

18 October 2021  
By email: ([seneddhealth@senedd.wales](mailto:seneddhealth@senedd.wales))

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Dear Russell

**Re: Legislative Consent Memorandum for the Health and Care Bill**

Thank you very much for your letter requesting our response to the Legislative Consent Memorandum for the Health and Care Bill.

The General Medical Council (GMC) is the independent regulator for all UK doctors. We help to protect patients and improve medical education and practice in the UK by setting standards for students and doctors. We support them in achieving and exceeding those standards and take action when they are not met.

Our relatively narrow remit, given the breadth of the Health and Care Bill, means that we are unable to comment on the specific questions asked.

However, we hope that it will be helpful to share our response to the Bill Committee on the Bill itself. This explains our position on the proposals that are relevant to our work. Below are excerpts from our Written Evidence to the Health and Care Bill specifically on Clause 123, which potentially impacts on Health Regulators.

The key points most relevant for the Senedd in Wales are in bold. Please see attachment to view the written evidence in its entirety.

**Changes to professional regulation (part 5, clause 123)**

- 1** Of direct interest to us are the proposals to extend the Secretary of State's (SofS) powers regarding healthcare professionals' regulation. These powers are:

- The removal of a profession from regulation where regulation is no longer required for the protection of the public
- The abolition of an individual health and care professional regulatory body where the professions concerned have been deregulated or are being regulated by another body
- The delegation of previously restricted functions to other regulatory bodies through legislation

*Powers to remove a profession from regulation and abolish a regulator*

- 2 The Government states that the aim of this proposal is to address an imbalance. At present, section 60 of the Health Act 1999 provides powers to make a large number of changes to the professional regulatory landscape through secondary legislation. The proposals in the Bill for additional powers will widen the scope of section 60 and extend the powers of the SofS.
- 3 Currently the Government has powers to bring a new profession into regulation, or modify it through secondary legislation, but can only remove a profession from regulation by primary legislation. The Bill will change this by enabling the removal of a profession from statutory regulation through secondary legislation. We welcome the clarification in the Bill that a profession would only be removed from regulation when it is no longer required for the purpose of the protection of the public. However, we would welcome reassurances on what criteria the government will apply to inform such a decision.
- 4 The Bill also allows the SofS to abolish a healthcare professional regulator using secondary legislation, but only where its regulatory functions have been merged into or subsumed by another body or bodies, or where the professions that it regulates are removed from regulation.
- 5 **The use of these powers will have implications for the devolved administrations because most<sup>1</sup> regulation of healthcare**

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<sup>1</sup> Regulation of social workers is devolved.

\*\*We will shortly take on the regulation of Physician Associates and Anaesthesia Associates which will be accountable to the Scottish Parliament.

**professionals in England, Scotland, and Wales is reserved to Westminster. Northern Ireland is different and professional regulation is a transferred matter. This is further complicated by the fact that health and care policy is devolved in each of the four nations.**

- 6 As a four-country regulator we welcome the Government's assurances in the Bill's explanatory notes that 'any use of the extended powers will be subject to Ministerial approval across the devolved administrations. Orders will always require the approval of the Northern Ireland Assembly where professional regulation is a transferred matter and may require the approval of the Scottish Parliament (where they concern professions brought into regulation after the Scotland Act 1998\*\*) or the Welsh Senedd (where the order concerns social care workers).'**
- 7 We believe that independence is key to the trust and confidence that the public and professions have in regulation. In a system of healthcare dominated by the UK's national health systems – four separate state funded providers – it's vital that regulators are able to operate independently of government and all other stakeholders.**
- 8 While we do not think these extended new powers would ever apply to the regulation of doctors due to the significant public protection risks the removal of regulation would entail, we would welcome reassurances from the Government about how these extended powers will be applied consistently.**
- 9 It would be useful to understand whether core criteria and principles to inform decisions to bring professions into regulation, or to remove them, will be developed, and what consultation with patients' organisations, representative bodies and regulators will take place.**
- 10 We have noticed that there is no mention of a statutory duty to consult stakeholders– either in the Bill, or in the explanatory notes - before abolishing a profession and a professional regulator. We would be pleased if consideration be given to how such decisions would subject to proper scrutiny and whether they are in the public interest and would protect**

patients.

*Power to remove restrictions regarding the power to delegate functions through legislation*

**11** We welcome this power as it is in line with the ambitions of our corporate strategy to work with partners to deliver wider healthcare system goals. Alongside parallel discussions on regulatory reform, it will:

- Give regulators and others across the healthcare systems the opportunity to work together more effectively.
- Enable organisations to pool expertise to streamline how functions are delivered, recognising that some may require a multidisciplinary perspective and collaborative approach, in order to strengthen public protection.

We hope the above information will help inform the Health and Social Care Committee's scrutiny of the Legislative Consent Memorandum on the Health and Care Bill.

Yours sincerely,

Sara Moseley

Head of GMC Wales