1 Introduction

1.1 The NHS Plan published in July 2000 proposed the formation of an UK Council of Health Regulators to co-ordinate and act as a forum for the particular bodies which regulate individual health professions. The Report of the Bristol Royal Infirmary Inquiry (the Kennedy Report) supported the concept of an overarching body for the regulation of health professionals and recommended the establishment of a Council for the Regulation of Healthcare Professionals. In making his preliminary response to the Kennedy Report’s recommendations the Secretary of State for Health announced on 18 July 2001 in the House of Commons that he would take action on this recommendation following consultation, alongside proposals to reform the General Medical Council. This document sets out the Government’s proposals in this area and seeks the views of all interested individuals and organisations.

1.2 The Government will make its substantive response to the Bristol Inquiry’s findings and 198 recommendations in autumn 2001, when we, the public and interested organisations have had the opportunity to study the report in detail. We plan to consult on our proposals for the Medical Education Standards Board at the same time. Legislation in this session of Parliament will be brought forward to address the issues set out in this document.

1.3 The proposals upon which we now seek views cover:

- the functions of the Council for the Regulation of Healthcare Professionals;
- the extent to which responsibilities for the functions of education, training, continuing professional development, revalidation and fitness to practise should be held by the individual professional regulatory bodies and the scope of the new Council’s powers in co-ordinating such functions;
the nature of the accountability of the individual professional regulatory bodies to the Council for the Regulation of Healthcare Professionals;

the mechanism for the accountability of the Council for the Regulation of Healthcare Professionals;

and when they are published

- reforms to the governance of the General Medical Council.

### Professional regulation in a modern context

#### 1.4

The Government has previously set out the principles for professional regulation in the health field1 which include clarity on standards, maintaining public confidence, transparency and fairness of procedures, responsiveness to, and protection of, the public.

#### 1.5

It is essential that the various regulatory bodies should work together to develop common systems across the professions, and to agree standards that put patients’ interests clearly at the heart of professional regulation. Modernisation must keep pace with change and development in the NHS as well as societal attitudes and public opinion. Professional regulatory bodies must be open, make improvements based on feedback from patients, their representatives and the public. They must deal with complaints quickly, thoroughly, objectively and in a way which is responsive to the complainant whilst treating fairly the health professional complained against.

#### 1.6

It is clear from the Kennedy Report and the experience of professional regulation in recent years that there are weaknesses in the current arrangements which need to be addressed by reforms to the individual regulatory bodies, stronger and more effective co-ordination of their work and clearer and more robust accountability mechanisms.

The Government is seeking responses to the proposals in this document by 30 September 2001.

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2 Modernising Regulation in the Health Professions
2 Progress with reform

2.1 The internal workings of the regulatory bodies have not always kept pace with the changes taking place across the NHS. As a result, a damaging perception has arisen that the existing arrangements have sometimes placed professional self-interest before the interests of patients.

2.2 Many of the processes and rules of professional regulatory bodies are bound by primary legislation which pre-dates the modern era of openness and responsiveness. The Government has addressed this by taking powers in the Health Act, 1999, to modernise this legislation more rapidly and easily than was previously possible. These powers have already been used to strengthen the GMC’s power to act quickly to protect patients when it receives a complaint.

2.3 Further reform is taking place:

- from 1 April 2002 the United Kingdom Central Council for Nursing, Midwifery and Health Visiting (UKCC) and the Council for Professions Supplementary to Medicine (CPSM) are, subject to legislation, being replaced by the Nursing and Midwifery Council (NMC) and the Health Professions Council (HPC). The new bodies will be smaller, will have a greater representation of lay members, and will be more transparent in line with the minimum requirements we set out in the NHS Plan;

- the General Dental Council, General Optical Council and Royal Pharmaceutical Society are all seeking new powers to improve fitness to practise procedures which will bring them more in line with the changes being proposed for the General Medical Council, NMC and HPC;

- the GMC has reached agreement on the introduction of a scheme of regular revalidation of the fitness to practise of doctors on its Register, and is consulting on new governance arrangements, revalidation and improved fitness to practise procedures.
2.4 These changes represent an important step forward. But further reforms are necessary to address the concern expressed in the Kennedy Report about the need for a more integrated approach to setting standards, monitoring performance and addressing issues of overlap between the various bodies.

2.5 The Government therefore proposes the creation of the Council for the Regulation of Healthcare Professionals with a strong role, backed by statutory functions, to work with the regulatory bodies to build and manage a new framework for self-regulation which:

- explicitly puts patients’ interests first;
- is open and transparent and allows for robust public scrutiny;
- is responsive to change;
- provides for greater integration and co-ordination between the regulatory bodies and the sharing of good practice and information;
- requires the regulatory bodies to conform to principles of good regulation; and
- ensures that the regulatory bodies act in a more consistent manner.

The Government welcomes views on the proposal that the Council for the Regulation of Healthcare Professionals should be empowered to build and manage a modern framework for self-regulation.
3 Accountability

3.1 The NHS Plan made clear that full and open accountability to the public and the professions is the key to effective reform of regulation. If the regulatory bodies are to retain public confidence that they are acting in the public’s interest they have to:

- inform the public about their work and what they have achieved;
- give the public the opportunity to influence decisions about policy and procedures;
- demonstrate that they exercise their powers in the public interest and for the protection of patient safety;
- ensure that regulation meets the needs of healthcare providers;

and to ensure that this has been successful the public must be able to:

- scrutinise and question what the regulatory bodies have done.

3.2 The current accountability of the regulatory bodies is as follows:

- General Medical Council – Privy Council;
- United Kingdom Central Council – Secretary of State;
- Council for Professions Supplementary to Medicine – Privy Council;
- General Dental Council – Privy Council;
- General Optical Council – Privy Council;
- Royal Pharmaceutical Society of Great Britain – no explicit accountability;
- General Chiropractic Council – Privy Council;

3.3 These arrangements are not satisfactory. For example, the GMC has admitted that its “accountability is largely implicit: it is subject to fewer disclosure requirements than a limited company, trade union or charity. This is unsatisfactory for a modern regulatory body carrying this level of responsibility and public trust.”

3.4 There are arguments for making the regulatory bodies accountable to the Secretary of State for Health. This might achieve greater clarity but it would not accord well with the recommendation in the Kennedy Report that the regulatory bodies must themselves be independent of and at arms’ length from Ministers.

3.5 Giving a more explicit supervisory role to the Privy Council would not greatly enhance the present arrangements for most Councils. The functions of the Privy Council are carried out by Government Ministers on an UK-wide basis. In health-related matters it is Health Ministers who determine Privy Council policy. It is therefore questionable whether accountability by this route would, in practice, be different from accountability to the Secretary of State for Health on their behalf.

3.6 The Government therefore proposes that the regulatory bodies should be accountable to a new Council for the Regulation of Healthcare Professionals, and through the Council to Parliament. This would bring clarity and consistency and, for the first time, would mean that the regulatory bodies are held properly and explicitly to account for their performance as competent public authorities.

The Government welcomes views on accountability of professional regulatory bodies and specifically on the proposal that they should be accountable to Parliament through the new Council for the Regulation of Healthcare Professionals.
4 Functions

4.1 The Kennedy Report recommended that the new overarching body should have a statutory basis. The Government accepts this recommendation and proposes that the Council for the Regulation of Healthcare Professionals should have the following statutory functions:

1) protecting the interests of the public and patients in the field of the regulation of health professionals;

2) managing a framework for self-regulation, including oversight of regulators’ rules and practices;

3) publishing an annual report on the regulators’ performance;

4) comparing the performance of the regulatory bodies in order to promote continuous improvement, by reference to each other and to other organisations;

5) setting performance improvement targets with the regulatory bodies where necessary and monitoring progress;

6) requiring the regulatory bodies to conform to the principles of good regulation;

7) ensuring that the regulatory bodies act in a consistent manner;

8) promoting greater integration and co-ordination between the regulatory bodies and the sharing of good practice and information;

9) providing an ombudsman service for complainants alleging maladministration against a regulatory body in the performance of its regulatory functions. (This would refer to allegations of maladministration only e.g. delay);
10) with the Health Professions Council, advising the Secretary of State and the devolved health ministers on the extension of health professional registration to currently unregulated professions; and

11) make public interest appeals in extreme cases against individual decisions of the regulatory bodies.

4.2 The Kennedy Report also recommended that the new body should have wider functions, for example education, training and development of all staff in the healthcare professions, and for promoting common curricula and shared learning across the professions.

4.3 In order to carry out its functions the Council needs reserve powers. The Government considers that the Council could not be certain about making progress in its tasks of modernising regulation without powers to ensure that any obstacles which it encountered could be overcome. The Kennedy Report came to the same conclusion.

4.4 The Government considers that the reserve powers should respect the independence of the regulatory bodies by giving them the maximum opportunity to act voluntarily. However, whilst the Council should not have the power to take over or intervene in individual fitness to practise cases it should have the capacity to ensure compliance with the principles of good regulation and carry out its statutory functions. It should have the power to require changes to the regulatory framework or the design of procedures operated by the individual professional regulatory bodies. It should have the powers in extreme cases to appeal against decisions of the healthcare regulatory bodies.

The Government welcomes views on:

- the functions of the Council for the Regulation of Healthcare Professionals;
- whether these functions should include the wider education, training and development role recommended by the Kennedy Report; and
- the powers needed by the Council to carry out its statutory functions.
5 The Director and the Council for the Regulation of Healthcare Professionals

5.1 The Kennedy Report recommended that the new body should be independent. The Government agrees, and proposes that this can be achieved if the Council is a non-ministerial government department headed by a Director. The Director would be appointed by the Secretary of State, in consultation with the other UK Health Departments and would have his or her own staff. The Council would have statutory powers and, like other regulators, would be independent of Ministers. The Council would report to Parliament.

5.2 The Council would be the forum in which common approaches across the professions would be developed, and implemented. The Council itself could be responsible for setting policy in the same way as the council of a regulatory body or the Board of an NHS organisation or a public company. Alternatively, it could instead serve as the Director’s key resource of advice on how to achieve change and the statutory duties and powers would rest with the Director.

5.3 It will be essential to get a proper balance of stakeholder interest in the membership of the Council. The Council will need to be representative of the regulatory bodies, health service and the public.

The Government welcomes views on whether statutory powers should rest with a Director or with the Council as a whole. It also seeks views on the best way to achieve a broadly based membership that would ensure key stakeholder interests are represented.
5.4 The Council will also have important links with other bodies such as the new General Social Care Council (GSCC). We do not think at present that the time is right to move all the way to combined regulation of health and social care professions, because for example the early work of the GSCC concentrates on the registration of social workers, who are employed very largely by social care employers and, if they work in healthcare settings, normally do so while remaining accountable to their social care employer. But in order to help the Council and the GSCC work in a mutually consistent way and keep informed of each other’s activities there might be a place for an observer from the Council and GSCC to have the right to attend each other’s council meetings.

The Government welcomes views on whether the GSCC and other bodies should have links with the work of the Council.
6 Summary

6.1 The proposals in this document are designed to replace the current fragmented arrangements for the regulation of health professionals with a modern framework that puts patients at the centre of the process and ensures public confidence that the best systems are in place.

6.2 The need for reform is beyond doubt. The Kennedy Report supports the Government’s commitment to establish an overarching body to oversee the various regulatory bodies, but does not address the need for meaningful accountability between the regulatory bodies and the health service, which is the key to reform.

6.3 The proposals will deliver the Government’s commitment in the NHS Plan and action some of the findings of the Kennedy Report. They will result in a system of regulation which is accountable, open and transparent, responsive to change, with consistency of approach, and greater integration and co-ordination between the regulatory bodies. A system which puts patients’ interests first, and offers patients better protection.

August 2001
How to respond

Comments should be sent by 30th September 2001 to:

Modernising Regulation in the Health Professions
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Room 2N35A
Quarry House
Quarry Hill
Leeds LS2 7UE

Or by e-mail to

regulation@doh.gsi.gov.uk

Attachments should be in Microsoft Word or rich text format only please.

Under the code of practice on open government, we will make responses available to the public unless respondents ask for their responses to remain confidential.

Further copies:

This consultation document is available on the internet at:

http://www.doh.gov.uk/modernisingregulation