



Department
of Health

External Relations Directorate

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Chief Executives/Registrars of the professional regulatory bodies

Dear Chief Executive/Registrar

This letter sets out the DH position on proposed legislation, including Section 60 Orders, the Law Commission draft legislation and the approach to seeking changes to existing legislation, particularly secondary legislation. It takes account of a number of representations made by the regulatory bodies (RBs) and the advice from the Professional Standards Authority (PSA) following their cost and regulatory effectiveness review.

You may be aware that we have established within the Professional Standards Branch a new Resource Board to assess priorities for future legislation and consider policy, legal and analytical resourcing matters within DH. The decisions set out here have been approved by the Resource Board. Where appropriate, they have also been approved by Ministers.

Law Commission draft legislation

You will be aware that we are seeking an early legislative opportunity to bring forward the draft legislation being constructed by the Law Commission. You have all been involved in the development of this work and I assume that you are fairly familiar with its contents. We will update you when we have some indication of the legislative vehicle that we are likely to be using to take forward these reforms.

Our initial view is that the draft legislation the Law Commission will bring forward is likely to make progress with the direction of travel taken by the Government in response to the Francis report. It is also likely to resolve a large number of matters raised by the RBs as part of their contribution to the PSA cost and regulatory effectiveness review. The draft Law Commission legislation will, of course, also take forward the simplification and modernisations set out in the Command Paper, 'Enabling Excellence, Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers', published in February 2011.

Taking all this into account, it remains our position that the Law Commission review is the correct legislative vehicle for the wide range of legislative change regarding professional regulation that is

currently being discussed out of Enabling Excellence, the Francis report, the PSA cost and regulatory effectiveness review and concerns raised by RBs themselves. There are, though, likely to be a few exceptions to this, based on the following principles:

- a) a small number of Section 60 Orders are currently under construction within my branch. These are based on pre-existing Government policy priorities, with the intention that they should be implemented sufficiently in advance of the commencement of any legislation arising out of the Law Commission review. These cover language checks for doctors, indemnity and the changes to GMC adjudication processes following on from the abolition of OHPA and have been taken into account by the Law Commission. Also, the proposed S60 order to regulate herbal practitioners is still ongoing, although a number of issues have arisen which the Department is working through; I will update you shortly about progress with this issue. Any further legislation which overlapped in Parliament with any legislation arising out of the Law Commission review would potentially be problematic for the Law Commission legislation.
- b) Where a new matter emerges that needs resolution by primary legislation or a Section 60 Order, we will consider this through the Professional Standards Resource Board. The Board will take into account whether any necessary legislation is likely to be able to be taken through Parliament in advance of introducing any legislation out of the Law Commission review, together with DH resourcing issues. Again, the starting point will be that the legislation arising out of the Law Commission review is the preferred method of dealing with such matters.
- c) We anticipate that there will continue to be a need to make changes to secondary legislation for the foreseeable future. Requests for my team to take forward such changes should be made to the Professional Standards Resource Board, using a new pro-forma based on the previous Legislation Board form that you are probably familiar with. My team will send this new form to you shortly. Your point of contact in Professional Standards should be the 'account manager' from my team. We will circulate a list in due course. Using information provided on the new form and subsequent discussions, the Resource Board will prioritise requests and consider policy, legal and analytical resourcing issues.

Section 60 Orders

In line with the principles above, the Resource Board that met on 17 April agreed to begin work on a further Section 60 Order. This would be a very slim order to resolve the matter referred to by the Prime Minister in his address to Parliament on the day of the publication of the Francis report. It would modernise the NMC legislation to enable it to review the decisions of its Investigating Committee. The intention is to do this in a way that also introduces Case Examiners. Our initial estimates show that such a slim Section 60 Order could complete its Parliamentary process in advance of any legislation being introduced arising out of the Law Commission review.

The Resource Board also met on 15 May and considered the PSA's Section 60 Order proposals, outlined in Harry Cayton's letter of 2 April. From its discussions, the Board felt further information was required about the proposals and the risks to public protection. We will be contacting the relevant RBs to discuss further.

Constitution Orders

I thought it would also be appropriate to set out where we are with regard to the plans to make changes to RB Councils, specifically their size. We have made the changes to the GMC, GDC and

NMC in line with the advice from the PSA. We are also taking forward similar changes to the HCPC. It is not our intention now to make any further changes in advance of any legislation arising out of the Law Commission review.

Conclusion

I hope that this letter is clear about the DH position regarding plans for future legislation. I will, of course, reconsider the position if it becomes clear that the legislation arising out of the Law Commission review is not likely to receive a Parliamentary slot in the near future.

I am, of course, very happy to discuss the contents of this letter either individually with you or at a CESG meeting if this would be useful. My team or I are in contact with you separately around specific pieces of legislation.

Yours sincerely



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Cc:

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Charlie Massey, Director General of External Relations, DH
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