

Council, 10 February 2016

Professional Accountability Bill – The next steps

Introduction

The purpose of this paper is to update the Council on the UK Government's proposals to reform the legislation of the nine UK statutory regulators of health and care professionals by way of possible primary legislation in the form of an Act of Parliament.

The paper provides an overview of recent developments in the project. The paper is to note as it has been assumed that no decision is required by the Council.

Decision

The Council is requested to note the report.

Background information

Meeting with the Department of Health to discuss plans for the Bill

Two meetings between officials from the Department of Health (DH) and the CEOs of the nine UK statutory regulators of health and care professionals took place on 13th and 25th January 2016. It was a continuation of the discussions started at the informative briefing by Ben Gummer, Parliamentary Under Secretary of State for Quality for on 9th December 2015 at the DH.

Law Commissions

The work of the Law Commissions published five years ago was effectively set aside in December 2015. The reasons for this are numerous but include:

- The degree of prescriptiveness of the Bill
- The large number of clauses, 260, in the Bill
- The division of responsibilities between the DH and the statutory regulators

DH Draft Accountability Bill

The draft Bill that the DH has been working on during 2015 has ceased and the team has been disbanded. The work that has not been published now represents an historic exercise.

New Project Overview

The intention of the new project will be to enact new legislation by way of a Bill by the end of the current Parliament. To date the DH has not published the Policy behind any proposed legislation. However, it is assumed that the policy objectives and content of the Bill will be made clearer following engagement with the regulators and planned subsequent consultation. The PSA report *Re-Thinking Regulation* published in August 2015 is also influencing the policy objectives.

Indicative Timetable

Officials from the DH have recently been requested by the regulators to provide a detailed timetable but are unwilling to do so as at this very early stage in the proceedings. No details on the timetable for the introduction of Rules has to date been discussed.

In relation to the indicative timetable, our working assumptions are as follows:

2016	
January – March	DH Engagement with regulators
September	Consultation published
Oct – December	Consultation
2017	
April/May	Queen’s Speech
June	Draft legislation published
June	Pre-Legislative Scrutiny Committee (PLSC) established
June - Nov	PLSC
December	Report and revised Bill published All Section 60s completed
2018	
Spring	Bill progresses through Parliament HoC and HoL
Autumn	Bill completed
2019	
Spring	Act published
	Existing legislation repealed
Rules drafted	Autumn
2020	
7 May	General Election

Department of Health Bill Team

It is reasonable to assume that the DH will establish a new Bill Team. However, the impact on the reduction in the annual budget of the DH which is expected to be reduce by 20 – 20% from April 2016 is unclear.

Engagement

The DH wants to “engage” with the regulators during February 2016 and very much wants to continue to work together with the nine organisations. The purpose of the engagement is to seek views on what the consultation could consist of. This process will probably influence the subsequent consultation. No information about which other

stakeholders would be involve has been forthcoming, for example Professional Associations or consumer/service groups.

Consultation

A “Sought of consultation” will probably start in September 2016 followed by a three month consultation ending in December. A White paper “what we are doing” will not be published but a “White paper with Green Edges” “policy paper” may be published - Green papers tend to focus on “What do you think”.

The Cabinet Office published new guidance on consultation principles on 14th January 2016, see <https://www.gov.uk/government/publications/consultation-principles-guidance> and it is assumed that they will be adhered to throughout this Project.

Parliamentary Sessions

The working assumption is that there will be five fixed twelve month sessions of Parliament starting and ending in spring each year.

Queens Speech

The 2017 spring Queen’s Speech will probably take place in April or May 2017. Provided that the Bill it is included work will commence on the draft Bill and in particular a Pre-Legislative Scrutiny Committee will be established.

However, no Official is in a position to make any commitment whatsoever on the possible content of any future Queen’s Speech.

Pre-legislative Scrutiny Committee

The draft bill will then be published by the DH and sent to a Pre-Legislative Scrutiny Committee. Scrutiny by the Committee reduces the risk that the Bill will fail or be substantially amended at a later stage by Parliament.

Unless the intention to draft a Bill is in the Queen’s Speech the Pre-Legislative Scrutiny Committee can’t be established. Each committee is separately established for each Bill and membership can be from both the House of Commons and the House of Lords. The committee will review the draft legalisation. It may take evidence as part of its work. A report may be published alongside the amended draft Bill.

Draft Bill

Following the completion of the Pre-Legislative Scrutiny Committee the revised draft Bill may emerge towards the end of 2017.

Progress with Bill

The Bill may be return to the House of Commons in the spring 2018. It will then be subject to Parliamentary approval and amendments.

Devolution

It is unclear at this stage what role the devolved Governments will play in the process.

Capacity to enact Bills

Bills started and not completed in a Parliamentary Session are carried over to the next session, currently there are a small number of Bills in this position. There is a tendency that fewer Bills are successful progressed as Parliament approaches the next General Election.

General Election

The Fixed Term of Parliaments Act proscribes that the next UK General Election will take place every five years. The next one will take place on Thursday 7th May 2020, although it can be postponed for up to three months. It is therefore probable that the Department of Health will aim to complete this passage of the Bill through Parliament before December 2019. If this does not happen the Bill can't be carried over to the new Parliament.

Section 60s

A Section 60 is the mechanism embedded in the Health Act which facilitates amendments to the legislation of the nine UK statutory regulators of health and care professions without the need for a Bill and Act. The process to draft and implement a Section 60 is considerably faster compared to a Bill and with a fair wind can take about one year. However, Parliament tends to prefer Section 60 relating to only one regulator at a time and that addresses only one or two issues. Portmanteaus are often talked about but rarely delivered. In addition, the more Section 60s implemented reduces the need for a Bill.

It should be noted that unlike Bills Section 60s can't be amended. They are less risky to Government compared to Bills but take longer to prepare for their passage through Parliament.

The Officials from Department of Health have indicated that subject to their constraints on funding legal resources a parallel process to develop Section 60s will occur.

Any Section 60 will have to be completed by the end of December 2017.

Rationalisation

At the meeting on 13th January the Officials from Department of Health reiterated the Under Secretary of State's disposition for "rationalisation". Again, this links to the PSA report of August 2015. By reducing the number of regulators, lower annual registration fees will follow and more effective and efficient organisation will be created. The DH is seeking suggestions from the statutory regulators on how this might be achieved.

During the early stage of the Project the CELG will probably focus their work preparing for the consultation on the Bill rather than issues related to Rationalisation.

No timetable for the implementation any rationalisation proposals have been published. However, it is assumed that any changes to legislation would dovetail into the Bill.

Chief Executive Liaison Group (CELG)

The liaison group which met during the Law Commissions project has been reconstituted. It met for the first time on 25th January 2016. Michael Guthrie will deputise for me. The purpose of the CELG will be to coordinate our input into the project.

HCPC

To date the position of the HCPC has been that in general are legislation is, subject to some minor amendments, fit for purpose. However, our approach will be to analyse four types of possible improvements. They are as follows:

- i. Improvements to the HCPC legislation**
 - Replacing Council members with Partners on registration appeals
 - Repositioning ADR
- ii. Supported recommendations of the Law Commissions draft Bill**
 - Negative registers
- iii. Rejecting recommendations of the Law Commissions draft Bill**
- iv. Adopting legalisation already enacted by one or more of the other eight regulators**
 - Disposal by consent
 - Independent tribunal service

Risks

There are numerous risks associated with Project. They include:

- The Bill will not be completed by May 2020
- The Bill will incorporate the policy objectives of influential stakeholders that are not supported by the HCPC
- The opportunity to amend legislation by Section 60s will be lost
- Reshuffle

Next Steps

I have written to the Department of Health responding to the proposal to hold separate meetings with the nine regulators. The meeting should take place once the new DH team is established, probably in the next four to six weeks. The agenda of the meeting will include:

- i. The four of improvements that we are seeking to be made to our legislation
- ii. HCPCs requirement for a Section 60
- iii. Rationalisation options

Resource implications

None

Financial implications

None

Appendices

None

Date of paper

25 January 2016