, the NMC and our other stakeholders to make these much-needed changes to our legislation.

The draft legislation represents a significant step forward in removing overly prescriptive legislation and providing regulators with a high-level legislative framework and increased flexibility and autonomy to make changes to their processes.

In general, we support the legislative proposals, however, there are a few areas in particular which we think warrant further consideration:

- We think that it will be important to more clearly draw out the initial assessment stage of the fitness to practise process within the legislation. This will be important in ensuring that regulators are able to act proportionately and effectively to avoid unnecessary delays and that the right regulatory outcome is reached as early as possible in the process.
- We recommend that the Department reconsiders its approach to reviews, revisions and appeals to provide greater clarity about the distinction between each of these processes and to reduce any unnecessary burdens for appellants and regulators.
- Whilst we welcome the high-level legislative approach, we do think that it is important that the legislation is accessible, in so far as is possible, to registrants, patients, service users and the public. The order of the drafting is not always intuitive and those reading the legislation must often make a number of cross-references to interpret regulators' powers and duties. We would recommend that the final legislation is reviewed with this in mind to minimise the risk of misinterpretation.

As noted above, we understand that this legislation will be used as a template for other regulators, including the HCPC. We recognise the benefits of this approach in providing consistency across regulators. Within this approach it will be important to retain a level of flexibility to allow for regulator-specific issues to be incorporated within their individual legislation when it is their turn for reform.

We have provided detailed comments in response to the consultation questions below. Given that the draft Order will be used as a template for other regulators, we have answered the questions as they would apply to the HCPC.

Part 1: General

Question 1: Do you have any comments relating to 'part 1: general' of the consultation?

Grounds for action

In our response to the Department's consultation *'Regulating healthcare professionals, protecting the public'* (2021) we supported the transition to two grounds of action - inability to provide care to a sufficient standard and misconduct. We agreed that fitness to practise concerns relating to a registrant's health or English language skills should be removed from the legislation as these could be effectively investigated under the proposed two grounds. We also highlighted our experience that handling health cases under a separate route could create

unnecessary complexity and could lead to delay, negatively impacting those involved.

We agree that the revised term proposed in the drafting - inability to provide care to a sufficient standard - is more appropriate than the term initially proposed in the 2021 consultation (lack of competence).

'Approved qualification'

We do have some concerns about the definition of the phrase 'approved qualification' in article 1 (Interpretation) of part 1. Here, an approved qualification is defined as 'a qualification approved under article 4(1)(a)(iii)'. Article 4(1)(a)(iii) provides regulators with the power to approve qualifications for those who are or wish to be registered. Within that article, regulators are given powers to attach a condition to that approval or withdraw that approval and in other parts of the draft Order appeal rights attach to these decisions (article 12). Our interpretation of this, therefore would be that article 4 applies to qualifications that we actively approve, whether in the UK or elsewhere. This form of approval involves an application by the education provider, assessment and ongoing quality assurance.

Currently we do not actively approve international qualifications. Instead, we assess an applicant's internationally obtained qualifications and their experience against our standards. If we deem their qualifications and experience comparable, and they meet our other registration requirements, they are able to join our register.

The phrase 'approved qualification' is used only twice in the draft Order. As regards offences relating to registration (article 14) the drafting creates an offence when someone falsely represents anyone, including themselves, to have an approved qualification (article 14(a)). If the term 'approved qualification' applies only to qualifications that we actively approve, then this offence could be said to preclude individuals falsely claiming to have relevant international qualifications. Similarly, paragraph 10(1)(b)(i)(bb) of Schedule 4 requires fitness to practise panels to consist of at least one person who has been registered, has an approved qualification or is a registrant member. Is this then intended to apply only to those with qualifications that we have actively approved?

If the phrase 'approved qualification' was deemed to apply to international qualifications this suggests that every time a regulator accepts an application for registration from an internationally qualified registrant, they are approving the qualification that the person has, whether or not that qualification is, by itself, sufficient to demonstrate that the person meets our standards of proficiency. Would this therefore also create unintended appeal routes?

We would ask DHSC to explore this further and consider whether the definition of approved qualification is necessary and achieves its intended purpose.

Part 2: standards and approvals

Question 2: Do you agree or disagree that the powers outlined in 'part 2: standards and approvals' are sufficient to enable the GMC to fulfil its role safely and effectively in relation to the education and training of AAs and PAs?

In general, we agree that the powers outlined here would be sufficient to enable us to fulfil our role in relation to the education and training of HCPC registrants.

Question 3: Do you have any additional comments on 'part 2: standards and approvals' in relation to the drafting approach as it would apply to all regulated healthcare professionals?

We do not have any further comments on this part and agree that the powers outlined here would be sufficient to enable us to fulfil our role in relation to the education and training of HCPC registrants.

Part 3: the register

Question 4: Do you agree or disagree that the draft order provides the GMC with the necessary powers to determine the standards and procedural requirements for registration?

We generally agree that the draft Order provides regulators with the necessary powers to determine standards for registration.

We do have some concerns with the position that the standards to be demonstrated at the point of registration are the same as those to be demonstrated by people on the register. For example, in relation to standards of conduct, performance and ethics, a person who is not currently in practice, but who is seeking to join the register (or being readmitted/restored to the register) will only be able to demonstrate that they are capable of/will meet those standards not that they are currently meeting them. This could be addressed by a minor change in wording in the drafting to make the position clearer for prospective registrants.

We note the approach to bring together the full suite of registration standards - standards for education, training, knowledge, skills, experience, conduct, performance, and ethics - and the distinction made between these and standards for approvals. We interpret 'standards for approvals' to be akin to our current standards of education and training. These are the standards against which we assess education and training programmes. In relation to the registration standards, we interpret 'standards for education, training, knowledge, skills, and experience' to reflect our standards of proficiency. We do question whether 'education' and 'training' are necessary in this context or can be said to be covered using the terms 'knowledge, skills and experience'. Referring to education and training here may cause some confusion with stakeholders as to how they are distinguishable from the standards for approvals.

In relation to the procedural requirements for registration, we agree that the draft Order would provide us with the necessary powers to determine our procedural

requirements. With regard to article 6, we do think that it would be clearer and more accessible to re-order provisions so that first registration (the most prevalent form of registration) comes at the start, and is then followed by provisions covering people returning to the register.

We are aware that there is currently work ongoing around indemnity and appropriate clinical negligence cover and would urge the Department to ensure that this is linked up with reform.

Question 5: Do you agree or disagree that the draft order provides the GMC with proportionate powers for restoring AAs and PAs to the register where they have previously been removed due to a final measure?

We agree that where a person has been removed from the register due to a final measure they should meet registration requirements and satisfy a panel that their fitness to practise is not impaired before being permitted to re-join. Our comments in response to question 4 in relation to being able to achieve some of the standards whilst not being on the register also apply here.

Question 6: Do you agree or disagree that the draft order provides the GMC with proportionate powers for restoring AAs and PAs to the register where the regulator identifies in rules that it is necessary for the applicant to satisfy the regulator that their fitness to practise is not impaired?

We agree that regulators should be provided with the flexibility to prescribe in rules circumstances where it is necessary for applicants to satisfy the regulator that their fitness to practise is not impaired following their removal from the register as a result of something other than a final measure. It is important that regulators are empowered to take proportionate action. For example, in cases of administrative removal following non-payment of the fee, consideration of impairment will not be necessary and a shortened process which allows someone to re-join without delay and undue burden would be preferable.

In addition to the above, our comments in response to question 4 as regards being able to achieve some of the standards whilst not being on the register also apply here.

Question 7: Do you agree or disagree that the powers in the draft order relating to the content of the register and its publication will enable the GMC to effectively maintain a register of AAs and PAs who meet the standards required to practise in the UK?

We generally agree.

As noted in our response to the 2021 consultation, we supported the approach to have a single register divided into parts. As a multi-profession regulator, the HCPC currently holds a single register which is divided into parts for each of the 15 professions we regulate. A single register divided into parts allows regulators to easily include new professions, if required.

Having a single register divided into parts does mean that regulators may have an individual registered on multiple parts. We urge the Department to ensure that the drafting is able to accommodate this so that individuals can be removed from a part of the register, for example at their request or as a result of our fitness to practise processes.

We welcome the removal of the proposal put forward in the 2021 consultation for a duty on regulators to publish an individual's qualification. As stated in our response to that consultation, a requirement to publish qualifications could disproportionately and negatively impact on registrants with older qualifications or those who qualified overseas as these qualifications may not be well understood by patients or members of the public.

Question 8: Do you agree or disagree that the draft order provides the GMC with the necessary and proportionate powers to reflect different categories of registration and any conditions that apply to the registration of people in those categories?

We partially disagree.

We do not currently use conditions on registration such as those referred to in the consultation (i.e., temporary overseas registration or provisional registration), however, in principle, we do not object to having the power to use measures to create categories of registration in the future.

We understand that one possible use for conditions could be to record enhancements to a person's registration, however, we think the terminology of 'conditions' is confusing in this context. 'Conditions' is a term used in fitness to practise (including within the draft Order itself) and registrants and the public more commonly understand conditions in this way. It seems convoluted and inaccessible to describe an enhancement (e.g., a prescribing qualification) in terms of a condition. Conversely, it seems disproportionate to place conditions on those registrants (who may be in the majority) without those enhancements. We would ask the Government to reconsider the terminology of conditions here.

We currently use annotations to denote additional qualifications, and this may be an area we wish to expand in future, particularly as advanced practice evolves. We understand that the draft legislation provides for annotations to the register to be managed in a number of ways, i.e., through the recording of additional information on the register under article 5(3)(c) or through the use of conditions as described above.

Whatever method is used to record these additions to the register, we will need to be able to amend and remove this information to reflect the registrant's current practice whether as a result of a request from the registrant or through our fitness to practice processes. We are not sure that the current drafting provides for this.

Question 9: Do you agree or disagree that the draft order provides the GMC with proportionate and necessary powers in relation to the removal of AA and PA entries from the register which will enable it to operate a safe and fair system of regulation that protects the public?

We generally agree, however, the issues raised above in relation to being able to remove someone from a part of the register as opposed to from the register as a whole (see our response to Question 7) are also pertinent here. Throughout, article 8 refers to removing a register 'entry'. We would appreciate clarification of what constitutes an entry and whether this is to be construed as meaning an entry in a part of the register or whether registration across various parts is treated as a single entry. Our preference would be for the former interpretation for the reasons described above.

We note that article 8 provides the Registrar with a power to remove a register entry where registration was procured fraudulently or made incorrectly (article 8(2)(a)). We agree with the approach here to provide a power rather than a duty, as in the case of register entries incorrectly made, a more suitable approach may be to amend an entry. We are not clear where the power to amend the entry in this case would sit within the draft Order, other than in the rule making powers under Schedule 4, paragraph 1(2). We would appreciate clarification from the Department.

Similarly, our current legislation allows for our Investigating Committee to make an interim order in fraudulent or incorrect entry cases (article 31 of the HPO 2001). It is important that regulators retain this power to prevent individuals who have gained entry by fraud, for example through the use of false qualifications, from continuing to practise during the interim period before any removal is carried out. Again, it would be helpful to clarify whether the current draft provides for this.

Question 10: Do you have any additional comments on 'part 3: the register' in relation to the drafting approach as it would apply to all regulated healthcare professionals?

We do not have any further comments on part 3.

Question 11: Do you agree or disagree that the draft order provides the necessary powers to enable the GMC to implement an efficient and safe system of temporary registration for AAs and PAs during a period of emergency as declared by the Secretary of State?

We generally agree. We do not have emergency registration powers in our existing legislation, which required amending in response to the Covid-19 pandemic. We would welcome the inclusion of emergency powers within our reformed legislation to enable us to respond effectively in the event of an emergency being declared by the Secretary of State for Health and Social Care.

As emphasised in our response to the 2021 consultation, we would expect such a power to only be used in exceptional circumstances. We would not wish for a temporary register to be used alongside a permanent register for anything other than

a specific, limited time period as this could cause confusion and undermine the status of the permanent register.

As regards the drafting of the emergency provisions in the Order, we note that this differs in a number of ways from the provisions implemented by the Coronavirus Act 2020. Although we note that article 7 includes powers to impose conditions on those with emergency registration, it would be helpful to understand why powers to amend, vary or revoke conditions in relation to emergency registration are not felt to be necessary in this drafting. Similarly, the Coronavirus legislation included provisions around the payment of fees and the applicability or otherwise of other requirements or processes relating to registration. It would be helpful to understand the learning that has led to these not being included in this legislation.

Part 4: fitness to practice

Question 12: Do you agree or disagree that the powers in the draft order enable the GMC to implement a 3-stage fitness to practise process for AAs and PAs proportionately and sufficiently?

We disagree.

We support a clear 3-stage fitness to practice process that allows us to ensure proportionate and appropriate regulatory outcomes are made at the earliest opportunity.

We support the Government's intention to provide regulators with the flexibility to manage the initial assessment stage and to respond to changing circumstances over time. We note the suggestion in the consultation document that powers under Schedule 4, paragraph 3(1)(a) confer rule making powers in relation to initial assessment. However, the use of the phrase 'Where a question arises as to whether a person's fitness to practice…is impaired…' at the start of article 9 suggests that the case examiner stage is the beginning of the fitness to practice process. We therefore do not think that the legislation clearly provides for an initial assessment stage without recourse to the consultation document as evidence of policy intent. This could result in the legislation being interpreted to mean that all cases have to go through a case examiner stage, and this could add delay to the early resolution of cases.

We would ask that article 9 be amended to more clearly reference the initial assessment stage and to provide regulators with the appropriate powers to dispose of cases at this stage as appropriate. In keeping with the spirit of the overarching aims of regulatory reform any drafting should provide regulators with flexibility in how they implement the initial assessment stage and avoid unnecessary prescription.

Question 13: Do you agree or disagree that the powers in the draft order enable case examiners to carry out their roles appropriately and that the powers help to ensure the safe and effective regulation of AAs and PAs?

We agree.

Our legislation does not currently provide for the use of case examiners. We support the introduction of case examiners which we anticipate will allow us to resolve cases at an earlier stage, support a less adversarial system and bring potential benefits to the public and registrants.

We support the ability of case examiners to conclude a case through an accepted outcomes process or in the case of a registrant who does not provide a reasoned response, within a prescribed period. We also agree that case examiners should have the full suite of measures available to them.

Question 14: Do you agree or disagree that the powers in the draft order enable panels to carry out their roles appropriately and that the powers help to ensure the safe and effective regulation of AAs and PAs?

We generally agree.

In the case of interim measures, the absence of a clear initial assessment stage implies that the Registrar cannot make a direct referral for an interim measure and instead needs to pass the case to a case examiner to refer to a final panel for consideration. Our legislation currently permits the Registrar to refer directly to a panel. The effect of having to pass through the case examiner stage adds an additional, and we would argue unnecessary step, which will add time and delay to urgent matters. We understand that Social Work England, who currently have the proposed article 9 within their legislation, are now seeking an amendment to their legislation to allow for direct interim measure referrals from the Registrar. We would urge the Department to ensure that learning from the experience of other regulators with similar legislation is taken into account.

Question 15: Do you agree or disagree that the powers in the draft order on reviewing interim measures are proportionate and sufficient for the safe and effective regulation of AAs and PAs?

We partially agree.

We think that it would be helpful here to make reference to what the case examiner's powers are on review as currently these are unclear. Although, in most cases it will be appropriate for a case examiner to conduct a review of an interim measure, there may be some more complex, contested cases where it would be helpful to allow for the review to be considered by a panel. Without clarity around the case examiner's powers here it is unclear whether this would be possible under the draft legislation.

Our current legislation allows for the HCPC to apply to the court for an interim order to be extended. We understand that article 10(4) is intended to reflect this process, however, instead of using the language of extension of the original measure, it refers

to the court ‘imposing’ a further interim measure. We feel that this language is potentially problematic when it comes to the regulator’s powers to revise those decisions under article 11, and the scope of a regulator’s jurisdiction in relation to a court’s decision to impose a further interim measure compared to a decision to extend an existing measure imposed by the regulator. The consultation document itself discusses this using the language of extension and we think that this terminology is more appropriate.

In the consultation the Department have asked for views about including a time limit of 12 months for extensions to interim measures. Serious cases, and those involving fraud or sexual misconduct can take a substantial amount of time to investigate and can be linked to other investigations carried out by third parties, including criminal investigations. The timeframe for these external investigations is not within the HCPC’s control, however, as the regulator we have a duty to protect the public whilst they are ongoing. It is therefore right that regulators be provided with the power to extend interim measures where appropriate. It is also right, however, that there are safeguards in place, including the requirement for the court to consider applications to extend and time limits on those extensions. Some investigations can take up to four years and so there is a risk to public protection if interim measures cannot be imposed during this period. The consultation notes that the ‘court may, before the expiry of the interim measure, impose a new interim measure on an associate’. It is not clear to us if this is intended to be an entirely new measure of up to 18 months. We would not object to extensions being limited to 12 months, provided that the court had powers to impose a new interim measure if appropriate. This also ties in with our point above about clarifying whether the court’s power to extend is different to their power to make an order.

Question 16: Do you have any additional comments on ‘part 4: fitness to practise’ in relation to the drafting approach as it would apply to all regulated healthcare professionals?

We think it would be helpful to include a provision around the review of final measures as we do not think that this is provided for elsewhere within the legislation (see our comments in response to question 17).

Part 5: revisions and appeals

Question 17: Do you agree or disagree that the powers in the draft order provide the GMC with proportionate and sufficient powers in relation to the revision of decisions concerning the regulation of AAs and PAs?

We disagree.

We think that it is right that regulators have the powers to reconsider decisions that they have made. However, the drafting in article 11 is quite complex and brings together a number of different types of decision which may cause confusion. Taken together, articles 11 and 12 could create unnecessary duplication and add to delay.

In relation to education, the powers in article 4(1) allow us to approve, attach conditions or withdraw approval. We are unclear what the power to revise an approval decision set out in article 11(1)(a) adds.

More generally, we are unclear on the rationale behind the grounds for revision for certain decisions. For example, we are unclear as to why the regulator is unable to revise panel decisions on the ground that the original decision was based on an error of fact or law as applies to other decisions.

We also feel that greater clarity is needed to describe the interactions between the regulator and the court. As noted above in our response to Question 15, the wording of article 11(2) which states that a regulator can revise a decision of the court to impose an interim measure is potentially confusing. Using the language of *extending* rather than *imposing* interim measures in article 10 would be more appropriate. Similarly, article 11(2)(c) provides for a regulator to be able to revise a decision made by a court on appeal and we question whether this was the intention.

In relation to interim measures, the difference between the duty to review in article 10 and the power to revise under article 11 is unclear, especially as the consultation states that the GMC may choose to review an interim measure at any time under article 11.

We note that article 11 gives the regulator a power to revise a final measure, however we do not think that this reflects the approach that we would currently use to review final measures. Without a process for this our ability to carry out our regulatory functions would be impacted.

We would urge the Department to revisit the drafting around this article to provide greater clarity around the approach.

Question 18: Do you agree or disagree that the powers in the draft order provide individuals with proportionate and sufficient appeal rights in respect of decisions made by the GMC and its independent panels relating to the regulation of AAs and PAs?

We disagree.

We have similar concerns here about the clarity of the drafting as regards article 11 (see our response to question 17) and recommend that the Department review this provision.

We are unclear as to whether it is intended that Article 12(2)(b) applies to appeals against all panel decisions, or whether it only applies to appeals against appeal panel decisions. There are two reasons for this: a) the words "Except where sub-paragraph (a) applies" at the start of Article 12(2)(b)(ii) cause us to query whether it is intended only to apply to panel decisions on appeals and b) the reference to the appeal being on the ground of error of law also leads us to query whether it is intended only to apply to panel decisions on appeals, as opposed to first instance panel decisions. Appeals from first instance decisions are not generally restricted to

appeals on the ground of error of law – a wider threshold (i.e., is the decision "wrong") is usually applied.

Question 19: Do you have any additional comments on 'part 5: revision and appeals' in relation to the drafting approach as it would apply to all regulated healthcare professionals?

As noted above, we recommend that the Department review provisions relating to reviews, revisions of decisions and appeals with a view to ensuring that there is a clear distinction between these different processes and unnecessary duplication is reduced.

Part 6: miscellaneous

Question 20: Do you agree or disagree that the offences set out in the draft order are sufficient to ensure public protection and to maintain public confidence in the integrity of the AA and PA professions?

We partially agree.

The structure of the offences set out in the draft Order is similar to the structure in the HPO 2001. However, the offences under the HPO 2001 include an interpretation of the intent to deceive as 'expressly or by implication'. This is not included in the draft Order. Whilst we agree that the offences should be intent offences to avoid penalising those who make a genuine error with no intent to deceive, we do think it is necessary to provide for circumstances where someone can be said to have intended to deceive by implication. This allows us to consider evidence such as advertisements or material which implies that a person is a regulated member of a relevant profession. We would ask the Department to consider including this within the offences.

We have identified a potential issue around the use of the term 'approved qualification' in our response to Question 1, and the possibility that this may preclude people falsely claiming to have international qualifications from the offence.

Finally, in our current legislation, in addition to offences relating to registration and title, we also have an offence relating to a protected function – that of hearing aid dispensers (article 39A of the HPO 2001). When it comes to reforming our legislation, this will be an area where we will need to diverge from the reform template put forward in this consultation to ensure that we continue meet our regulatory obligations. It should also be noted that this offence refers to individuals on the GMC's Specialist Register (as being able to perform the protected function) and so this may need to be amended to reflect any future changes to the wider GMC register.

Question 21: Do you have any additional comments on 'part 6: miscellaneous' in relation to the drafting approach as it would apply to any regulated healthcare professionals?

In relation to article 13 (opportunity to make representations), it would be helpful to understand the rationale behind the decision to provide rights to make oral and/or written representations in the scenarios outlined in the provisions.

Schedule 1: the regulator

Question 22: Do you agree or disagree with the proposed powers and duties included in schedule 1 the regulator in relation to AAs and PAs?

We generally agree.

We do think that it would be helpful to also include co-operation with other regulators within the duty to co-operate under Schedule 1, paragraph 3(1)(d).

Question 23: Do you have any additional comments on schedule 1, the regulator, in relation to the drafting approach as it would apply to all regulated healthcare professionals?

We do not have any further comments in relation to Schedule 1 of the draft Order. We understand that the wider reform of the GMC's overall governance framework will form part of a second legislative order and we look forward to providing further input into the consultation on that order in due course.

Schedule 2: listed offences

Question 24: Do you have any comments on schedule 2, listed offences?

We agree that the list of offences in Schedule 2 is appropriate and that these offences should result in automatic removal from the register. We also believe that conviction under these offences should justify the refusal of an application for registration and for restoration to the register. It is important that including these offences within the legislation does not preclude the regulator from considering other convictions as part of its determinations in relation to fitness to practise.

Schedule 3: evidence gathering, notifications, publication and data

Question 25: Do you agree or disagree that the powers in the draft order enabling the GMC to gather, hold, process, disclose and assure information in relation to the regulation of AAs and PAs are necessary and proportionate for meeting its overarching objective of protecting the public?

We generally agree.

In relation to notifications, we would suggest that there should be a provision allowing for a complainant to opt out of notifications if they so desire. This is provided

for in appeal decisions (Schedule 3, paragraph 2(1)(e)) but not in relation to first instance decisions and it would be helpful to understand the rationale for this. Providing the option to opt-out of notifications would better support a complainant's wellbeing.

As regards evidence gathering, Schedule 3, paragraph 7(4) provides for the regulator to require a person to supply information. If a person fails to supply such information the regulator may seek an order of the county court, or sheriff (in Scotland) to compel them to supply the information (paragraph 7(6)). Whilst this is useful in the context of fitness to practice, it is unlikely to be used in the context of education approvals.

Our current legislation includes a similar provision requiring relevant education institutions to provide information and assistance to the regulator in connection with the exercise of its functions (article 17 HPO 2001). Should the institution fail to comply with any reasonable request for information the legislation explicitly states that Council may refuse to approve or withdraw approval. We believe that refusing or withdrawing approval would be a more appropriate sanction in the context of education approvals rather than compelling them to supply the information. Whilst it may not be necessary to amend the drafting of Schedule 3, paragraph 7, we would appreciate confirmation that the wider legislation would provide us with the powers to refuse or withdraw approval in these cases.

Question 26: Do you have any additional comments on schedule 3, evidence gathering, notifications, publication and data, in relation to the drafting approach as it would apply to any regulated healthcare professionals?

We do not have any additional comments.

Schedule 4: rule-making powers

Question 27: Do you agree or disagree that the draft order provides the GMC with sufficient and proportionate rule making powers to enable it to effectively maintain a register of AAs and PAs who are safe to practise?

We welcome the overall approach in the consultation to provide regulators with greater autonomy to set out their regulatory procedures in rules and the additional flexibility to allow us to update and amend our rules to respond to developments.

In general, however, we do have some concerns around the clarity of the rule making powers as set out in the legislation. In some cases, for example, provisions appear to overlap, and this has the potential to cause confusion. We would welcome further discussion on this topic.

We have made comments elsewhere in our response on particular provisions which filter down to the associated rule making powers. For example, as noted above, in our response to question 12, we do not think that the rule making powers under Schedule 4, paragraph 3(1)(a) (Procedural rules other than for appeals) themselves sufficiently provide for an initial assessment phase within fitness to practise and we

would recommend providing an explicit power in the legislation to act as a basis for these rules.

Question 28: Do you agree or disagree that the draft order provides the GMC with proportionate and sufficient rule making powers to address non-compliance of AAs and PAs?

We partially disagree and our general comments outlined in question 27 also apply here.

We have recommended above that the process around reviews, revisions and appeals be reviewed (see response to questions 15-18). Any changes to the approach will require complementary changes to the rule making provisions to ensure that regulators are provided with the necessary powers to regulate effectively.

Question 29: Do you agree or disagree with the provisions set out in the draft order for the setting and charging of fees in relation to the regulation of AAs and PAs?

We partially agree with the provisions set out in the draft Order for the setting and charging of fees as it would apply to the HCPC. For the HCPC the draft Order would be an improvement on our current legislation in this area and we welcome the approach to level the playing field across regulators around fee setting.

We agree with the principle of full cost recovery; our clear understanding is that the wording in the Order is to be taken as meaning recovery of all costs incurred in fulfilling our regulatory responsibilities, including maintaining adequate reserves to meet prudential standards and ensure that we are able to exercise prudent financial management over the medium term. It could be helpful for the wording in the Order to incorporate those considerations more explicitly.

Our aim is to move to a position whereby we are able to carry out regular reviews of our fees, in accordance with the above principle, with a view to more regular, modest fee adjustments as appropriate; subject to appropriate safeguards and clear accountability we think that could be achieved without the need for parliamentary approval for each individual fee review outcome, as is already the case for other regulators.

Question 30: Do you agree or disagree that the rule making powers set out in the draft order will enable the GMC to deliver the safe and effective regulation of AAs and PAs?

We partially disagree.

The comments that we have made in relation to questions 27 and 28 also apply here.

In addition, the comments that we raised in response to question 1 and the use of the phrase ‘approved qualification’ apply here in the context of paragraph

10(1)(b)(i)(bb) of Schedule 4 – the requirement that fitness to practise panels consist of at least one person who has an approved qualification.

Question 31: Do you have any additional comments on schedule 4, rules in relation to the drafting approach, as it would apply to all regulated healthcare professionals?

At the HCPC we do not have revalidation, but instead ask registrants to renew their registration periodically.

Our current legislation provides for a specific registration period, at the end of which registrants are required to make an application for renewal in accordance with rules and we are required to grant the application if they meet our health and character, fee, indemnity, CPD and practice requirements. If people do not meet these requirements, we are able to remove them.

We appreciate the flexibility provided for in the draft Order to accommodate different models of ensuring that registrants keep their knowledge and skills up-to-date across regulators. Whilst we can see some parallels with our model, we do think that there are potential differences (for example how to incorporate the non-standards elements of our renewal processes) which we would need to explore further as part of our reform. We would welcome further discussion regarding our legislation to identify any HCPC-specific amendments which may be necessary when the time comes to amend HCPC's legislative framework.

Schedule 5: consequential amendments

Question 32: In relation to schedule 5, consequential amendments, do you have any comments on how the draft order delivers the policy intention in relation to AAs and PAs?

We do not have any comments in relation to the consequential amendments as this purely relates to the GMC's legislation.

Question 33: Would you like to provide any further comments on the draft order?

We do not have any further comments.

Costs, benefits and equalities analysis

Question 34: Do you think there are any further impacts (including on protected characteristics covered by the public sector equality duty as set out in the Equality Act 2010 or by section 75 of the Northern Ireland Act 1998) from the legislation as currently drafted?

We have highlighted any impacts identified in response to relevant questions. We have not identified any further impacts.