UK Department of Health & Social Care.

Regulating anaesthesia associates and physician associates

The draft order and consultation questions

This chapter of the consultation is intended to be a high-level description of what the legislation will do and should be read alongside the draft order at Annex A. Where there has been a meaningful policy change since our previous consultation, Regulating healthcare professionals, protecting the public, we have highlighted this and sought further views.

Part 1: general

Citation and commencement

This article sets out the name of the draft order and the date provisions come into force.

The draft order currently states that article 14(b) (which relates to the use of protected titles) will come into force 3 years from the date the draft order is made to allow the GMC 12 months to complete their preparations and commence regulation and a further 2 years for the relevant medical associate professionals to register with the GMC. All remaining provisions will commence one year after the date the draft order is made. As the passage of legislation is subject to the Parliamentary timetable, we will keep the commencement provisions under review to ensure that regulation of AAs and PAs begins in timely fashion, while providing the GMC with the necessary time to prepare and consult on its rules.

Interpretation

This article lists the definitions of certain words in the draft order.

Included is confirmation that any reference in the draft order to a person's fitness to practise being impaired is a reference to impairment by reason of:

- inability to provide care to a sufficient standard or
- misconduct

These are the new grounds for action, which are set out in article 2(2)(a) of the draft order. They set out the reasons why the GMC might need to investigate and take action where there is a concern about an associate's fitness to practise. As set out in our response to our consultation, Regulating healthcare professionals, protecting the public, we are of the view that going forwards all regulators should be provided with the same 2 grounds for action. This will introduce consistency across regulators and clarify to the public and registrants the circumstances in which action can be taken. The terms that we have decided on are different to those we initially consulted on which were 'misconduct' and 'lack of competence'.

We considered the alternative terminology proposed by respondents to the consultation and following further policy development work with the healthcare regulators and other key stakeholders, we are of the view that 'inability to provide care to a sufficient standard' is a more appropriate term. It is intended that this term will cover

concerns relating to lack of competence, health matters and insufficient English language ability (further background to this change can be found in our consultation response).

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

The Royal College of Physicians of Edinburgh (RCPE) is pleased to respond to this important consultation. The RCPE considers that PAs and AAs play an extremely important and positive role within our health services as part of multidisciplinary teams and we welcome moves that will further enhance the status of PAs and incorporate them within formal regulation, something which can enhance patient confidence and safety.

Many RCPE Fellows and Members were broadly supportive of the change of terminology and the view that regulators should be provided with the same two grounds for action. However, some were less convinced about the specific two new grounds for action and therefore it may be appropriate for more information to be provided on the details of the policy development work which led to this decision. Some Fellows wished to emphasise the importance of clear definition of PAs and AAs- and indeed other newer professions- to avoid misinterpretations.

Part 2: standards and approvals

Standards

Article 3 sets out the GMC's duty to set standards in relation to education and training and registration. For registration, this requires regulators to set standards of education, training, knowledge, skills, experience, conduct, performance, ethics, and English language. Regulators are expected to have regard to the government's Code of Practice on the English language requirements for public sector workers when setting the language proficiency requirements for the professions they regulate. These are the standards which the GMC must be delivering at a minimum. The draft order requires the GMC to establish processes for the on-going assurance of associates on their register and this article gives the GMC powers to set any standards it determines are relevant to this process.

This article includes a requirement for the GMC to consult appropriate persons when determining standards and to keep the standards under review.

The government considers the power to issue advice in relation to standards to be incidental to the power to approve qualifications, education or training providers, or an examination or assessment.

Approvals

Article 4 sets out the GMC's approval power. This power extends to:

- education or training qualifications
- education or training providers
- an examination or assessment of persons who are or wish to be registered

Approvals can have conditions attached and can be withdrawn. Article 4 also allows for the above approvals outside the UK. Article 4 is broad enough to ensure that approval of curricula is covered.

The government position is the power to award qualifications is incidental to the power to approve qualifications, education or training providers, or an examination or assessment.

GMC role in co-ordinating education and training

Article 4 (3) provides the GMC with the power to coordinate all stages of education and training of associates. This, in conjunction with schedule 1 paragraph 3(1)(d) and its incidental powers, will provide for the GMC to have an overarching role in the education and training of AAs and PAs.

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?

Note: This question does not relate to the GMC's powers for setting the standards for registration contained in Part 3.

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider that this is generally appropriate and aligns with medical and education and training processes.

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?

No

Part 3: the register

Register

Article 5 sets out that the registrar must keep an up-to-date register of associates that they are satisfied meet the criteria for registration. The registrar also has a duty to safeguard the integrity of the register by taking steps to prevent falsification.

It sets out that the registrar must only divide the register into 2 parts, one for each of the following:

- anaesthesia associates
- physician associates

Associates may be registered in one or both parts of the register.

It sets out the mandatory information that the registrar must record against an entry and that the GMC must set rules detailing which contact details it will record.

The registrar also has a duty to include information in the register which relates to a person's practice as an associate, where the regulator determines its inclusion serves the purpose of protection of the public.

The registrar also has a discretionary power to include any additional information they see fit.

As set out in the government response to the consultation Regulating healthcare professionals, protecting the public, we believe it is appropriate for the GMC to have proportionate powers to determine when additional information should be included (or 'annotated') in the register. The powers set out in article 5 and in schedule 3 will enable the GMC to include and publish information relating to the identity and practice of professionals where doing so will serve the protection of the public. There is also a further discretionary power to hold other types of additional information which may not be published.

Registration

Article 6 sets out the standardised requirements for registration as an associate with the GMC, and for restoration to its register. It also contains powers for the GMC to register associates where the Secretary of State declares that an emergency has occurred or is about to occur - see the 'emergency registration' section for a summary of the emergency registration powers contained in the draft order.

Paragraph 1(a) and (b) set out the requirements that applicants must meet to be restored to the register.

Paragraph (1)(a) requires applicants who were removed from the register as a result of a final measure to satisfy the registrar that they meet the criteria for registration, and they must also satisfy a panel that their fitness to practise is not impaired.

Paragraph (1)(b) requires all other applicants for restoration to satisfactorily demonstrate that they meet the criteria for registration set out at paragraph 2 and additionally, where the regulator has made rules which apply to an application, that the applicant's fitness to practise is not impaired. Regulators must set out in rules who will decide applications for this category of applicants.

These powers are an important patient safeguard that will enable the GMC to consider any concerns that have been raised about an associate's fitness to practise before they can be restored to the register.

Paragraph 2 sets out the standards and requirements for each profession that associates must meet to be registered with the GMC, including: identity, insurance or indemnity cover, and the regulator's standards of education, training, knowledge, skills, experience, conduct, performance, ethics, and English language. It also gives the regulator a power to set out in rules any other procedural requirements for registration that fall outside of these standards.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider that these generally align to the process in place for doctors, protect patient safety and ensure the competence of associates through the requirements needed.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

Again, these processes seem to align with those of doctors.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider these appear to be appropriate and proportionate.

Conditions on registration

Article 7(a) gives the GMC powers to set and impose conditions on the scope of registration of groups of associates.

This article also gives regulators broad powers to impose conditions on the scope of registration of individuals or groups of associates registered under the emergency registration powers - see the 'emergency registration' section for further details.

In respect of non-emergency registration, the powers in this section of the draft order enable regulators to set conditions that will apply to the registration of associates who meet pre-determined criteria, as set out in rules at paragraph 2(d) of schedule 4. The GMC can set out how the condition will operate, how long a condition applies, or any particular criteria that associates must meet before the end of a condition period. Depending on the nature of a condition set by the GMC, there may be implications for future registration, in line with other provisions in the draft order. For example, non-compliance with a condition could result in registration being removed or fitness to practise proceedings commencing.

This power could also be used by the GMC to create different registration categories that enable associates who meet the baseline registration standards and requirements to join the register and practice. This may include temporary overseas registration or provisional registration that in turn will be capable of restricting or enhancing an associate's scope of practice.

As set out in the government response to the consultation Regulating healthcare professionals, protecting the public, the draft order only allows the GMC to divide the single register into 2 parts, one for AAs and one for PAs. Therefore, the draft order does not allow for the GMC to create a separate part of the register for students. However, the powers to set conditions on registration would enable students who the regulator considers meet the standards of registration to be registered, subject to any conditions the regulator deems necessary.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We broadly agree that the powers in the draft order are appropriate.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

Again, we broadly agree that the powers in the draft order are appropriate and allow the reflection of different categories and conditions of registration.

Removal of an entry

Article 8 sets out the duties and powers for the GMC to remove entries from the register.

The regulator has a duty to remove a person from the register in the following circumstances:

- in the event of their death
- when a final measure for removal is issued at the conclusion of fitness to practise proceedings
- where the regulator determines the associate has been convicted of or, in relation to some offences has received a custodial sentence for, an offence listed at schedule 2 of the draft order

The GMC may also remove an entry from the register where:

- the entry was obtained through fraud or made incorrectly
- the associate has requested the removal (sometimes referred to as 'voluntary removal from the register')
- the associate has failed to comply with requirements made in rules in respect of an assessment of standards or an associate's fitness to practise
- the associate has not paid a required fee
- the associate does not have appropriate and adequate indemnity or insurance cover
- the associate has failed to maintain an effective means of contact with the GMC, as per the requirements set by regulator in its rules
- the associate has failed to comply with a requirement in the draft order to provide information

The GMC also has duties and powers to remove entries from the register where they relate to an entry under the emergency registration powers - see the 'emergency registration' section.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider that these powers are proportionate and appropriate and will help protect public safety.

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 consider the drafting approach appropriate and would want to ensure continued and significant engagement with the Medical Royal Colleges and representative bodies as any proposals to apply these to all regulated healthcare professionals are taken forward.

Some of our Fellows stated that while the principles outlined in relation to removal from the register and the circumstances when this may occur are appropriate, and the opportunity for representation has been stated in Article 13 (1) (b), additional safeguards may be required in order to avoid any unintentional removal from the register, for example by accidental non-payment of fees.

Emergency registration

Powers for the GMC relating to the registration of associates during an emergency situation (as declared by the Secretary of State) are located across different sections of the draft order, summarised below.

Registration - article 6(3) and (4)

Paragraphs 3 and 4 contain powers that enable the GMC to register associates where the Secretary of State informs the GMC that an emergency has occurred. For registration in these circumstances, the regulator may register any fit, proper, and suitably experienced persons or groups of people, for the period of the emergency.

Paragraph 4 gives regulators broad powers to declare that anyone who meets its criteria for emergency registration can be considered to be registered, before formally processing individual applications or automatically adding them to the register.

Conditions on registration - article 7(b)

Where the GMC has registered an associate using the emergency registration provisions in the draft order, it may determine, impose, and make amendments to, conditions on the registration of either groups of associates, or individual associates. This gives the regulator powers to determine the scope of practice of associates registered under the emergency powers. For example, this might include limiting the activities they are permitted to perform or requiring them to work under the supervision of an associate subject to non-emergency registration with the GMC.

Removal of an entry - article 8(3) and (4)

The GMC must remove an entry made under the emergency registration powers once it is declared that the emergency has ended.

The GMC has a discretionary power to remove an entry made under the emergency provisions for any reason, including where concerns have been raised about an associate's fitness to practise.

Revision of decisions - article 11

Article 11 paragraph 4 gives the GMC powers to revise a decision relating to emergency registration for any reason. This is intentionally broad to enable regulators to rapidly flex their emergency registration policies, for example by changing the criteria for registration under the emergency powers. There is a separate power at paragraph 11(a) of schedule 4 that allows regulators to set out in rules particular cases or circumstances in which a revision may not be made.

Appeals - article 12

There is no right of appeal against any decision in relation to the regulator's emergency registration powers.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider the approach outlined to be sensible and pragmatic.

Part 4: fitness to practise

Regulated professionals are required to meet the standards for practising their profession safely and effectively. This is one of the principle means by which regulators ensure public protection. This part of the draft order sets out the GMC's fitness to practise process for associates.

In our consultation, Regulating healthcare professionals, protecting the public, we proposed that all regulators should have a 3-stage fitness to practise process consisting of the initial assessment stage, the case examiner stage and the Fitness to Practise Panel stage. The majority of respondents to our consultation supported a 3-stage fitness to practise process.

We are of the view that the case examiner stage and the Fitness to Practise Panel stage should be set out in the draft order. However, we do not believe the draft order needs to prescriptively set out the initial assessment stage. We are of the view that the GMC is able to set out the initial assessment stage process in rules, under the rule making power in schedule 4, paragraph 3(1)(a) of the draft order. This will give it more flexibility to amend this stage and to respond to changing circumstances over time.

Article 9 and the rule-making power referred to enable the GMC to determine whether a fitness to practise case should be referred to a case examiner to make a determination. We consider that this approach provides the GMC with sufficient flexibility to determine which cases should be closed at initial assessment without taking any further action and which cases should be referred to a case examiner. The GMC will be able to appoint one or more case examiners to conclude a case.

Case examiner and panel functions where fitness to practise question arises

Article 9 sets out that where a question arises as to whether a person's fitness to practise as an associate is impaired, a case examiner will be able to decide whether the associate's fitness to practise is or is not impaired. Note that associates registered using the GMC's emergency registration powers are exempt from fitness to practise procedures, meaning that the GMC can remove or add conditions to the registration of any emergency registered associate.

Where a case examiner determines that an associate's fitness to practise is not impaired, article 9(1)(b) of the draft order empowers them to close the case without taking any further action, or issue a warning to the associate, if they believe this is necessary.

Where a case examiner determines that an associate's fitness to practise is impaired, they will be able to conclude cases through an accepted outcomes process where the associate accepts both the findings (including impairment) and the proposed measure, as set out in article 9(2)(a) of the draft order. Case examiners will have a full suite of final measures available to them including applying condition to registration, suspension of registration, and removal of registration. The maximum period for which a condition or suspension could be applied is 12 months, although this can be extended by review.

Associates will be required to provide a reasoned response to a notification of a proposed accepted outcome from a case examiner, within a timeframe prescribed in the GMC's rules which may not be less than 28 days beginning with the date on which the associate received the notification as set out in schedule 4, paragraph 10(1)(a) of the

draft order. The notification must also have warned the associate that a measure may be imposed if they do not respond to the case examiner. An associate will be required to provide a reasoned response to a case examiner in order to satisfy the case examiner that they have accepted both the findings and the proposed measure. If an associate does not accept or disputes the findings and/or the proposed measure, the case will proceed to the panel stage.

Where an associate does not provide a reasoned response to a case examiner's offer of an accepted outcome within the GMC's timeframe, a case examiner may impose a final measure upon the associate. This is not an accepted outcome, but a separate power set out in article 9(2)(b) of the draft order and only applies where the case examiner concludes that the associate's fitness to practise is impaired.

Schedule 4, paragraph 3(1)(a) of the draft order places a duty on the GMC to prescribe in rules the procedure for its case examiner stage.

Interim measures

A case examiner will be able to refer a case to a panel to impose an interim measure on an associate or to make a determination on a case.

Interim measures are restrictions on an associate's practice that a panel can put in place to address a public protection risk and/or an associate protection risk, while their fitness to practise is under consideration. Article 9(1)(d)(ii) allows a panel to impose an interim measure on an associate subject to the associate or their representative having been given an opportunity to make a written or oral representation to the panel. The panel may put in place an interim measure for a period of up to 18 months.

Final measures

Following a referral from a case examiner, a panel may also be required to make a determination as to whether an associate's fitness to practise is impaired or not. A case examiner may not refer a case to a panel unless the person whose fitness to practise is in question has been given an opportunity to make a written representation beforehand. The person whose fitness to practise is in question will not have a right of appeal against a decision by a case examiner to refer a case to a panel.

The GMC may choose to provide in rules that a panel can consider more than one referral in relation to the same individual at the same time, as set out in schedule 4 paragraph 5(b) of the draft order.

Where a panel concludes that the associate's fitness to practise is impaired, it can impose an appropriate measure including applying conditions to an associate's practice, suspending their registration, or removing the associate from the register. The maximum period for which a condition or suspension order can be applied is 12 months, although this could be extended by review. A final measure cannot be imposed unless the associate affected has been given an opportunity to make a representation to the panel. This is set out in article 9(1)(d)(ii)(bb) of the draft order.

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?

- Agree

- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

There were concerns among some Fellows about the decision not to set out the first stage- the initial assessment stage- in the draft order when the subsequent two stages would be set out. While understanding the need for flexibility in this process, it may be worth considering that the inclusion of some general guidance, including the first stage, would also help ensure consistency across medical regulators. In any case it would also be helpful to understand more about the reasons and thinking behind the decision not to include the initial assessment stage in the draft order.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

Notwithstanding the point in the previous question, we consider that the powers enable examiners to carry out their roles appropriately.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

Again, notwithstanding the point in relation to the initial assessment stage, we consider that the powers are generally appropriate here.

Review of interim measures and imposition of further interim measures by a court

Article 10 sets out that a case examiner must review an interim measure before 6 months and again before 12 months. However, where the case examiner fails to review an interim measure, it does not affect its validity.

If the GMC wishes to extend an interim measure beyond its initial term it will be required to make an application to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland for an extension. Our intention is to include a time limit to that extension which will be a maximum of 12 months before the interim measure expires. We consider this time limit, which is shorter than the period that an interim measure can initially be imposed for, is appropriate given that it is intended to be 'interim' and provides for a maximum of 30 months from the initial imposition for the GMC to conclude an investigation. The order does not currently provide for that time limit, but we would welcome your views on that intention. The court may, before the expiry of the interim measure, impose a new interim measure on an associate.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

Again we consider these measures to be proportionate and appropriate. A number of Fellows also referred to the importance of proactive and supportive communication in these scenarios to avoid unnecessary uncertainty.

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?

Some Fellows voiced the view that a time limit of 24 months for interim measures from the initial interim measure may be more proportionate, recognising the interim nature of the measure while offsetting any impact on the individual.

Part 5: revisions and appeals

Revision of decisions

Article 11 sets out the GMC's powers in relation to revising decisions.

Article 11(1) sets out that the GMC will be able to revise the following decisions if the decision was based on an error of fact or law or there has been a material change of circumstances since it was made:

- education and training approval and refusal decisions made under article 4(1)
- decisions on restoring to the register. There is an exception at article 6(1)(a)(ii) which relates to the element of the 2-part restoration decision where the applicant must satisfy a panel that their fitness to practise is not impaired. As this relates to fitness to practise, any determination relating to this aspect of the decision would follow the fitness to practise appeals model, so the next step for this stage of the restoration process would be for the person to appeal to the courts. Accordingly, there is no power to revise that decision
- registration (except where it relates to registration under emergency registration provisions)

- conditions on registration (except where it relates to registration under emergency registration provisions)
- removal from the register
- a decision by a case examiner to impose a final measure (this includes where a case examiner has found an associate's fitness to practise to be impaired and an associate has accepted the proposed outcome and measure), that an associate's fitness to practise is not impaired or to issue a warning to an associate whose fitness to practise is found not to be impaired or to revise a decision under this article

Anyone will be able to make a request to the GMC for it to revise a case examiner's decision. However, the request needs to show that the case examiner's decision was based on an error of fact or law or that there has been a material change of circumstances since the case examiner's decision was made. As set out in schedule 5, paragraph 4, we will amend the National Health Service Reform and Health and Care Professions Act 2002 so that the Professional Standards Authority for Health and Social Care will be able to make a request to the GMC for a case examiner's decision to be revised.

Article 11(2) sets out that where a panel or court has imposed an interim measure on an associate, the GMC will be able to revise the decision if there has been a material change of circumstances since the decision was made. However, the GMC will not be able to revise the period specified in an interim measure as to make it longer. The GMC may choose to review an interim measure at any time and an associate will also be able to ask the GMC to review an imposed interim measure at any time.

Where a panel has imposed a final measure on an associate, the GMC may revise the decision on the ground that there has been a material change of circumstances since it was made subject to an associate been given an opportunity to make a written representation. Where a time period is specified in the final measure the GMC cannot make the time period longer.

As set out at schedule 4 paragraph 11(a), the GMC may prescribe in rules cases or circumstances in which a revision may not be made under article 11.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

The provisions here are logical and appropriate.

Appeals

Article 12(1)(a) to (d) sets out that a person (for example an associate or applicant for registration) prescribed in rules, under schedule 4 paragraph 11(b) of the draft order, may appeal to a panel against the following education and training and registration decisions:

- education and training approval and refusal decisions made under article 4(1). Article 12(5) sets out that the person for the purposes of 12(1)(a) is the person who applied for approval
- registration and restoration decisions made under article 6(1). With the exception of a decision at article 6(1)(a)(ii) which relates to the element of the 2-part restoration decision where the applicant must satisfy a panel that their fitness to practise is not impaired. Article 12(5) sets out that the person for the purposes of article 12(1)(b) is the applicant
- conditions on registration decisions (for associates registered under the non-emergency powers) made under article 7(a). Article 12(5) sets out that the person for the purposes of article12(1)(c) is the person who is subject to the condition
- removal from the register decisions (in relation to those decisions where the GMC has discretion to remove an entry) made under article 8(2). Article 12(5) sets out that the person for the purposes of article 12(1)(d) is the person to whom the entry relates

There are 2 exceptions to this where there is no right of appeal for the following decisions:

- where the decision was based solely on the fact that a fee has not been paid in accordance with rules made under paragraph 7 of schedule 4
- where the decision was based solely on the fact that the person has not applied for registration in accordance with rules made under paragraph 3(1) of schedule 4

In our consultation, Regulating healthcare professionals, protecting the public, we proposed that there would be no right of appeal against a regulator's decision not to remove a person from the register at their own request and that such a decision would need to be challenged by Judicial Review (question 38). However, regulators have a discretionary power to retain a person on the register, the intention being that this will be used proportionately by regulators while they conclude or commence a fitness to practise investigation. As set out in our consultation response, we believe it is proportionate to allow an appeal against the refusal to remove someone from the register. This is also supported by powers for regulators to revise a decision on voluntary removal in article 11 of the draft order.

The GMC will be able to set out in rules the timeframe within which a person prescribed in rules can appeal a decision to a panel.

Associates will also have a subsequent right of appeal against a panel's decision in relation to registration, restoration, and removal decisions to the County Court.

The exceptions to this are:

- where an associate is removed from the GMC's register following a conviction for a listed offence as set out in schedule 2 of the draft order, the associate will have a direct appeal route to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland against the removal. This is set out in article 12(2)(b)(i) of the draft order
- where a panel makes a finding that fitness to practise is impaired in respect of an application for restoration from an associate who was previously removed by a final measure, the associate will have a direct appeal route to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in

Northern Ireland in respect of this element of the 2-stage restoration decision process. This is set out in article 12(2)(b)(i) of the draft order

Article 12(1)(e) sets out that a person prescribed in rules, under schedule 4 paragraph 11(b) of the draft order, may also appeal to a panel against the following fitness to practise decisions made under article 9 where a case examiner:

- imposes a final measure on an associate who has not submitted a reasoned response to a case examiner's offer of an accepted outcome within the GMC's prescribed timeframe
- has found an associate's fitness to practise to be impaired and the associate has accepted the proposed outcome and measure
- has found that an associate's fitness to practise is not impaired and closed a case
- has found that an associate's fitness to practise is not impaired but has issued a warning

Article 12(5) sets out that the person for the purposes of article (12)(1)(e) is the person in respect of whom a final measure or warning is given.

In addition, where a panel has found an associate's fitness to practise to be impaired and has imposed a final or interim measure on an associate, the associate will have a right of appeal to the High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland only on the ground of error of law as set out in article 12(2)(b)(ii). This is a change from section 40 of the Medical Act 1983, as section 40 does not restrict a medical practitioner's right of appeal against a Fitness to Practise Panel's decision to this ground alone.

Where an associate wishes to appeal to the court, they will be required to do this within 28 days of the decision being served on them.

Article 12(1)(f) sets out that an associate may also appeal to a panel against the revision of a decision made under article 11(1) or (2).

As set out at schedule 4 paragraph 4 of the draft order the GMC must prescribe in rules the procedure for appeals under article 12(1), which can include the timeframe for submitting an appeal.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

Again, we consider these powers to be broadly appropriate and proportionate. Some Fellows did question the lack of a right to appeal where the decision is solely based on the fact of non-payment of fees.

As set out at article 12(3)(a)(i) to (iv), following an appeal, a panel, the County Court or High Court in England and Wales, the Court of Session in Scotland, or the High Court in Northern Ireland may:

- quash the decision under appeal
- dismiss the appeal
- substitute for the decision under appeal a decision that could have been made
- remit the matter to be disposed of in accordance with its directions

In addition, the County Court, the High Court in England and Wales, the Court of Session in Scotland or the High Court in Northern Ireland make any order as to costs as it thinks fit.

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?

Several RCPE Fellows welcomed in particular the ability for the regulator to have a power to retain an individual on the register, despite their voluntary request for removal, as an important step to ensure voluntary erasure is not used as a mechanism to avoid fitness practice investigation, as noted in recent reports of cases for doctors which have been covered in the media.

Part 6: miscellaneous

This part contains additional provisions that are required for effective regulation.

Opportunity to make representations

Article 13 (1)(a) sets out that the GMC may not attach a condition or withdraw an education and training approval or qualification unless the person to whom the approval has been given under article 4(1)(a) has been given an opportunity to make representations.

Article 13(1)(b) sets out that a removal of an entry from the register under article 8(2)(a), (b)(ii)(aa) or (ee) of the draft order, or a revision to a decision under article 11(1) or (2) and a final measure may not be imposed on an associate unless the associate affected has been given an opportunity to make representations.

Article 13(2) sets out that the representation made under article 13(1)(b) may be in writing or made orally, if the associate so chooses, except that they must be in writing where:

- the GMC revises an interim measure
- a case examiner imposes a final measure

Article 13(3) sets out that a case examiner may not refer a case under article 9(1)(d) of the draft order unless the person whose fitness to practise is in question has been given an opportunity to make a written representation beforehand.

Article 13(4) sets out that a panel may not impose an interim measure on an associate unless, where practicable, the associate has been given an opportunity to make representations beforehand in writing or, if the associate chooses, orally.

Article 13(5) states that representations made under article 13(2) and (4) may, if the associate chooses, be made by a representative.

Offence relating to registration etc.

Article 14 sets out the offences created by the draft order in relation to use of protected titles, registration and the content of the register with intent to deceive. It also sets out the penalty on conviction for these offences.

As outlined in other parts of this document, the offence relating to the use of the titles 'anaesthesia associate' and 'physician associate' will not take effect until 3 years after the order is made.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider that this seems broadly appropriate. Some Fellows are concerned that a fine alone for impersonating an Associate was perhaps not a proportionate deterrent or safeguard to protect the public or patients.

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?

No.

Schedule 1: the regulator

Schedule 1 provides powers and duties in relation to the regulator and sets the basic framework for the way the GMC will operate to regulate AAs and PAs. The GMC's overall governance framework will continue as under the Medical Act 1983 after the draft order comes into effect.

Appointment of registrar and others

This paragraph enables the GMC to appoint a registrar and panel members as well as any other appointments it deems appropriate.

Delegation

This paragraph gives the GMC the power to delegate a function to another person within the organisation or another healthcare regulator or third party where it is likely to lead to an improvement in the exercise of the function (subject to paragraph 8 of schedule 3 to the Health Act 1999). Functions may be delegated wholly or partly, generally, or only in specific circumstances, unconditionally or with conditions.

If any function is delegated the GMC will retain responsibility for its delivery. The GMC may still exercise any function it has delegated elsewhere. Through incidental powers, the GMC may also discharge a function, or part of a function, which is delegated to it by another regulator. It also sets out that the power to delegate and the rule-making function cannot be delegated.

Since the coming into force of the Health and Care Act 2022, the Health Act 1999 enables the functions of keeping a register, determining standards of education and training, advising about standards of conduct and performance, or administering procedures relating to misconduct and fitness to practise, to be delegated under section 60, however they can only be delegated to another health and care professional regulatory body or Social Work England.

Objective, matters to which the regulator must have regard and co-operation

This paragraph sets out the regulator's objectives for AAs and PAs (promoting and maintaining public confidence in the professions and the professional standards and conduct of AAs and PAs) and brings them into line with medical practitioners. The objective 'to protect, promote and maintain the health, safety and well-being of the public' under paragraph (1B)(a) of section 1 of the Medical Act 1983 will continue to apply to all professions regulated by the GMC.

It also sets out that the GMC must have regard, when carrying out its functions, to the interests of persons using or needing the services of associates in the UK, any differing interests of different categories of AAs and PAs, and the principle that regulatory activity should be targeted only at cases in which action is needed. The GMC must discharge its functions in a transparent, accountable, proportionate, and consistent manner.

The GMC must also co-operate with those concerned with the employment (whether or not under a contract of service), education or training of associates or the services they provide. This will be in addition to the co-operation requirements included in the Medical Act 1983 which will still apply. The GMC must also have regard to any differing considerations relating to practising as an AA or PA which apply in England, Scotland, Wales, or Northern Ireland.

Default powers of the Privy Council

The Privy Council currently has default powers (under section 50 of the Medical Act 1983) which can be used if it is of the opinion that the GMC has failed to carry out its functions in relation to medical practitioners. This paragraph widens these powers to incorporate the regulation of AAs and PAs.

Incidental powers

The powers set out in this paragraph enable the GMC to do anything which appears to it to be incidental or conducive for the purpose of, or in connection with, the performance of the GMC's functions in relation to the regulation of AAs and PAs. This includes paying members and staff renumeration, pensions, expenses, allowances, or gratuities and borrowing. The GMC may also make arrangements for the provision of advice, assistance, accommodation, services, and other facilities for a panel, including those with the Medical Practitioners Tribunal Service established under the Medical Act 1983.

Grant making power

This new power enables grant funding to be provided to the GMC, by the Secretary of State, Scottish Ministers, Welsh Ministers, or the Department of Health in Northern Ireland, and which may be subject to a condition. Funding can already be provided to regulators however a grant making power provides an easier mechanism to do this and would not undermine the operational independence of the GMC.

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

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider this is broadly appropriate.

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?

No.

Schedule 2: listed offences

Listed offences

This schedule lists the offences that would lead to automatic removal from the register.

The listed offences we consulted on mirrored those set out in schedule 3 of the Social Workers Regulations 2018.

The schedule also includes 2 additional offences which we identified following consultation. These are section 1 and section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

As part of the government's consultation, Changes to Social Work England's regulatory framework, it was proposed that the listed offences within schedule 3 of the Social Workers Regulations 2018 should be extended to include these 2 additional offences. In August 2022, the government published Changes to the regulatory framework for Social Work England: Government consultation response which set out our intention to include these 2 offences within schedule 3 of the Social Workers Regulations 2018. We have therefore included these offences in this schedule.

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

Again, this section seems generally appropriate.

Schedule 3: evidence gathering, notifications, publication and data

Schedule 3 provides powers and duties in relation to information and data.

Disclosure of information

Paragraph 1(1) allows the GMC to disclose information about any matter relating to its functions under this draft order, subject to paragraph 1(2). These powers are broad, however only relevant information may be disclosed.

These provisions do not exempt the GMC from complying with existing data legislation.

Notifications

Paragraph 2 sets out the duties for the GMC to notify prescribed persons of the outcome of decisions and any onward rights of revision or appeal relating to approvals, registration, removal of an entry and fitness to practise proceedings.

It places a duty on the GMC to notify a person of an education and training approval given under article 4(1) of the draft order, and of a decision to attach a condition to that approval. Where an approval is withdrawn the GMC must also notify the relevant person. In addition, the GMC must notify a person that they can apply for a revision of a decision made under article 4(1) and make an appeal to a panel against a decision under article 4(1).

The GMC must notify an associate, their employers, other regulators (where the associate is dually registered) and complainants of a fitness to practise final measure by a case examiner or panel, an interim measure imposed by panel and any subsequent revisions to decisions. The GMC must notify the associate of the reason for the final fitness to practise decision and it must also inform the associate that they may apply for a revision of the final decision or appeal the decision to the relevant court.

In addition, where an associate is removed from the GMC's register, the GMC will have a duty to notify the associate, their employers, and other regulators (where the associate is dual registered) once the removal is made.

The draft order also includes a duty on the GMC to notify an associate that they can appeal to the relevant court (as set out in Part 1, article 2 of this draft order) where a decision has been made to remove them from the register due to a conviction for a listed offence.

Power to publish

Paragraph 3 sets out the powers available to the GMC to publish information from the content of the register, guidance and other information outlined below.

The GMC has powers to publish information related to fitness to practise of associates, or associates of a particular class, if it considers it to be in the public interest. This article also allows the GMC to publish the findings of an education and training approval investigation and any warning given in consequence of its findings. In addition, the GMC will have powers to publish information relating to the removal of entries from its register and may also publish historical information from the register, where this information has previously been published by the regulator. The GMC may also publish guidance about the exercise of its functions under this draft order.

Duty to publish registration information and certain decisions

Paragraph 4 sets out the GMC's duties to publish information from the content of the register.

It specifies the core data held on the register that must be published and sets out a duty for the GMC to publish information relating to a person's practice as an associate, which the regulator is satisfied serves the purpose of protection of the public.

Paragraph 4(2) sets out that the GMC must publish the following information as soon as practicable:

- a removal from the register for a conviction for a listed offence
- a warning issued by a case examiner or panel
- an interim measure or a final measure
- a decision made on appeal by a panel or the courts

The information must remain published for as long as the GMC is satisfied that its publication serves the purpose of protection of the public.

Our consultation Regulating healthcare professionals, protecting the public set out that regulators should be required to publish warnings for a period of 2 years. However, after considering the small number of comments on the publication of warnings we are now of the view that regulators should maintain a discretion as to how long they publish warnings for, subject to the publication of the warning serving the purpose of public protection.

Duty to publish other matters

Paragraph 5 lists information that the regulator must publish and includes:

- rules made under the order
- standards and approvals in relation to education and training, and any condition or withdrawal of approval, with the exclusion of information about an approval which relates to education or training provided only for a particular individual

It sets a duty for the GMC to publish guidance as to what amounts to impairment of fitness to practise and requires the GMC to keep such guidance under review.

Information to be included in a report under section 52A of the Medical Act 1983

Paragraph 6 sets out that the GMC must include the anaesthesia associate and physician associate professions in its current reporting requirements (annual reports, statistical reports and strategic plans) under the Medical Act 1983 and include the arrangements which it has put in place to protect members of the public from registered associates whose fitness to practise is impaired, together with its observations on the report.

The GMC must also include in its annual report the evidence it considered of the likely impact of any fee change, particularly in relation to:

- the workforce of the health service in the UK
- anaesthesia associates and physician associates
- the GMC

Evidence gathering

Paragraph 7 sets out the powers available to the GMC to obtain information to enable it to fulfil its duties in respect of provisions in the draft order. It also sets out the enforcement powers available to the GMC.

Paragraph 7(1)(a) sets out the GMC's duty to take necessary steps to evaluate whether an associate, other person or provider meets standards set by the regulator under article 3(1), which includes the standards of registration. Paragraph 7(2) sets out that the steps under paragraph 7(1)(a) may include setting exams.

Paragraph 7(1)(b) sets out that the GMC must take such steps as it considers necessary for the purpose of evaluating whether a person's fitness to practise as an associate is impaired. This power extends to non-registrants and would, for example, enable the GMC to undertake an assessment of the fitness to practise an associate removed by a final measure seeking to be readmitted to the register. The GMC may prescribe in rules the procedure for an evaluation under this power and, in particular, for an assessment of a person's physical or mental health.

The GMC must establish a periodic system of assurance that requires associates or other people to provide information that the GMC thinks is necessary for the purpose of checking that associates are meeting the GMC's standards for the professions it regulates, and to enable the periodic review of approvals given under Article 4. This provision has been included to meet the government's commitment that all regulators must operate a proportionate process of checking that associates are continuing to meet the requirements set by regulators for safe and effective care. The GMC is not required to replicate the system it operates for doctors' revalidation in respect of associates.

Paragraph 7(4) gives the GMC powers to require the supply of information or documents relevant to its functions under this draft order. This power is intentionally broad to capture the range of individuals and organisations that the GMC may need to require information from to effectively discharge its statutory duties in relation to the regulation of AAs and PAs.

Paragraph 7(5) prohibits the GMC, for the purposes of fitness to practise proceedings, from asking an associate to provide material produced for the purposes of professional development or in the course of reflecting on their professional practice in order to improve it. However, the legislation does allow an associate to disclose reflective material to the GMC if they choose to do this. This article implements recommendation 5.3 of Professor Sir Norman Williams's report, Gross negligence manslaughter in healthcare.

Paragraph 7(6) sets out that if a person fails to supply any information or produce any document within 14 days of being required to do so, the GMC may seek an order of the County Court or, in Scotland, the sheriff in whose sheriffdom requiring the information to be supplied or the document to be produced.

Further provision as to disclosure

Paragraph 8 provides that the GMC's data powers do not allow it to do anything prohibited by information law, including UK General Data Protection Regulation (GDPR), and the GMC can only require persons to provide documents or information that they could be required to supply in court proceedings.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider these are broadly proportionate.

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?

No

Schedule 4: rule-making powers

Schedule 4 provides the GMC with further rule-making powers.

Rules as to the register

Paragraph one allows the GMC to prescribe in rules the form and keeping of the register. This includes powers to make rules about the entry, alteration, and removal of information in the register, including where the GMC determines information should be included to aid protection of the public.

The GMC must make rules about which contact details, including addresses must be recorded against an entry.

Rules prescribing persons etc. for the purposes of articles 6 and 7

Paragraph 2 permits the GMC to set rules relating to restoration. This includes powers to set a time period that must have elapsed, and a limitation on the number of applications a person may make where they are applying for restoration following their removal due to a final measure.

It also gives the GMC the power to prescribe in rules the type of circumstances when an associate applying for restoration must satisfy the regulator that their fitness to practise is not impaired, and to whom the above limitations may also apply.

Paragraph (2)(d) gives the GMC powers to set the criteria for associates whose scope of registration may be subject to conditions at article 7(a).

Procedural rules other than for appeals

Paragraph 3 places a duty on the GMC to prescribe in rules the procedure for:

- 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

The GMC may prescribe in rules the procedure for:

- all other removal of entries in the register, other than where removal results from a conviction for a listed offence or a final measure
- an evaluation under paragraph 7 of schedule 3 and, in particular, for an assessment of a person's physical or mental health

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider that the draft order provides for adequate and appropriate rule making powers to maintain the register in the interests of patient safety.

Procedural rules for appeals

Paragraph 4 places a duty on the GMC to prescribe in rules the procedure for appeals under article 12(1) of the draft order which must in particular specify:

- the timescales within which any steps in an appeal are to be taken
- the content of a notice of appeal
- the information to be provided with such a notice of appeal
- how and when service of a notice is deemed to have been made

The rules must provide that a panel may dispose of an appeal with or without a hearing, but with the proviso that a panel must hold a hearing if the appellant so requests.

The rules must permit, in relation to any hearing, the appellant to:

- attend and be represented
- make oral representations and
- call witnesses

Rules as to panels

Paragraph 5 places a duty on the GMC to set out the constitution of a panel in rules and sets out that the GMC may choose to provide that a panel may consider more than one referral in relation to an individual at the same time.

Rules as to non-compliance

Paragraph 6 places a duty on the GMC to set out in rules the consequences of non-compliance with an interim measure, or a final measure involving the imposition of a condition or a suspension from practice for example, removal from the register (see sub-paragraph (2)).

The GMC may prescribe in rules the consequences of non-compliance with:

- rules under paragraph 3(2)(b) relating to an assessment of the meeting of standards and/or a finding of impaired fitness to practise
- a direction under rules under paragraph 10(4) of the draft order relating to an interim measure

In addition, the GMC may prescribe in rules for a panel to draw adverse inferences in circumstances prescribed in the rules.

Paragraph 6(5) sets out that the GMC may set out in rules the circumstances in which costs may be awarded by a Fitness to Practise Panel to either an associate or the GMC, the factors which need to be taken into account in awarding costs, the assessment or taxation of costs, or in Scotland taxation of expenses and the enforcement of an award of costs or expenses by the Fitness to Practise Panel.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

On the basis of the information provided, we consider that the rule making powers appear to be generally sufficient.

Rules as to fees

Paragraph 7 sets out that rules may be made by the GMC in relation to the setting, charging, collection and recovery of fees relating to the GMC's functions under this draft order. This includes:

- the various fees in relation to registration
- an appeal under article 12(1)
- work carried out by the regulator that powers allow it to charge for, including for activity outside of the UK

In relation to registration fees, the GMC may also make rules to determine a longer-term approach, for example, a framework. The existing requirement to consult will also apply to any longer-term approach to fee setting. There is no provision for the GMC to charge for appeals against Fitness to Practise Panel decisions.

Sub-paragraph (2) states 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). We

recognise it is difficult for the GMC to predict its annual income and expenditure given fluctuations in the number of registrants and fitness to practise cases, in addition to holding sufficient reserves and meeting regulator's financial obligations. We would expect that the GMC takes a pragmatic approach by setting its fees at a level which allows for, and smooths out, year on year variations in its income and expenditure. Where, over time, there is divergence between income received and expenditure incurred, the GMC will need to adjust its fees accordingly to bring these back into alignment.

As required by schedule 3 paragraph 6(b), the GMC must include in its annual report the evidence it considered of the likely impact of any registration fee change, particularly in relation to the workforce of the health service in the UK, anaesthesia associates and physician associates, and the GMC.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider the provisions here are broadly appropriate.

Rules as to notifications

Paragraph 8 places a duty on the GMC to make rules as to notifications to be given under article 13 and paragraph 2 of schedule 3, which include provision as to:

- their content
- any information to be provided with them
- the period within which they must be given
- their service
- the date on which they are to be treated as having been received

The rules must guarantee that any notification ensures that the recipient is aware of:

- the nature of the proceedings to which it refers
- the timescale within which any response to it is required and the method for making such a response
- any consequences of failing to respond to a notification or to comply with the fitness to practise procedure, and in particular any decisions that may be taken in the absence of the person and any action that may be taken for failure to comply with the fitness to practise procedure
- any right to be represented and to make representations

Rules as to panel appointments

Paragraph 9 places a duty on the GMC to make rules specifically in relation to the appointment of panels. The GMC will be able to set out in rules:

- the process for appointment, suspension and removal
- the term of appointment
- remuneration

Rules as to fitness to practise

Paragraph 10 places a duty on the GMC to prescribe in rules a period for a reasoned response to a notification of a proposed final measure from a case examiner.

It also sets out that the GMC must set out in rules the quorum of a panel and that a panel in fitness to practise proceedings must consist of at least one person who:

- has been registered
- has an approved qualification
- is a registrant member (within the meaning of paragraph 1(1) of schedule 1 to the Medical Act 1983)
- one person who does not satisfy any of the above 3 requirements

The GMC will be expected to hold Fitness to Practise Panel proceedings in public. However, it must set out in its rules the circumstances in which fitness to practise proceedings may be required to be held in private.

The GMC will also be able to make rules on the functions of case examiners and panels, including:

- case management of cases
- admissibility of evidence
- administration of oaths
- requiring persons to attend and give evidence or to produce documents

In addition, the GMC may prescribe in rules the procedural directions that may be given in fitness to practise proceedings.

Rules as to revision and appeal

Paragraph 11 allows the GMC to prescribe in rules cases or circumstances in which a revision may not be made under article 11.

It allows the GMC to prescribe in rules a person, other than itself, for the purposes of article 12. For example, an associate or an individual applying for registration with the GMC may be a person prescribed in the GMC's rules.

Rules as to when decisions take effect

Paragraph 12 allows the GMC to make rules setting out the date from which a removal from the register for a conviction for a listed offence, a revision of a decision, an interim measure or a final measure takes effect.

Rules for the purpose of paragraph 7 of schedule 3

Paragraph 13 sets out that the GMC must prescribe in rules persons, information, an interval, and a manner for the purpose of paragraph 7 (evidence gathering) of schedule 3. This relates to the duty for the GMC to have a periodic process of assurance for registrants.

General provision about rules

Paragraph 14 provides general information in relation to making rules, including a requirement to consult on draft rules and to consider those who are likely to be impacted.

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?

- Agree
- Disagree
- Neither agree nor disagree
- I don't know

Please explain your answer.

We consider that the overall rule making powers set out in the draft order will allow the GMC to deliver effective regulation. We welcome the commitment to consultation on draft rules which is of course vitally important.

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?

One Fellow wished to emphasise their strong belief that fitness to practice panels should include members of the same professional group as the individual being investigated and the need to ensure the principles of equity, diversity and inclusivity.

Schedule 5: consequential amendments

Schedule 5 sets out the consequential amendments necessary to other primary and secondary legislation as a result of the draft order. Further information can be found in the 'Legislation and consequential amendments' section.

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?

No.

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

No.

Costs, benefits and equalities analysis

Throughout this project we have looked to consider any potential impacts of the introduction of regulation for AAs and PAs under a reformed system of legislation.

We have considered the potential impact on business and impacts (positive and negative) on protected characteristics under the public sector equality duty.

We have sought further information through 3 public consultations:

- Promoting professionalism, reforming regulation
- The Regulation of Medical Associate Professions in the UK
- Regulating healthcare professionals, protecting the public

and used these to inform our approach in refining the draft legislation.

Our analysis shows that, while there will be a small number of costs to business, these will be limited and outweighed by the benefits of introducing regulation. In addition, in our assessment of potential costs over a 10-year period, the costings are based upon an assumed cohort of self-employed AAs and PAs, however the numbers in this category currently are negligible.

For example, costs to business could include:

- small costs to higher education institutions (HEIs) - there are currently 2 universities offering AA courses with PA courses being offered by 37 universities. Under statutory regulation, HEIs offering AA and PA courses will be subject to the GMC's education and training standards and may have to adjust working practices, revise course content and facilitate inspections. However, based on their initial scrutiny and discussions with the HEIs, the GMC do not anticipate that any course provider will need to make significant or costly changes in order to meet the required standards
- small cost to private sector employers - the GMC has advised that there is unlikely to be any working time lost due to AAs and PAs having to apply for registration. One exception would be where a private sector employer has a PA who has not passed the PA national exam and therefore needs to take time off to prepare and sit it. However, based on information from the voluntary registers and a 2020 survey by the GMC, it is understood that only around 1.8% of AAs and PAs work solely in the private sector and it is unlikely that any are self-employed currently

Possible benefits of introducing regulation for AAs and PAs could include:

- increased scope of responsibility: statutory regulation may, in time, following further policy development, allow AAs and PAs to make a greater contribution to patient care. This will benefit patients and reduce pressure on other professionals
- improved professional accountability: statutory regulation protects job titles in law, meaning professionals practising in the UK must be registered and practise in accordance with regulator standards. Those with substandard practice can have development mandated in order to remain practising or be prevented from practising entirely by law

- introduce patient redress: having a formal fitness-to-practise procedure external to the employer enables patients who have concerns about an individual's ability to practise safely and effectively to have their case heard by the regulator
- reduced burden on employers: statutory regulation reduces the burden of employment checks for employers as they can be confident that those registered have the required qualifications and are eligible to work in the UK
- improved training standards: regulation of education and training provision ensures a consistent standard of training across the UK and across education providers. This provides certainty of competence for employers regardless of where AAs and PAs are trained

In terms of equalities considerations, the public sector equality duty sets out that we must consider how our policies will:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not

The general duty covers the following protected characteristics:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race (includes ethnic or national origins, colour, or nationality)
- religion or belief (includes lack of belief)
- sex
- sexual orientation

As set out above, the information we collected from respondents as part of the 3 previous consultations has been used to inform our policy thinking as we have developed the provisions of the draft order to bring AAs and PAs into regulation.

The legislation that the department is putting in place is a high-level framework that will give the GMC the power to develop, and set out in rules and guidance, the details of how AAs and PAs will be regulated.

The introduction of statutory regulation for AAs and PAs will mean that the GMC will have a legal requirement to consider the impacts on protected characteristics as part of its policy development relating to the regulation of these groups. These 2 roles will also be regulated under a reformed legislative framework which will give the GMC more flexibility than it currently has with medical practitioners to adapt its processes and operations to make them more effective and responsive to individuals' needs.

The 3 previous consultations referenced at the start of this section all sought respondent's views on the potential impact on protected characteristics of these changes.

Of those that felt that there would be a positive impact on protected characteristics if statutory regulation was introduced, common themes included:

- it would facilitate more robust monitoring of adherence to the duties and increase commitment to them
- it would increase the diversity of entrants to the MAPs roles as it would enable professions to establish direct entry routes

A small number commented that there may be a negative impact if statutory regulation was introduced in terms of the financial burden of registrant fees, especially on lower-paid or part-time registrants. While the department has considered the impact of the powers being given to the GMC, the GMC is also a designated public authority under the Equality Act 2010 and is therefore required to consider the impact its policies and processes may have on protected characteristics and take action to ensure that there are no disproportionate impacts. This is particularly important due to the discretionary nature of some of the powers being given to them. The GMC is in the process of developing the policies and procedures that will apply to the regulation of AAs and PAs. As part of this work, the GMC has been carrying out its own equalities assessment and identifying any potential issues in each policy workstream and implementing mitigating actions where appropriate.

Our assessment is that we do not expect there to be any disproportionate impacts on protected characteristics as a consequence to the introduction of statutory regulation for AAs and PAs and that, alongside the requirements of the GMC under the Equality Act 2010, the flexibility provided by the new legal framework will ensure that the GMC is able to adapt to the requirements of the professions' demographics.

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?

Some Fellows stated that there should be a commitment to ongoing work to ensure that referrals to the regulator are fair and proportionate. In addition, they referred to their experience of the medical profession that doctors from minority ethnic backgrounds may be being disproportionately referred to the regulator, something which they would not want to see replicated with regard to other medical professions. We would hope that this is closely monitored on implementation of these regulations.