Health, Social Care and Sport Committee

1st Meeting, 2023 (Session 6), Tuesday, 16 January 2023

Subordinate legislation – Affirmative SSI

1. This paper invites the Committee to consider the following affirmative instrument:

   - Anaesthesia Associates and Physician Associates Order 2024

Parliamentary procedure:

2. The affirmative procedure means that an instrument cannot be made and come into force unless the Parliament has voted to approve it (rule 10.6.1 of standing orders).

3. Affirmative instruments are first looked at by the DPLR Committee before being considered by the lead committee (usually the committee which examined the Bill for the Act that the SSI is made under or whose remit is most aligned).

4. It is usual practice for the lead committee to take evidence from the relevant Scottish minister in advance of considering the instrument. The committee can ask the minister and any officials questions about the SSI.

5. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion.

6. The lead committee must report its recommendation to Parliament within 40 days of the SI being laid. If the committee agrees the SSI should be approved, the whole of the Parliament then gets a chance to vote on it in the Chamber. If the lead committee decides the SSI should not be approved, the Parliamentary Bureau decides whether MSPs should vote on it in the Chamber.

Clerks to the Committee
11 January 2023

Title of Instrument:	**Anaesthesia Associates and Physician Associates Order 2024**
Laid Date:	**13 December 2023**
Reporting deadline:	**6 February 2024**
Type of instrument:	**Affirmative**

Purpose

7. The instrument allows the statutory regulation of anaesthesia associates and physician associates by the General Medical Council. It provides a framework for AA and PA regulation and establishes the powers and duties in relation to the GMC, including the autonomy to set out the detail of its regulatory procedures in its rules.

8. The policy note is included at **Annexe A.**

9. Before the Order was laid, the Committee received a letter from the Nursing and Midwifery Council on 11 December 2023. The Committee also received a letter from the Association of Anaesthetists on 9 January 2024.

10. A targeted call for views was undertaken, and submissions were received from the GMC, BMA Scotland, and the Professional Standards Authority.

Delegated Powers and Law Reform Committee consideration

11. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 9 January 2024 and made no recommendations in relation to this instrument.

For decision

12. The Committee must decide whether or not to agree the motion, and then report to Parliament accordingly, by 6 February 2024.

ANNEXE A

POLICY NOTE

THE ANAESTHESIA ASSOCIATES AND PHYSICIAN ASSOCIATES ORDER 2024

2024 No. [XXXX]

The above instrument was made in exercise of the powers conferred by sections 60(1)(b) and 62(4) and (4A) of, and schedule 3 to, the Health Act 1999. The instrument is subject to affirmative procedure.

Summary Box

This instrument will allow the statutory regulation of anaesthesia associates (AAs) and physician associates (PAs) by the General Medical Council (GMC). It provides a framework for AA and PA regulation and establishes the powers and duties in relation to the GMC, including the autonomy to set out the detail of its regulatory procedures in its rules.

Policy Objectives

The overarching purpose of professional healthcare regulation is public protection. It plays an important role in demonstrating that those providing care are safe to practise and can be held to account if serious concerns are raised about their conduct or performance.

The current regulatory landscape for healthcare professionals is complex and has evolved in a piecemeal manner over the last ten years; it lacks the flexibility required to protect patients and to support our health services and evolving workforce models.

This instrument is the result of several four-country consultations led by the Department of Health and Social Care (DHSC) over the last six years. It is the first phase of a long-term programme of work and will act as the template for future reform of the legislative frameworks of all professional healthcare regulatory bodies in the UK.

AAs and PAs are part of multidisciplinary teams and are able to deliver additional medical capacity within the workforce by working complementary to and under the supervision of doctors. Although AAs and PAs are currently not regulated, voluntary registers exist for each role by the Royal College of Anaesthetists and Faculty of Physician Associates, respectively. Statutory regulation will, for the first time, introduce consistent standards for education and behaviour and UK-wide professional accountability to these roles.

A core function of the regulatory bodies is to set the professional standards which registered professionals must meet, as well as standards relating to education and training. By assuring that these standards are met, the regulators ensure that education and providers deliver registrants who have the right behaviours and the skills, knowledge and experience needed to offer safe and effective care. This instrument, therefore, sets

out the GMC's duty to determine the standards and requirements that AAs and PAs must meet to be registered, including standards of education, training, knowledge, skills, experience, conduct, performance, ethics and English language. For education and training, this instrument provides the GMC with the power to approve education or training, qualifications; providers; and an examination or assessment of AAs and PAs who are or wish to be registered.

All regulators have a duty to keep a register or registers of professionals who have demonstrated that they are appropriately qualified, have the necessary knowledge, skills and experience and are capable of safe and effective practice. The GMC will be responsible for holding and maintaining a register for AAs and PAs to provide assurances that those practising in the UK meet the standards that patients expect. This instrument, therefore, sets out the duties of the Registrar in effectively maintaining the register and the criteria that AAs and PAs must meet for registration and restoration to the register.

While the instrument requires the Registrar to divide the register into two parts, one for AAs and one for PAs, it provides the powers for the GMC to set conditions on the registration of groups of AAs and PAs who meet pre-determined criteria. These conditions will limit the scope of an associate's registration and is intended to allow the GMC to operate defined, different types of registration, for example: provisional registration.

Regulated professionals are required to demonstrate that they have the skills, knowledge and experience needed to practise their profession safely and effectively. Where a concern is raised about a professional, the regulator has a duty to assess the concern, and, where necessary, to take action to protect the public. This could result in restrictions being applied to a professional's practice or, in the most serious cases, lead to their removal from the register.

There is considerable variation in the fitness to practise powers currently available to the regulators. One of the key objectives of the reform programme is to provide a common framework that is swifter, fairer and less adversarial. This instrument, therefore, sets out the linear, three-stage fitness to practise process that the GMC will follow should concerns arise about AAs and PAs, including the functions and remit of the case examiner and panel.

Should the fitness to practise process result in the imposition of an Interim or Final Measure, this instrument sets out the maximum period of application, the conditions in which they can be reviewed and the options available to the GMC upon completion of the relevant review process.

AAs and PAs will have the right to appeal against decisions made regarding their fitness to practise or registration. This instrument sets out the process and criteria for AAs and PAs who wish to appeal to a Panel or Court in respect of a decision made by the GMC. This instrument also sets out that the GMC will be able to revise 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; the GMC will further set out in rules the types of decisions it will revise.

Once AAs and PAs are statutorily regulated, this instrument makes it an offence for someone, with intent to deceive, to:

- falsely represent anyone to have an approved qualification (which will cover AA and PA courses) or be registered
- make a false representation as to the content of the register
- procure, or attempt to procure, the inclusion or exclusion of information in the register

In addition, from 13 December 2026, if will be an offence for a person to, with intent to deceive, use the titles ‘anaesthesia associate’ or ‘physician associate’ if they are not registered as such with the GMC. This later coming into force date is to allow time for existing AA and PAs to continue to use the title while undertaking any necessary training or education to comply with GMC registration requirements.

Consequential changes to other pieces of primary and secondary legislation have also been made to ensure that legislation relating to health professionals is updated to reflect the regulation of AAs and PAs where appropriate.

EU Alignment Consideration

There are no alignment considerations with this instrument. Recognition of AA and PAs would fall under the EU general system of mutual recognition. This allows an applicant to have their professional qualification considered a on a case by case basis against a host countries standard. The instrument makes provision for this under article 4(1) which allows GMC to approve training, education or examination provided or qualifications obtained from outside the UK.

Consultation

The regulatory landscape has evolved in a gradual and piecemeal manner following the publication of a joint report between the Scottish Law Commission, the Law Commission for England and Wales and the Northern Ireland Law Commission, in 2014, recommending, among other things, a single legal framework for the regulatory bodies:

https://lawcom.gov.uk/project/regulation-of-health-and-social-care-professionals/

Building on this report, in 2017 the Department of Health (now DHSC) published a consultation on options for reforming the regulation on healthcare professionals in the UK:

https://assets.publishing.service.gov.uk/media/5a81d78ce5274a2e8ab561e7/Regulatory_Reform_Consultation_Document.pdf

In 2019, the UK Government published its consultation response and committed to working with the Devolved Governments and the regulators to develop draft secondary legislation. The response can be found at:

https://assets.publishing.service.gov.uk/media/5d386abfed915d0d0446885f/Promoting_professionalism_reforming_regulation_consultation_reponse.pdf

In 2017, Department of Health also published a consultation seeking views on the regulation of Medical Associate Professions (MAPs) in the UK (MAPs is the umbrella term

for AAs, PAs and Surgical Care Practitioners; although at the time of consultation it also encompassed Advanced Critical Care Practitioners):

https://assets.publishing.service.gov.uk/media/5a81d87440f0b62305b911d5/The_regulation_of_MAPs_in_the_UK.pdf

Detailed proposals for the reform of the legislation underpinning healthcare regulation were then set out in a consultation published by DHSC in 2021:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978833/Regulating_healthcare_professionals__protecting_the_public.pdf

The response, published on 17 February 2023, can be found at:

https://www.gov.uk/government/consultations/regulating-healthcare-professionals-protecting-the-public/outcome/regulating-healthcare-professionals-protecting-the-public-consultation-response-executive-summary#closing-summary

The consultation for this instrument was published by DHSC on 17 February 2023 until 16 May 2023. It can be found at:

https://www.gov.uk/government/consultations/regulating-anaesthesia-associates-and-physician-associates

The report on the Consultation, published on 11 December 2023 by the Scottish Ministers and the Secretary of State, reflects the final positions that have been used as the basis for drafting this instrument that will give the GMC the power to effectively regulate AAs and PAs under the new regulatory framework. It can be found at:

https://www.gov.uk/government/consultations/regulating-anaesthesia-associates-and-physician-associates

Impact Assessments

The Scottish Government has not prepared full impact assessments for this instrument because in developing the legislation, DHSC's analysis, which we agree with, confirms that there is no, or no significant, impact on business, charities or voluntary bodies. It is also confirmed that DHSC is providing funding for the initial set up costs of regulating AAs and PAs.

As part of developing the policy positions on reform and regulating AAs and PAs, DHSC developed and updated an Equalities Impact Assessment. The Scottish Government is in agreement that we don't anticipate that there will be any disproportionate impacts on protected characteristics from the regulation of AAs and PAs. The GMC is 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 instrument provides a flexible framework to allow the GMC to adapt to requirements of the professions' demographics.

In the preparation of this instrument, the Cabinet Secretary for NHS Recovery, Health and Social Care has given due regard to the environmental principles under section 14 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. Given the

nature of the instrument - the regulation of health professions - it is considered that the principles do not apply.

Financial Effects

The Cabinet Secretary for NHS Recovery, Health and Social Care confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government

Chief Nursing Officer's Directorate

13 December 2023