General Osteopathic Council

# GOsC response to Department of Health and Social Care consultation: Regulating anaesthesia associates and physician associates

Information regarding the consultation can be found below:

- Department of Health and Social Care (DHSC) Regulating anaesthesia associates and physician associates consultation questions published 17 February 2023
- Draft Anaesthesia Associates and Physician Associates Order (AAPA) Order
- DHSC consultation outcome re: Regulating healthcare professionals: protecting the public

## GOsC responses to the consultation questions:

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| **Part 1: general**<br>Do you have any comments relating to 'part 1: general' of the consultation? | **Implementation of the Order within 12 months**<br>We note that once the Order comes into force the General Medical Council (GMC) would have 12 months to complete their preparations and commence regulation and a further 24 months to for all relevant medical associate professionals to register with the GMC.<br>For GOsC, 12 months is a relatively short period of time to enact change. However, planned time in advance for development and consultation on rules, transition arrangements and communication and engagement in the project will enable the transition period to be as short as possible.<br>We strongly encourage the Department of Health and Social Care (DHSC) to set out a clear timetable for when the reforms will be applied to all regulators so that there can be an appropriate amount of forward planning, and joint-working and collaboration between regulators of similar sizes. |

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| | **Language/Definitions**<br>We note the definitions provided in this section but suggest this may not be as comprehensive a list as it could be. For example, we note there is no definition of a 'person' or 'thing', which are subsequently referenced in future sections of the Order, and we feel this is a gap within the Order as presently drafted. We have commented on this point elsewhere in the response.<br>**Fitness to Practise, grounds for action**<br>We note that DHSC are proposing two grounds of action of a person's fitness to practise being impaired by reason of:<br>• inability to provide care to a sufficient standard (this replaces lack of competence and is intended it will cover concerns relating to lack of competence, health matters and insufficient English language ability) or<br>• misconduct<br>Changing terminology to 'an inability to provide care to a sufficient standard' does not address the issues we raised in our response to the 'Regulating healthcare professionals: protecting the public' consultation. Registrants who have a health condition that impacts upon their fitness to practise (FtP) should not be 'labelled' with a misconduct or an inability to provide care to a sufficient standard allegation if health sits at the heart of the concerns. This fails to reflect compassionate regulation and nuance around conditions related to physical and mental health and is out of step with the other changes proposed in the Order which benefit patients, the public and registrants, such as the less adversarial FtP processes through the 'accepted outcomes' process.<br>Troublingly, not having health as a separate ground of action would also prevent the regulator dealing with future risk to the public. By way of example: where a registrant is not demonstrating insight because of their health condition but there are currently no concerns relating to their ability to provide care to a sufficient standard, the regulator would effectively be prevented from taking proportionate and effective action. Moreover, the new proposals would not provide a framework to manage health concerns that are episodic/recurring where the competence or misconduct issue has fallen away or been adjudicated upon, and the regulator will have then effectively 'lost' jurisdiction. |

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| | *Conviction:*<br>We continue to consider that there should be a separate category of conviction. This is for several reasons. We set out the principal reasons below.<br>If conviction was alleged as misconduct, then this would require the introduction of an extra layer of decision making at the Fitness to Practise hearing (or by the case examiner). Most regulators have some provision within their rules which state that production of a certificate is conclusive evidence of the offence committed. It would be odd to include this provision where conviction is not a separate category of impairment. In addition, the proposal for automatic removal for certain convictions supports the inclusion of conviction as a category of impairment as otherwise there would be a disconnect between these provisions and the grounds of action. |
| **Part 2: standards and approvals**<br>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?<br>Note: This question does not relate to the GMC's powers for setting the standards for registration contained in Part 3.<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | Agree in relation to the GMC. Although we wonder, in relation to consultation provisions whether registrants and patients should be specified in the consultation provisions in Article 3(2) in addition to 'such persons as the Regulator considers appropriate before determining a standard under paragraph (1)'.<br>In relation to Article 3 for the osteopathic profession:<br>It might be helpful to reference standards related to CPD/evaluation of standards in Article 3(1) separately here and also reference these in Article 6(2)(c)(1) as our CPD standards are different to our registration standards.<br>Such an approach would enable a clearer link between the evidence gathering provisions in Schedule 3 paragraph 7 and the procedural rules in Schedule 4 para 3(2)(b) about the operation of a CPD scheme/evaluation of standards and the removal provisions under Article 8(3)(2)(b)(ii). It will also invoke the requirement to consult as outlined in Article 3(2).<br>In this way, the CPD/evaluation of standards scheme would be effectively established and enforced. The outcome that we are seeking to achieve is that a registrant is not able to be removed for failure to comply with the CPD scheme and then is able to re-join through Article 6 registration standards (see article 6 for more information on this) by demonstrating standards for joining the Register without having completed the CPD standards. We are not clear that as currently drafted, the Order achieves this.<br>In relation to Article 4 for the osteopathic profession: |

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| | Standards for Education will include Outcomes that graduates need to meet and Standards that providers need to meet in order to provide the right environment to deliver the relevant qualifications. The definition of 'person' needs to be defined or expanded to include a provider, placement or organisation as well as individuals.<br>We support the duty to co-ordinate all stages of education. Even in a profession which does not have specific postgraduate regulatory powers, it remains important to co-ordinate the different stages in a collaborative way with the sector.<br><br>In the same vein, we would also support an emphasis on a 'duty to promote high standards of education'. Quality assurance is not just a series of compliance exercises, but an ongoing focus on continuing improvement that provides continuing assurance and informs decision making and ultimately preserves the integrity of the Register of osteopaths and this statutory obligation recognises that.<br><br>'Person' and 'thing' in this article need to be defined and to be wide enough to include an organisation. Also 'person' is threaded through the document in relation to reviews, appeals, notifications and publications with different meanings at different points,<br>this needs to be enabled to be defined as an organisation, where appropriate, such that<br>if educational institution names or placement providers change that this can be incorporated easily into the structure.<br><br>We note that there does not appear to be a direct link between an educational approval and registration in the Order. Does holding an approved qualification under Article 4 need to be referenced explicitly in Article (6)(2)(c) registration requirements? |

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| 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? | Yes – although we do not currently register businesses in the same way as the General Optical Council or General Pharmaceutical Council, we would like a power to do this in the future.<br><br>Osteopaths became Allied Health Professionals in England in 2017 and increasing numbers are working in the NHS or delivering NHS services. As the health workforce changes to meet future needs, we should ensure that we should future proof our legislation to enable the demonstration of effective business regulation and clinical governance for independent osteopathic business delivering NHS services like other statutory health regulators.<br><br>Consequently, there should be powers to set standards and register business entities with powers to remove business entries where standards are not complied with which will also impact on subsequent articles and schedules as outlined above. |
| **Part 3: the Register**<br>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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | We agree that the draft Order provides the necessary powers to determine the standards and procedural requirements for registration.<br><br>We consider that the powers provide the framework with regulators able to make underpinning rules for registration which will be proportionate to the profession it regulates.<br><br>When GOsC legislation is amended, we consider that the draft Order will enable us to streamline elements of our registration processes, ie removing the need for archaic reference forms, while retaining robust processes for assessing the suitability of an entrant to the Register.<br><br>Please also see comments above in relation to Article 3 standards here. We wonder if requirements related to CPD/Evaluation of Standards need to be specifically referenced in Article 6(2)(c).<br><br>There is a power rather than a requirement to make certain rules in relation to registration, for example there is a power on the form and content of the Register. We wonder if, there is a consultation section needed in Article 5 about the Register to provide a catch all where this is not covered in paragraph 1 of Schedule 4 rule making powers. In particular, patients, the public and employers as the main users of the Register should be consulted on its form, content, accessibility and use. |

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| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | While we agree that the draft Order provides powers for restoring AAs and PAs to the Register where they have been previously removed due to a final measure, we question whether individuals who have been removed for the most serious of offences should be eligible for restoration with a regulator, unless their conviction has been overturned. |
| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | We agree the draft Order provides 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.<br>We consider this to be an important safeguard for public protection and believe that the drafting of the Order meets that need. |

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| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | We agree that the powers in the draft Order relating to the content of the Register and its publication will enable the GMC to maintain a Register of AAs and PAs.<br>We note the content of Section 5 which provides the Registrar with the powers to publish the Register. We welcome these powers as it would enable the GOsC, when our legislation is amended, to modernise the information we display on our Register, for example by removing the need to display gender in only two forms.<br>We also welcome that the powers would continue to allow GOsC to publish information on our Register which we know is of value to the public, such as location/practice information.<br>It would also enable us to note when a registrant is non-practising. |
| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | We agree.<br>We consider that the draft Order content, specifically Article 7, contains the necessary powers to reflect the different categories of registration and conditions that apply to the registration of people in those categories. |

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| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | Agree.<br>Based on the powers contained within Article 8, we agree that the draft Order would provide proportionate and necessary powers in relation to the removal of AA and PA entries from the Register. |
| 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 welcome the drafting of the Order for 'the Register' as it would enable regulators to retain those aspects of its work which currently benefit registrants and the public, while also allowing for those elements which are cumbersome to be streamlined and improved.<br>We also consider that providing all regulators with the opportunity to establish emergency Registers during times of national emergency is sensible and ensures a consistency and harmonisation of approach and provides an opportunity to utilise easily the whole of the health workforce. |
| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | While we agree that the Order provides the necessary powers to enable the GMC to implement an efficient and safe system of temporary registration during a period of emergency as declared by the Secretary of State, we also note there is no right of appeal provided for within the Order, which we suggest might need further reflection to ensure consistency with other powers contained within the Order. |

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| **Part 4: fitness to practise**<br>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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | Currently, DHSC does not believe the draft Order needs to 'prescriptively' set out the initial assessment stage. Instead Schedule 4, paragraph 3(1)(a) of the draft Order provides that this can be set out in Rules.<br>Whilst we agree that a 3-stage fitness to practise process is both proportionate and sufficient, we consider that express provision setting out a framework for the initial assessment within the Order is required.<br>As it is intended that the new legal framework for dealing with questions about the fitness to practise of AAs and PAs will form a template for doctors and other regulated healthcare professionals, it is vital that the initial assessment stage is provided in the Order. This will ensure transparency and promote consistency between regulators but will also provide a sounder legal basis for the initial assessment stage process detailed within rules. We consider that this would strike an appropriate balance between autonomy and accountability. Importantly, we consider that making express provision within the Order will also provide appropriate assurances which will promote public confidence in the regulator's fitness to practise processes. |
| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | We agree in part. However, please see our comments below.<br>We previously highlighted, in our response to the 'Regulating healthcare professionals: protecting the public' consultation, the importance of the patient/complainant's 'voice' in fitness to practise processes as emphasised in the Lessons Learnt Review into the NMC's handling of concerns about midwives' fitness to practise at the Furness General Hospital. We continue to consider that it is vital that any 'accepted outcomes' process should seek the patient/complainant's views on the accepted outcomes proposal and indeed that patients and complainants should be kept informed throughout the process. We consider that express provision for this should therefore be made within Article 13 of the Order.<br>*Review of final measures:*<br>We also consider that powers for review of final measures by Case Examiners should be expressly and unambiguously provided for within the Order.<br>Article 9(4) of the Order specifies that a final measure cannot be imposed for a period longer than 12 months with the added stipulation that 'this is without prejudice to a subsequent |

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| | measure being imposed based on the same evidence'. We think this might be a reference, albeit opaque, to the ability of Case Examiners (and a Panel) to undertake a review of the registrant's fitness to practise by reason of one of the grounds of action prior to the registrant being able to return to safe, unrestricted practice. The requirement for a review of final measures is separate to the provisions currently provided within Article 11 of the Order giving the regulator power to 'revise' a decision as this is limited to the ground that final measure was based on an error of fact or law or that there has been a material change of circumstances since it was made. This therefore would not encompass whether the registrant is safe to return to practise.<br><br>We consider that express provision setting out a framework for the case examiner review of a final measure (other than removal) within the Order is required to ensure safe and effective regulation. |
| 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?<br><br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br><br>Please explain your answer. | We agree in part. However, please see our comments below.<br><br>*Review of final measures:*<br><br>We consider that powers for review of final measures by a Panel should be expressly and unambiguously provided for within the Order.<br><br>Article 9(4) of the Order specifies that a final measure cannot be imposed for a period longer than 12 months with the added stipulation that 'this is without prejudice to a subsequent measure being imposed based on the same evidence'. We think this might be a reference, albeit opaque, to the Panel (and Case Examiners) to undertake a review of the registrant's fitness to practise by reason of one of the grounds of action prior to the registrant being able to return to safe, unrestricted practice. The requirement for a review of final measures is separate to the provisions currently provided within Article 11 of the Order giving the regulator power to 'revise' a decision as this is limited to the ground that final measure was based on an error of fact or law or that there has been a material change of circumstances since it was made. This therefore would not encompass whether the registrant is safe to return to practise.<br><br>We consider that express provision setting out a framework for a Panel review of a final measure (other than removal) within the Order is required to ensure safe and effective regulation. |

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| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | We agree in part. However, please see comments below.<br>*Review of an Interim Measure by a Panel*<br>Article 9(1)(a) provides that a Panel may impose an interim measure. However, there is no corresponding provision in Article 10 for a Panel to review an interim measure. We are not sure whether this is an oversight or deliberate drafting decision. We consider that specific powers should be provided to a Panel to review an interim measure imposed, both by a Panel and a Case Examiner. The purpose of a review of an interim measure is to determine whether one is still required or whether, interim conditions should replace an interim suspension following a change in the assessment of risk. In these circumstances, fairness requires that provision must be made for the registrant to make oral submissions before a Panel.<br>*Grounds for imposing interim measures*<br>We consider that the ability to impose interim measures during a Fitness to Practise (FtP) investigation is vital for public protection where the registrant presents a real continuing risk (actual or potential) to patients, colleagues or other members of the public if an interim measure is not made. However, we note that under current proposals, Article 9(1) is silent on the test to be applied by a Case Examiner/Panel when considering whether to impose an interim measure. We understand that this may because the existing grounds (which vary amongst regulators which encompass public protection, the wider public interest and the registrants' own interests) are considered unnecessarily restrictive. The imposition of interim measures has a serious impact on the registrant and while removing these grounds may provide a level of flexibility to the regulator, we consider this increased flexibility needs to be balanced by ensuring fundamental procedural safeguards are explicitly referenced within the Order. We consider that specific reference or a link to public protection should be written into paragraph 3 of schedule 1 under the Order as this will provide the appropriate balance and enhance transparency in the exercise of this power thereby promoting public confidence. We comment on paragraph 3 of Schedule 1 further below. |

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| 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? | Please see our detailed comments above and below in relation to paragraph 3 of Schedule 1. |
| **Part 5: revisions and appeals**<br>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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | In our response to the 'Regulating healthcare professionals: protecting the public' consultation we agreed with the regulator's power to review oversight of decisions made by case examiners but that the review should be conducted by the appointment of an Independent Reviewer. We consider this would have many advantages, notably the review would be quicker and cheaper without compromising independence.<br>DHSC is currently proposing that where a Panel has imposed a final measure on an associate, the regulator may revise the decision on the ground that there has been a material change of circumstances since it was made. The previous consultation only sought views on regulator review of Case Examiner outcomes. Article 11(2) proposes an extension of the regulator's review to panel substantive outcomes. The provisions are unclear as to the interplay with a registrant's right of appeal to the high court and any review conducted. As this involves parallel remedies involving the application of different tests before different panels/courts, it throws up challenges in terms of interpretation and application.<br>In addition:<br>- What about the principle of finality of proceedings?<br>- Introduction of unitary boards will mean that the Registrar will be a member of the governing council and thus a party to proceedings. There needs to be safeguards within Article 8. This could risk undermining the judgement an of independent panel who have assessed witnesses/evidence<br>- What is meant by material change? Does the registrant engaging after not engaging amount to a material change in circumstances? |

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| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | We consider that the interplay between reviews and appeals is complicated and consider that this be reconsidered to make it clearer and more accessible.<br>The wording and use of person causes challenges in relation to organisations as outlined earlier in relation to Article 4. |
| 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? | Please refer to our detailed comments above. |
| **Part 6: miscellaneous**<br>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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | We agree. Please see our comments below. |

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| 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? | |
| **Schedule 1: the regulator**<br>Do you agree or disagree with the proposed powers and duties included in Schedule 1 the regulator in relation to AAs and PAs?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | We agree with the proposed powers and duties included in Schedule 1, the regulator, in relation to AAs and PAs. |
| 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 note the proposed powers in Schedule 1, the regulator, would remove development of the profession from being within the scope of the regulator, which is something we currently have within the Osteopaths Act 1993.<br>Schedule 1, paragraph 2 – delegation powers – can these be made to an organisation? The wording of the Order specifies person. It may be helpful to define person in Article 1 for clarity.<br>Schedule 1, paragraph 3 – paragraph 3 of Schedule 1 makes reference to an 'objective' and matters to which the regulator must have regard to in exercising its functions under the Order. Only reference to promoting and maintaining public confidence and proper professional standards and conduct for members of the profession is expressly referenced. This fails to reference the overarching objective of public protection. We are unclear as to why this is absent from 'objective' in paragraph 3. The suggestion that the primary legislation (here the Medical Act) contains it and can be read across is unconvincing given the express inclusion of maintaining public confidence and professional standards and conduct within the 'objective'. |

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| | Further, taking into account our view that patient partnership is an important part of clinical care and health professional regulation and a necessary component of public confidence and as such references to patients and users need to be strengthened in the Order rather than in rules made by the regulators themselves, we consider that different wording should be used for patients. We suggest the additional words 'seek out' so that it reads 'must seek out and have regard, in exercising its functions under this Order, to — 11 (i) the interests of persons using or needing the services of associates in the United Kingdom.<br><br>We suggest that the wording here should mirror the public protection objective that exists in the GMC and all other health regulator's legislation. We consider that specific reference or a link to public protection should be written into paragraph 3 of Schedule 1 under the Order as this will provide the appropriate balance and enhance transparency in the exercise of powers under the Order thereby promoting public confidence.<br><br>Schedule 1, paragraph 4 – we are not clear as to the rationale for the wording in (5) – (5). The Privy Council may not under this paragraph make, amend or remove an entry in the Register in respect of an individual, nor refuse to do so. Are there any circumstances in which this could be a public protection issue? Or is the suggestion that this power could be delegated by the Privy Council to another body to do? |
| **Schedule 2: listed offences**<br>Do you have any comments on Schedule 2, listed offences? | We agree with the proposal. This will enable the regulator to take action quickly to protect the public. Please see our response under categories of action that conviction should be included as a separate category of action to ensure the provisions are consistent with each other and joined up. |

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| **Schedule 3: evidence gathering, notifications, publication and data**<br><br>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?<br><br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br><br>Please explain your answer. | Schedule 3, paragraph 1 – Disclosure of Information – we would support the strengthening of this paragraph to cover requirements to co-operate, acquire and disclose data with other organisations for the purposes of patient safety which may relate to any of our functions including education, registration and fitness to practise and also activities, for example, for the purposes of research and policy development.<br><br>Schedule 3, paragraph 2 – Notifications – We consider there is a gap in that students should be notified about matters such as approvals and appeals and that the student voice should feature within educational provisions. There is also a gap here in relation to notifying patients or complainants about decisions.<br><br>Schedule 3, paragraph 4 sets out the GMC's duties to publish information from the content of the Register. We consider that the principle of consistency is important across regulators in relation to publication of warnings etc.<br><br>Schedule 3 (a) requires a report to each Parliament and devolved legislature on how the regulator carries out its function to protect members of the public from registrants whose fitness to practise is impaired. We welcome this inclusion. However, we note this duty is retrospective and the first time within the Order where public protection is referred to in relation to the regulator's fitness to practise functions. Please see our response to Schedule 1.<br><br>Schedule 3, paragraph 7 – we support a strengthening of duties in relation to co-operating, acquiring and disclosing information for the purposes of patient safety. Further, we could not see any powers to inspect for the purposes of educational quality assurance or other forms of approval and we consider that these powers would be a necessary part of any GOsC framework. |

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| 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? | *Evidence Gathering*<br>It is not clear whether this section is drawn wide enough to enable us to require information from other organisations or people connected to registrants or persons with educational approval to fulfil our statutory duties with regards to education. For example, we can require information from prescribed 'persons' but it is not clear if we can require information from educational organisations or placement providers for the purposes of assuring the quality of education.<br>Further, it is not clear if we are permitted to enter and inspect providers or placements for the purposes of quality assurance. We consider that this point may need to be made explicit on the face of the Order. |
| **Schedule 4: rule-making powers**<br>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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | Schedule 4, paragraph 1 – This gives GOsC more flexibility in how the Register is kept and what information is displayed which we welcome.<br>Schedule 4, paragraph 2 – registration rules (Rules prescribing persons etc) – these powers appear proportionate and sufficient. Although note that persons also has a meaning in terms of educational approvals which will need to be a separate definition as these rules refer to Articles 6 and 7 only not Article 4.<br>Schedule 4, paragraph 3 – Procedural rules for procedures other than appeals (includes: approvals, registration, case examiners' and panels' function, review of interim measures and revision of decisions removing an entry for conviction of a listed offence, in particular, the time within which any step must be taken) – These rules also include rules about the operation of the CPD scheme/evaluation of standards – These appear sufficient although the reference to 'in particular, for an assessment of a person's physical or mental health' in paragraph 3(2)(b) should possibly be a separate paragraph 3(2)(c) as this is not part of an evaluation of standards for CPD, this would be part of a fitness to practise evaluation process. |

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| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | Schedule 4, paragraph 4 – appeals – patients or complainants should be notified about a fitness to practise appeal they have been involved in and should this be raised in the Order? |
| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | Schedule 4, paragraph 7 – We welcome more flexibility in setting our own fee structure.<br>While we understand the intent of the Order, we disagree with some of the provisions as set out concerning the charging of fees.<br>The Order states at 7(2) that *'The rules must require the level of any fees to be set with a view to ensuring that, so far as practicable, the Regulator's fee income does not exceed its expenses (taking one year with another).'*<br>While regulators would not be looking to set an income budget which resulted in significant surpluses, we do not believe the draft wording provides regulators with the room to build reserves or raise funds for infrastructure projects/investment.<br>Additionally, we are concerned how fees can be set in accordance with the wording of the Order when there may be volatility around income/expenditure connected to future registrant numbers and fitness to practise cases.<br>However, we do positively note that the Order does provide at 7(1) for the regulator to make rules as to the setting, charging, collection and recovery of fees in connection with the discharge of any of its functions under the Order, which we welcome. Such a provision will allow the future GOsC Council to assess whether, for example, it wishes to recharge for aspects of the Recognised Qualification programme which is a power that we do not currently have within our statutory framework. |

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| 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?<br>Agree<br>Disagree<br>Neither agree nor disagree<br>I don't know<br>Please explain your answer. | We agree.<br>We believe regulators will welcome the enhanced flexibility and autonomy which would be provided by the rule making powers set out in the Order. We believe this approach will free regulators from the challenges of complex and prescriptive legislation and will ensure a greater flexibility for responding to the changing context within which healthcare professionals operate. |
| 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? | |
| **Schedule 5: consequential amendments**<br><br>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 note the consequential amendments that relate to other primary and secondary legislation and would suggest that in making these changes, there was time spent to ensure that all healthcare professions were reflected in those pieces of legislation. We consider that this is important to ensure there is parity between all healthcare professionals within the workforce who form part of the wider healthcare system.<br>As an example, we would suggest osteopaths should be included within the Social Security (Personal Independent Payment) Regulations 2023. |
| Would you like to provide any further comments on the draft Order? | No. |

| Question | GOsC response |
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| **Costs, benefits and equalities analysis**<br>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 are currently required to display sex on our Register and so the removal of this requirement removes a specific impact of our legislation. Equally, we currently have a requirement of good health in our legislation and this could be interpreted in a discriminatory manner. The removal of this requirement removes a specific impact of our legislation.<br><br>Consistent standards but with the flexibility to tailor assessment to different groups should enable greater fairness and consistency in meeting registration requirements.<br><br>If the Order were to strengthen in this area, it could strengthen the consultation provisions outlined in Schedule 1, paragraph 14 and in other parts (eg Article 3(2) – consultation on standards) to explicitly make reference to the equalities legislation of the four nations here.<br><br>We also note that there is very little reference to patients in the Order. For example, patients are only referenced in Schedule 1, paragraph 14 in relation to being consulted on the content of rules. But patients are not mentioned in relation to consultation on standards in relation to Article 3(2) consulting on standards. Regulatory standards require health professionals to work in partnership with patients and we consider that patients voice should be strengthened in relation to regulatory functions too.<br><br>It may also be appropriate to reference the Welsh Language Standards explicitly which will also impose specific requirements on all regulators. |