The Changing Landscape of Regulation, Health and Social Care Professionals: the Law Commission Review

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Public Law Commissioner for England and Wales

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What I will cover today

- Overview of the project
- Structure of the proposed legal framework
- Fitness to practice
- Other proposals
The Law Commission

- Independent body created by statute
- Responsible for systematic development and reform of law in England and Wales
- Two thirds of reports have been implemented
- Law Commission Act 2009 and Protocol
- Currently on our 11th programme of law reform
Review the UK law relating to the regulation of health care professionals

In England only, review the law relating to the regulation of social workers
Sponsored by Department of Health

Supported by the devolved administrations

First ever tripartite review with the Northern Ireland and Scottish Law Commissions
Outline of project

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<th>Stage 1: Pre consultation</th>
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<th>Stage 2: Public Consultation</th>
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<tr>
<td>1 March 2012</td>
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<tr>
<td>Publication of consultation paper</td>
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<td>March – May 2012</td>
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<td>3 month public consultation</td>
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<th>Stage 3: Draft Bill and report</th>
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<td>Publication early 2014</td>
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<td>Legislation before the end of the current Parliament</td>
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The legal framework

- Pharmacy Order (NI) 1976
- Nursing and Midwifery Order 2001
- Pharmacy Order 2010
- Medical Act 1983
- Dentists Act 1984
- Chiropractors Act 1994
- Opticians Act 1989
- Osteopaths Act 1993
- UK health professional regulation
- Health Professions Order 2001
Structure of reform

- A single UK statute
- Broad powers for the regulators
- Removal of Privy Council role
- Government default and regulation powers
- Parliamentary accountability
The paramount duty

To protect, promote and maintain the health, safety and well-being of the public by ensuring proper standards for safe and effective practice

What about maintaining confidence in the profession?
1. Consolidate main statutory grounds (misconduct, deficient performance, convictions, health)

2. Shipman Inquiry recommendations

3. Remove the statutory grounds and provide test of impairment based on whether registrant is a risk to the public
Fitness to practise: Investigation

- Regulators can consider any information which comes to their attention
- Powers to introduce screeners and mediation
- No requirement for an Investigation Committee
- Powers to dispose of cases via warnings, interim orders, undertakings, voluntary erasure, advice.
- Ability to review certain decisions not to refer cases to a FTP Panel
Fitness to practise: Adjudication

- Article 6 ECHR compliance
- Extended powers of case management
- Broad powers for the regulators to determine procedural rules in most areas
- Consistent range of sanctions (erasure, suspension, conditions, warnings)
- Government power to introduce financial penalties / cost awards
Governance

- Board-like Councils
- Size and composition of Councils
- Appointments
- Committee structure
- Delegation and collaboration
Registers

- Duty to establish main register
- Specialist lists in statute
- High level registration requirements
- Student and voluntary registers
- Duties to establish appeals systems for registration decisions
- All current sanctions must appear in the public register
Education and conduct

- Wide powers to approve and monitor education
- Statutory inspection systems
- Duty to share information
- Two tier system of guidance
- Duty to ensure continued professional competence
- Powers to establish revalidation
## Other key areas

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<th>Role of CHRE</th>
<th>Business regulation</th>
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<td>Duties to co-operate</td>
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<td>Duty to consult widely</td>
<td>Protected titles</td>
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<td>Protected functions</td>
<td>Criminal prosecution powers</td>
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