MEMORANDUM

THE NHS REFORM AND HEALTH CARE PROFESSIONS BILL

Background

1. The NHS Reform and Health Care Professions Bill, which received its first reading in the UK Parliament on 8th November includes provisions to create a Council for the Regulation of Healthcare Professionals (CRHP) and to streamline the processes for individuals who appeal against decisions of certain regulatory bodies.

2. These proposals are the Government's response to a recommendation of the Kennedy Report on the Bristol Inquiry. They follow a public consultation by the Department of Health based on a paper entitled *Modernising Regulation in the Health Professions* issued in August 2001. The consultation was on a UK basis and a number of the 140 responses were from Scotland.

Content of the Bill

3. The relevant provisions are contained in Part 2 of the Bill, and they deal for the most part with reserved matters. The Scotland Act reserves the regulation of the health professions, defined as those eight professions[1] regulated by enactments stated in Schedule 5 G2 to the Act (which also covers the veterinary profession).

4. Each of the eight professions has its own regulatory body operating within its own legal framework. Central to the functions of those bodies is the conduct of hearings to assess the fitness for practice of individuals, which may result in "striking off" or other disciplinary action. The Bill proposes to establish a Council to oversee those bodies.

5. The CRHP will have the functions of promoting the public interest in the way that the eight existing (and any future) statutory regulatory bodies carry out their work; promoting best practice; formulating the principles of good professional self-regulation and encouraging the regulatory bodies to conform to them; and promoting co-operation between the bodies and between them and other bodies with corresponding functions.

6. The Council will be a non-Ministerial Government Department accountable to Parliament, not to the Secretary of State. Its membership will comprise:

1. one nominee of each of the regulatory bodies (currently 8),
2. one member appointed by each of the three devolved administrations and other members appointed by the Secretary of State, with the total in a majority of one (i.e. initially 9).

The 9 members in this second group are expected to comprise 2 NHS and 7 lay members. The first chairman will be appointed from among the members by the Secretary of State; subsequent chairmen will be elected by the Council.

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[1] Here and elsewhere, "professions" can refer to groups of professions, as in the case of the Health Professions Council which regulates 12 separate professions including physiotherapists, and the Nursing and Midwifery Council (nurses, midwives and health visitors).

7. The Council may not intervene in the determination of individual fitness for practice cases, although it will be able, at the conclusion of a case, to refer the case to the courts if it felt this was necessary to protect members of the public.

8. The Council will have powers to direct a regulatory body to make rules for a particular purpose. It is intended that this will allow the Council to improve consistency between the professions in the interests of fairness to different professionals and to the public. There is a power for the Secretary of State to set up a complaints scheme through regulations, which would not be an alternative appeal route but would deal with accusations of maladministration against a regulatory body.

9. The Bill also proposes amendments to the enactments governing several of the eight professions, in order to direct appeals against decisions on fitness to practise cases to the courts rather than to the Judicial Committee of the Privy Council and to bring consistency to the route taken by appeals against registration decisions. This is intended to harmonise arrangements across the eight professions.

Devolved aspects

10. The Council will also oversee further regulatory bodies which may be established for other professions in the future under section 60 and schedule 3 of the Health Act 1999. This is a pre-commencement enactment for the purposes of the Scotland Act 1998 and so Schedule 3 obligations of the Secretary of State, in the 1999 Act, in respect of an Order in Council to be made under section 60 powers devolve also to Scottish Ministers. It would be possible for the Scottish Parliament to create a body to oversee regulatory bodies that might be established and which might fall within devolved competence, and to make such a body accountable by laying its report and accounts before the Scottish Parliament

11. The power for Scottish Ministers to appoint one of the members of the Council represents an extension of Scottish Ministers' executive competence, and so falls within a devolved area. The same applies to the power to make loans and payments.

Proposal

Council to cover devolved regulatory bodies

12. The Scottish Executive wishes the CRHP to oversee any new regulatory bodies which the Scottish Parliament might establish in the future under section 60 of the Health Act 1999. It agrees with the view expressed in the Kennedy report and supported by public consultation that there should be an overarching body to ensure that regulatory standards for healthcare professions are more consistent across the UK and across those professions. This would lead to more consistent standards of patient care and would also benefit the professionals themselves through, for example, greater career flexibility. This UK approach is reinforced by the requirement to lay reports and accounts before the Scottish Parliament.

13. It is more than likely that any new regulatory bodies for health professions will be established on a UK basis for these same reasons, but should there be a need to provide for such a body in Scotland alone, its oversight by the CRHP will help to ensure that it is

consistent with other bodies, and they with it. The independence of the CRHP, its accountability direct to Parliament and the requirement that a member of its Council is appointed by Scottish Ministers all provide reassurance that, should there be circumstances in which a separate regulatory body needs to be created for Scotland, those circumstances will be taken into account by the CRHP.

14. Currently, no circumstances are foreseen in which it would be necessary to promote a separate regulatory body for Scotland.

15. The CRHP is specifically for healthcare professionals. *Our National Health: a plan for action, a plan for change* promotes a much stronger link between health and social care. There will be some professionals working in the social service sector who will be regulated both by a body under the oversight of the CRHP and by the Scottish Social Services Council. It is part of the proposed functions of the CRHP to promote co-operation between the regulatory bodies for healthcare professionals and other bodies performing corresponding functions.

Appointment of member of Council

16. The proposal that Scottish Ministers should appoint a member of the Council is welcomed. Alongside equivalent appointments from Wales and Northern Ireland, it reinforces the UK nature of the body. It is quite possible that there will also be Scottish appointments from among those nominated by the regulatory bodies.

Power to fund CRHP

17. As a reserved body, it is intended that the CRHP will be financed out of money provided by the Westminster Parliament. The proposal that Scottish Ministers should have the power to make loans and payments to the CRHP enables them, if they so choose, to share financial support for the body should that become desirable, and to commission particular activities by or through the CRHP which might be desirable to support the improvement of standards in Scotland.

Conclusion

18. The Executive believe that it would make sense for Westminster to legislate on the aspects of the Bill outlined above, in order to achieve a coherent, single legislative package to set up CRHP on a UK basis.

SCOTTISH EXECUTIVE
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