



JOINT CONSULTANTS COMMITTEE

Response to the Council for Healthcare Regulatory Excellence's (CRHE) consultation on its powers under section 27 of the Health Care Professionals Act 2002

This consultation exercise is concerned with the Council for Healthcare Regulatory Excellence's (CRHE) power under section 27 of the NHS Reform and Health Care Professional's Act.

This power allows CRHE to instruct a regulatory body to make or change rules if this is deemed necessary to protect the public. Section 27 only applies to rules the regulator has the power to make and which do not need a law change. With regard to the GMC these rules include:

- Removing and suspending members (the Removal and Suspension of Members rule – expected to come into force on 1 March 2004)
- Assessing professionals who qualified overseas (the Review Board for Overseas Qualified Practitioners Rules Order 1979)
- Voluntary removals from the register, and going back on the register after a voluntary removal (the Voluntary Erasure and Restoration following Voluntary Erasure Regulations 2003 and the Restoration and Registration Fees Amendment Regulations 2003)
- Fitness to practise committee (the constitution of Fitness to Practise Committees [Transitional Arrangements] Rules 2003)
- Professional performance (the Professional Performance Rules 1997)

OVERVIEW

Whilst the document outlines the mechanics of the proposed process of issuing instructions it does not provide enough detail as to what resources will be at the disposal of the CRHE to underpin such decision making and administer this workload. It would be useful to have clarified the experience and expertise that will be employed by the CRHE in this area. With regard to the regulation of the medical profession, the GMC has an enormous amount of experience and expertise. We would be concerned if the CRHE, a body without such experience, was to undermine the GMC by imposing rule changes. It is therefore essential that the CRHE demonstrates that its officers possess the requisite skills to carry out their duties satisfactorily.

The responses to the specific questions are as follows:

1. What criteria should we use to decide whether a rule change is needed to protect members of the public?

The criteria should be rather restrictive and thus any decision on whether a rule change is needed must only be made on the basis of the findings of a comprehensive public inquiry wherein there is a challenge to, or proof of deficiency in, a rule or regulatory framework.

2. How long should the consultation period be for getting feedback on a proposed instruction?

We would favour a minimum three-month consultation period in all instances of a proposed instruction.

In those circumstances where a regulatory wishes to consult its own members it should be possible for that body to negotiate with the CHRE for a longer consultation period.

3. How widely should we consult on a proposed instruction?

Being concerned with the medical profession, the JCC's considerations are focused on the implications of a proposed instruction on the GMC and GDC.

To this end, we would suggest that in any consultation process patients, the public and representatives of the profession (through the BMA, BDA and the Medical Royal Colleges) should be included.

4. If it is appropriate for us to consult more widely on a proposed rule change, which of the options explained in this document is best?

If it is necessary to consult more people than just the regulatory body concerned, the CHRE should provide the regulatory body concerned with extra time beyond the three-month consultation period so it can respond to feedback the CHRE receives.

5. Should the regulations specify who we should consult? One view would be that this should be up to us. An alternative is the model used in, for example, the Nursing and Midwifery Council Order 2001. This includes:

'Before establishing any standards or giving any guidance under this Order the Council shall consult representatives of any group of persons it considers appropriate including, as it sees fit, representatives of -

- (a) registrants or classes of registrant;*
- (b) employers of registrants;*
- (c) users of the services of registrants; and*
- (d) persons providing, assessing or funding education or training for registrants or prospective registrants.'* (Art 3(14))

We strongly feel the CRHE should employ the model used by the Nursing and Midwifery Council (Order 2001).

However, we would ask that the phrase 'as it sees fit' is removed from the model. Inclusion of the representatives listed should be mandatory.

6. Do you think that the process outlined is the appropriate way to proceed with rule changes affecting more than one regulatory body that we feel are necessary to protect the public?

Yes, as long as the recommendations contained in this response are acted upon.