

## **Regulating healthcare professionals, protecting the public**

The Scottish Social Services Council is the regulator for the social work, social care and early years workforce in Scotland. Our work means the people of Scotland can count on social work, social care and early years services being provided by a trusted, skilled and confident workforce.

We protect the public by registering social workers, social care and early years workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

We:

- publish the national codes of practice for people working in social work, social care and early years services and their employers
- register people working in social work, social care and early years and make sure they adhere to our codes of practice
- promote and regulate their learning and development
- are the national lead for workforce development and planning for the social work, social care and early years workforce in Scotland.

In addition to our regulatory function, we are also an Official Statistics and National Statistics provider. For example, we are responsible for annually publishing the Scottish Social Services Workforce Data report and the Mental Health Officers report.

During the coronavirus pandemic we have continued our regulatory function by moving to remote working for all our processes, including remote/online hearings.

While the proposed legislation will not impact us directly, we are responding to this consultation to share our views on the proposed model which is similar to one we have a long history of operating.

### **consultation questions**

- 1. Do you agree or disagree that regulators should be under a duty to co-operate with the organisations set out above? Please give a reason for your answer.**

The proposal is that regulators must cooperate with organisations concerned with:

- the regulation of healthcare professionals

- the employment, education and training of healthcare professionals
- the regulation of health and care services
- the provision of health and care services.

We are aware that many healthcare regulators already cooperate with the organisations outlined above. Establishing the requirement to cooperate as a duty, rather than a convention, would ensure a consistency of approach among regulators. This approach would also not present a burden to many of the regulators who already do cooperate with these organisations.

**2. Do you agree or disagree that regulators should have an objective to be transparent when carrying out their functions and should have these related duties? Please give a reason for your answer.**

We agree that healthcare regulators should have an objective to be transparent when carrying out their functions. Transparency in regulation is important for engendering the confidence of the workforce subject to regulation and the public at large. Performing their functions in a transparent manner is presently required of statutory agencies carrying out public functions, so setting this as an objective for all healthcare regulators would maintain consistency in approach.

**3. Do you agree or disagree that regulators should be required to assess the impact of proposed changes to their rules, processes and systems before they are introduced? Please give a reason for your answer**

We agree that there should be a requirement on healthcare regulators to carry out assessments of the potential impacts of changes to their rules, processes and systems. Given the potential for serious impact on the regulated workforces and end users of services, it is important to carry out thorough impact assessments prior to the introduction of new rules, processes and systems to ensure that any negative impacts are identified and minimised.

**4. Do you agree or disagree with the proposal for the constitution on appointment arrangements to the Board of the regulators? Please give a reason for your answer.**

We agree with the requirement that registrants or former registrants should be a minority. We welcome the recognition of the importance of having board members from all UK nations.

- 5. Do you agree or disagree that regulators should be able to set their own fees in rules without Privy Council approval? Please give a reason for your answer**

We currently set our fees through our rules, however, any changes we make to the rules regarding fees require ministerial consent.

- 6. Do you agree or disagree that regulators should be able to set a longer-term approach to fees? Please give a reason for your answer.**

We believe it would be useful for regulators to be able to set longer-term approaches to fees as this provides long-term clarity for registrants and allows regulators better scope for strategic planning.

- 7. Do you agree or disagree that regulators should be able to establish their own committees rather than this being set out in legislation? Please give a reason for your answer.**

We agree that regulators should have the power to establish their own committees. This will allow regulators the flexibility to create committees to address issues which are pertinent to them. Governance is critical to the success of an organisation, but this governance must be dynamic enough to allow regulators the scope to respond appropriately to issues as they arise.

- 8. Do you agree or disagree that regulators should be able to charge for services undertaken on a cost recovery basis, and that this should extend to services undertaken outside of the geographical region in which they normally operate? Please give a reason for your answers.**

We currently have broad powers to set fees for a number of our functions, however, we have used this power very rarely.

- 9. Do you agree or disagree that regulators should have the power to delegate the performance of a function to a third party including another regulator? Please give a reason for your answer.**

We currently do not have the power to delegate the performance of our powers to another regulator.

- 10. Do you agree or disagree that regulators should be able to require data from and share data with those groups listed above? Please give a reason for your answer.**

We agree that regulators should have sufficient powers to require the necessary data to fulfil their statutory functions. Our current powers in this regard are insufficient and this lack of power can act as a barrier in some areas of our work.

- 11. Do you agree or disagree that regulators should produce an annual report to the Parliament of each UK country in which they operate? Please give a reason for your answer.**

We agree that regulators should produce annual reports for the Parliaments of each UK country in which they serve. Our annual report is laid before the Scottish Parliament and we believe this aids transparency.

- 12. Do you agree or disagree that the Privy Council's default powers should apply to the GDC and GPhC? Please give a reason for your answer.**

N/A

- 13. Do you agree or disagree that all regulators should have the power to set:**
- **standards for the outcomes of education and training which leads to registration or annotation of the register for individual learners;**
  - **standards for providers who deliver courses or programmes of training which lead to registration;**
  - **standards for specific courses or programmes of training which lead to registration;**
  - **additional standards for providers who deliver post-registration courses or programmes of training which lead to annotation of the register; and**
  - **additional standards for specific courses or programmes of training which lead to annotation of the register?**

**Please give a reason for your answer.**

We agree that all regulators should have the powers as outlined above. These powers broadly align with the powers we currently hold. It is our belief that it is essential that regulators have the power to establish standards for training and education for the workforces they regulate. Without these powers it would be difficult for regulators to properly fulfil their roles.

- 14. Do you agree or disagree that all regulators should have the power to approve, refuse, re-approve and withdraw approval of education and training providers, qualifications, courses or**

**programmes of training which lead to registration or annotation of the register? Please give a reason for your answer.**

We agree that regulators should have the power to approve, refuse, re-approve and withdraw approval for training and educational courses and providers which lead to inclusion on their register. We currently have similar powers to this in terms of approval.

**15. Do you agree that all regulators should have the power to issue warnings and impose conditions? Please give a reason for your answer.**

I think we would agree with this, the ability to impose warnings or conditions will allow training providers the opportunity to reassess and adapt their courses before approval is refused.

**16. Do you agree or disagree with the proposal that education and training providers have a right to submit observations and that this should be taken into account in the decision-making process? Please provide a reason for your answer.**

We agree with this proposal as this will ensure regulators are given as much information about the quality of training courses offered by providers and will allow them to make better decisions about approval.

**17. Do you agree that:**

- **education and training providers should have the right to appeal approval decisions;**
- **that this appeal right should not apply when conditions are attached to an approval;**
- **that regulators should be required to set out the grounds for appeals and appeals processes in rules?**

**Please provide a reason for your answer.**

We agree with the right to appeal decisions relating to the assessment of courses.

**18. Do you agree or disagree that regulators should retain all existing approval and standard setting powers? Please provide a reason for your answer.**

We agree that regulators should retain all existing approval and standard setting powers. The regulators within each healthcare sector will be best placed to determine the needs of their workforce, so these powers are appropriate.

**19. Do you agree or disagree that all regulators should have the power to set and administer exams or other assessments for**

**applications to join the register or to have annotations on the register? Please provide a reason for your answer.**

We agree with the proposed power to set and administer exams. Affording regulators this power will ensure that all regulators are confident that those on their registers meet the minimum standards required for inclusion. We do not currently set exams for inclusion on our register, however this is something that we could introduce in order for applicants to evidence their competence, prior to registration.

**20. Do you agree or disagree that this power to set and administer exams or other assessments should not apply to approved courses or programmes of training which lead to registration or annotation of the register? Please provide a reason for your answer.**

We agree that the power to set and administer exams or other assessments should not apply to approved courses and programmes. Our feeling is that this would amount to double assessment of applicants and would also place too high a burden on regulators.

**21. Do you agree or disagree that regulators should be able to assess education and training providers, courses or programmes of training conducted in a range of ways? Please provide a reason for your answer.**

We agree that regulators should be able to assess education and training providers in a range of ways. Allowing regulators choice in how providers are assessed could lead to greater efficiency of the assessment process, however, care must be taken that the assessment methods used are sufficiently thorough to ensure minimum standards are complied with.

**22. Do you agree or disagree that the GMC's duty to award CCTs should be replaced with a power to make rules setting out the procedure in relation to, and evidence required in support of, CCTs? Please give a reason for your answer.**

N/A

**23. Do you agree or disagree that regulators should be able to set out in rules and guidance their CPD and revalidation requirements? Please give a reason for your answer.**

We agree that regulators should have these powers in relation to CPD.

**24. Do you agree or disagree that the regulators should hold a single register which can be divided into parts for each profession they regulate? Please give a reason for your answer.**

We agree that regulators should have the ability to hold a single register which can be divided into separate parts to account for the range of professions they regulate. We currently register a wide range of professionals across all areas of the social work, social care and early years workforces in Scotland and we successfully manage their regulation through one register.

**25. Do you agree or disagree that all regulators should be required to publish the following information about their registrants:**

- **Name**
- **Profession**
- **Qualification (this will only be published if the regulator holds this information. For historical reasons not all regulators hold this information about all of their registrants)**
- **Registration number or personal identification number (PIN)**
- **Registration status (any measures in relation to fitness to practise on a registrant's registration should be published in accordance with the rules/policy made by a regulator)**
- **Registration history**

**Please provide a reason for your answer.**

The statutory instrument which governs what we may publish on our register is more restrictive about what we may disclose than is proposed herein. We will be looking at whether there is a need to make changes to what we disclose when we come to review our register.

**26. Do you agree or disagree that all regulators, in line with their statutory objectives, should be given a power allowing them to collect, hold and process data? Please give a reason for your answer.**

N/A

**27. Should they be given a discretionary power allowing them to publish specific data about their registrants? Please give a reason for your answer.**

We believe giving regulators discretionary power to publish specific data about registrants would be helpful. This is not a power we currently have, however we recognise the utility such a power would have in several areas of our work.

**28. Do you agree or disagree that all regulators should be able to annotate their register and that annotations should only be made where they are necessary for the purpose of public protection? Please give a reason for your answer.**

N/A

- 29. Do you agree or disagree that all of the regulators should be given a permanent emergency registration power? Please give a reason for your answer.**

We agree that regulators should be given permanent emergency registration powers. Given the exceptional need for additional workers that occurred during the pandemic, allowing for all regulators to have an emergency registration power will mean that when a state of emergency is declared in the future, the regulators can respond more quickly to address any shortfall in staff levels.

- 30. Do you agree or disagree that all regulators should have the same offences in relation to protection of title and registration within their governing legislation?**

We agree with the proposal as this will ensure consistency across regulators and will also allow for greater public trust in the regulated workforces

- 31. Do you agree or disagree that the protection of title offences should be intent offences or do you think some offences should be non-intent offences (these are offences where an intent to commit the offence does not have to be proven or demonstrated)? Please give a reason for your answer.**

We agree that the protection of title offences should be intent offences.

- 32. Do you agree or disagree with our proposal that regulators should be able to appoint a deputy registrar and/or assistant registrar, where this power does not already exist? Please give a reason for your answer.**

N/A

- 33. Do you agree or disagree with our proposal that regulators should be able to set out their registration processes in rules and guidance? Please give a reason for your answer.**

We agree that regulators should set out their registration processes in rules. We have set out our registration process in rules which has enabled us over, the 20 years we have been regulating, to change our registration processes and ensure that they are proportionate.

- 34. Should all registrars be given a discretion to turn down an applicant for registration or should applicants be only turned down because they have failed to meet the new criteria for registration? Please give a reason for your answer.**

We do not have a discretionary power to turn down an application for registration, however we have never experienced the need for such a power.



Our rules currently provide a mechanism for addressing situations such as those highlighted in the consultation document.

**35. Do you agree or disagree that the GMC's provisions relating to the licence to practise should be removed from primary legislation and that any requirements to hold a licence to practise and the procedure for granting or refusing a licence to practise should instead be set out in rules and guidance? Please give a reason for your answer.**

N/A

**36. Do you agree or disagree that in specific circumstances regulators should be able to suspend registrants from their registers rather than remove them? Please give a reason for your answer.**

We agree with the proposal that regulators should be able to suspend individuals from their registers, rather than removing them. In particular suspension for administrative reasons such as non-payment of fees, failure to maintain appropriate contact details, failure to provide information requested, etc. may serve as a useful means of ensuring such requirements are met, without the need of removing the individual from the register and the work then required to re-add them.

**37. Do you agree or disagree that the regulators should be able to set out their removal and readmittance processes to the register for administrative reasons in rules, rather than having these set out in primary legislation? Please give a reason for your answer.**

We agree that regulators should have the ability to set out their removal and readmittance to the register processes in rules. Our own processes are set out in our rules and have been effective for the 20 years that we have been regulating. We believe that having our processes laid out in rules means we can make changes as necessary and maintain the proportionality of our processes.

**38. Do you think any additional appealable decisions should be included within legislation? Please give a reason for your answer.**

The appealable decisions listed in the consultation are:

- refusal to register a person
- suspending a person from the register for administrative reasons
- removing a person from the register for failure to keep their name and contact details up to date
- not granting a person voluntary removal from a regulator's register

- removing a person from the register for failure to meet a condition attached to their registration
- removing a person from the register for failure to comply with a requirement to meet the professional standards relating to continuing professional training and/or revalidation; remove a person's entry from the register where registration renewal has not been made in accordance with the regulator's renewal process
- removing an entry from the register, where the regulator is satisfied that their registration was fraudulently procured or incorrectly made
- refusing to readmit/restore an applicant to the register
- not registering, readmitting/restoring or removing a person's name from the register due to insufficient or inadequate indemnity provisions being in place
- adding or amending an annotation to a person's register entry which leads to a restriction on a person's practice or registration
- removing an annotation from a person's register entry
- refusing to add or restore an annotation on a person's register entry
- any other decision specified by a regulator in their rules.

We agree with the list of appealable decisions as set out in the consultation document as these closely reflect the rules we operate under.

**39. Do you agree or disagree that regulators should set out their registration appeals procedures in rules or should these be set out in their governing legislation? Please give a reason for your answer.**

It would appear that the overall trend here is toward regulators having more power to decide for themselves how best to lay out their processes, etc. If this is the case, it would be anomalous for this to be laid out in the governing legislation rather than the rules. It would be cumbersome to have some rules in legislation and some in the regulators own rules, for consistency these should be laid out in the rules.

Appeals against any of our administrative registration decisions are to the Sheriff Court which governs the process. If the appeal is internal to the regulator then we support it being in rules as we have found over last 20 years that approach is more proportionate

**40. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish student registers? Please give a reason for your answer.**

The view here is that educational providers are better placed than the regulators to monitor the suitability of students, therefore this power should be removed from regulators. Obviously we register student social workers, so we are in a good position to provide an informed view here.

As a regulator we also support students in a number of ways. For example, we manage postgraduate bursaries for students studying a full time postgraduate social work course. Funding is reviewed annually but currently includes tuition fees and a maintenance grant.

Yes, we should say that we regulate social work students because they go on practice placements and think that is an important safeguard that gives a standardised regulatory approach to fitness to practise.

**41. Do you agree or disagree with our proposal that the regulators should not have discretionary powers to establish non-practising registers? Please give a reason for your answer.**

We agree that regulators should not have discretionary powers to establish non-practising registers.

**42. Do you agree or disagree that the prescriptive detail on international registration requirements should be removed from legislation? Please give a reason for your answer.** We agree that regulators should be given the power to determine their own approach to international registration. This will ensure that unnecessary barriers are removed and workforce planning needs can be properly addressed. Our approach to international registration is governed by our rules, this approach gives us the flexibility to ensure proportionality in our approach. **Do you agree or disagree with our proposal that regulators should be given powers to operate a three-step fitness to practise process, covering:**

- **1: initial assessment**
- **2: case examiner stage**
- **3: fitness to practise panel stage?**

**Please give a reason for your answer.**

We agree that regulators should be given powers to operate a three-stage fitness to practise process. We currently operate a three-stage process similar to that proposed and we find that this approach works effectively.

**44. Do you agree or disagree that:**

- **All regulators should be provided with two grounds for action – lack of competence, and misconduct?**
- **Lack of competence and misconduct are the most appropriate terminology for these grounds for action?**
- **Any separate grounds for action relating to health and English language should be removed from the legislation, and concerns of this kind investigated under the ground of lack of competence?**

- **This proposal provides sufficient scope for regulators to investigate concerns about registrants and ensure public protection?**

**Please give a reason for your answers.**

We disagree with the proposal that the ability to remove registrants because of issues relating to health concerns should be removed from the legislation. In our experience we have found it helpful, and welcomed by employers, to have the option for removal on health grounds. We have designed our Fitness to Practise process so that removal on the grounds of misconduct prevents an individual from reapplying for registration for three years. The same does not apply to removal on the grounds of health as we recognise that an individual's health may drastically improve in that time, meaning they are able to return to work once their health no longer impairs their ability to do so.

**45. Do you agree or disagree that:**

- **all measures (warnings, conditions, suspension orders and removal orders) should be made available to both Case Examiners and Fitness to Practise panels; and**
- **automatic removal orders should be made available to a regulator following conviction for a listed offence?**

**Please give a reason for your answers.**

We agree that the full suite of measures should be available to both case examiners and Fitness to Practise panels. This reflects the process that we have used since we moved to a Fitness to Practise model over ten years ago and we have found this useful.

**46. Do you agree or disagree with the proposed powers for reviewing measures? Please give a reason for your answer.**

We agree with the proposed powers for reviewing measures. These powers are similar to the review powers we currently hold, as laid out in our rules.

**47. Do you agree or disagree with our proposal on notification provisions, including the duty to keep the person(s) who raised the concern informed at key points during the fitness to practise process? Please give a reason for your answer.**

We agree with the proposals in relation to notification provisions. The proposal as it stands should provide regulators with clarity in relation to their duties around notifications and may also serve to reduce the burden that some regulators experience under notification rules that go beyond those proposed.

**48. Do you agree or disagree with our proposal that regulators should have discretion to decide whether to investigate, and if so, how best to investigate a fitness to practise concern? Please give a reason for your answer.**

We agree that the decision of whether and how to investigate a fitness to practise concern should ultimately sit with the regulator themselves. The proposal reflects our current processes and powers which are covered by our rules. The process that we use allows us to effectively deal with approximately 60% of all referrals to us at the initial screening stage. This allows us to focus our resources on serious matters of public protection and public interest.

The proposed powers in relation to requiring information from third parties would be welcomed as it is our experience that when there are insufficient powers in this regard, the ability of regulators to fulfil their statutory functions is affected.

**49. Do you agree or disagree that the current restrictions on regulators being able to consider concerns more than five years after they came to light should be removed? Please give a reason for your answer.**

We agree that restrictions on the ability of regulators to investigate or consider concerns more than five years after they came to light should be removed. We do not currently operate under such a restriction and it is our belief that this ensures our public protection function is upheld.

**50. Do you think that regulators should be provided with a separate power to address noncompliance, or should non-compliance be managed using existing powers such as “adverse inferences”? Please give a reason for your answer.**

We currently have the power to remove registrants for noncompliance in cases where health issues or concerns form the basis of a fitness to practise concern. We currently require compliance from registrants in other fitness to practise investigations.

**51. Do you agree or disagree with our proposed approach for onward referral of a case at the end of the initial assessment stage? Please give a reason for your answer.**

We agree with the proposed approach for onward referrals at the end of the initial assessment stage. The proposed process is similar to the approach we follow, which is set out in our rules.

**52. Do you agree or disagree with our proposal that regulators should be given a new power to automatically remove a registrant from the Register, if they have been convicted of a listed offence, in line with the powers set out in the Social Workers Regulations? Please give a reason for your answer.**

We currently remove registrants who are listed under the Protection of Vulnerable Groups scheme. This approach has the same effect as the one currently proposed.

**53. Do you agree or disagree with our proposals that case examiners should:**

- **have the full suite of measures available to them, including removal from the register?**
- **make final decisions on impairment if they have sufficient written evidence and the registrant has had the opportunity to make representations?**
- **be able to conclude such a case through an accepted outcome, where the registrant must accept both the finding of impairment and the proposed measure?**
- **be able to impose a decision if a registrant does not respond to an accepted outcomes proposal within 28 days?**

**Please give a reason for your answers.**

We agree with the proposal that case examiners should have a full suite of powers available to them, including removing individuals from their register and the ability to make final decisions on impairment.

We have operated a system of decisions based on consent for the past ten years and our data shows that [XXX]. Under this system, consent does not take the form of a negotiation, the registrant must accept the allegations put to them, the decision on impairment the reasons for it. These decisions are then published in the same way as decisions made at Fitness to Practise hearings. We are currently in the process of introducing an opt-in hearings process which will operate in a similar way.

All decisions made through this process are appealable to the Sheriff Court, in the same way as other impairment decisions. As a safeguard, all evidence used by case examiners in coming to a decision under this process is reviewed by a solicitor and a member of staff with sector experience.

**54. Do you agree or disagree with our proposed powers for Interim Measures, set out above? Please give a reason for your answer.**

We agree with the proposal that interim orders would be available to regulators, case examiners and FtP panels. The proposed powers are similar to those we currently hold which are set out in our rules.

**55. Do you agree or disagree that regulators should be able to determine in rules the details of how the Fitness to Practise panel stage operates? Please give a reason for your answer.**

We agree that regulators should be able to determine in their rules how their Fitness to Practise panels operate. Our Fitness to Practise process is governed by our rules. We are able to amend our rules to ensure they are proportionate to the aims of public protection, this flexibility means we have been able to operate successfully for 20 years.

**56. Do you agree or disagree that a registrant should have a right of appeal against a decision by a case examiner, Fitness to Practise panel or Interim Measures panel? Please give a reason for your answer.**

We agree that registrants should have a right to appeal against the decisions made by case examiners, Fitness to Practise panels or Interim Measure panels.

**57. Should this be 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? Please give a reason for your answer.**

The Sheriff Court operates as the court of appeal for our decisions. We feel this is the right level for appeals as it allows easier access for registrants.

**58. Do you agree or disagree that regulators should be able to set out in Rules their own restoration to the register processes in relation to fitness to practise cases? Please give a reason for your answer.**

We agree with the proposal that regulators should be able to set restoration processes in their rules. Should registrants have a right to review measures, there will need to be rules governing how restoration is dealt with. It is right that these are established by the regulator themselves.

**59. Do you agree or disagree that a registrant should have a further onward right of appeal against a decision not to permit restoration to the register? Please give a reason for your answer.**

We agree that registrants should have a right to appeal against the decisions made by case examiners, Fitness to Practise panels or Interim Measure panels.

**60. Should this be 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? Please give a reason for your answer.**

The Sheriff Court operates as the court of appeal for our decisions. We feel this is the right level for appeals as it allows easier access for registrants.

**61. Do you agree or disagree that the proposed Registrar Review power provides sufficient oversight of decisions made by case examiners (including accepted outcome decisions) to protect the public? Please provide any reasons for your answer.**

We do not have a registrar review process in place however, we would agree that having a process in place to allow review would be helpful and welcome.