

THE ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN

RESPONSE TO 'PHARMACISTS AND PHARMACY TECHNICIANS ORDER 2006 - A PAPER FOR CONSULTATION

The Royal Pharmaceutical Society of Great Britain (the Society) is the professional and regulatory body for pharmacists in England, Scotland and Wales. It also regulates pharmacy technicians on a voluntary basis. The primary objectives of the Society are to lead, regulate, develop and represent the profession of pharmacy.

The Society has responsibility for a wide range of functions that combine to assure competence and fitness to practise. These include controlled entry into the profession, education, registration, setting and enforcing professional standards, promoting good practice, providing support for improvement, dealing with poor performance, dealing with misconduct and removal from the register.

The Society leads and supports the development of the profession within the context of the public benefit. This includes the advancement of science, practice, education and knowledge in pharmacy. In addition, it promotes the profession's policies and views to a range of external stakeholders in a number of different forums.

The Society is very pleased to have the opportunity to respond to the consultation on the Pharmacists and Pharmacy Technicians Order. Our response has been informed by the feedback we have received from the pharmacy profession and organisations within pharmacy. We have long been aware of the inadequacies of the powers and procedures stemming from our current legislation and have sought opportunities to update these. We look forward to implementing the Order and providing both pharmacists and pharmacy technicians with a new, more robust regulatory framework. We believe this should be implemented in a proportionate way, both in terms of costs and procedures.

While welcoming the draft Order, we wish to highlight four specific concerns:

- We believe that the main purpose of the Society, as expressed in the Order, should more closely reflect the Society's constituting document, its Royal Charter.
- While recognising that the regulation of professions recognised after 1998 is a matter that, for Scotland, is devolved to the Scottish Parliament, the Society is concerned that the provisions relating to regulation of pharmacy technicians will not apply across Great Britain. We hope that a satisfactory solution can be found to resolve this situation at the earliest opportunity.
- We are convinced that the statutory link between registration as a pharmacist and membership of the Society should be maintained and that this link makes a valuable contribution to public protection.
- We value our connection with the Privy Council and the high quality of the independent chairmen appointed by the Privy Council to our Statutory Committee. We wish to see this appointment function continue.

We have expanded on these concerns below.

The consultation document poses a number of specific questions. We have considered all of these. On most points, the draft Order reflects the Society's proposals as submitted to the Department of Health (DH) and our response does not therefore address these points in detail.

Q1. *Have you identified any significant elements of the Pharmacy Act 1954 which are not reflected in the draft Pharmacists and Pharmacy Technicians Order?*

No.

Q2. *Do you think the change of name of the register from "Register of Pharmaceutical Chemists" to "Register of Pharmacists" is helpful? Can you suggest a more suitable name for the register?*

We think "Register of Pharmacists" is the most suitable name for this register.

Q3. *Do you support the proposal to establish a statutory Register of Pharmacy Technicians for England and Wales to be maintained by the Royal Pharmaceutical Society of Great Britain? Can you suggest a more suitable arrangement for the statutory regulation of pharmacy technicians?*

The Society supports the proposal for statutory regulation of pharmacy technicians in England and Wales but is concerned that these provisions will not apply across Great Britain. This will significantly limit the Society's ability to protect, promote and maintain the health and safety of the public in Scotland to the same extent as those in England and Wales.

We recognise that the regulation of professions recognised after 1998 is a matter that, for Scotland, is devolved to the Scottish Parliament but wish to highlight the inconsistency in regulatory standards and powers that will result across Great Britain if an acceptable solution cannot be found. The provisions in the draft Order are also inconsistent with the approach agreed by both the Westminster and Scottish Parliaments in June-July 2005 for the UK-wide regulation of dentists and other dental care professionals. Pharmacy technicians work with pharmacists, sharing common expectations and a common ethos. The Society believes that regulation of pharmacists and pharmacy technicians together is the best way to recognise this.

Pharmacy technicians are playing an increasing part in delivering health services and it is important that they should be regulated by statute, for the public benefit. We hope very much that a satisfactory solution can be found to allow regulation of pharmacy technicians across Great Britain as soon as possible.

Q4. *Do you think it is helpful for the Society's registers to be divided into two parts to distinguish between practising and non-practising pharmacists or pharmacy technicians? Is there any further division of the registers which might be appropriate?*

We think it is helpful for the registers to be divided into ‘practising’ and ‘non-practising’ parts. We would not propose any further divisions at this stage but may wish to do so in the future as we move towards revalidation and the recognition of specialisms.

Q5. *Do you agree that it is desirable that those who are recognised as practising pharmacists or pharmacy technicians should be required regularly to demonstrate they are keeping up to date with developments? Can you suggest other, or more suitable, continuing obligations for registrants than the ones already set out in the Order?*

We agree that those on the practising registers should be required to demonstrate that they are keeping up to date. We would not propose other continuing obligations at present but, again, may wish to do so in future as we move towards revalidation.

Q6. *Do you consider the definition of practising contained in the draft Order adequate? If not, how would you suggest that the definition might be improved?*

We are pleased that the definition of practising in the draft Order encompasses both acting in the capacity of, and holding oneself out as, a practising pharmacist or pharmacy technician. We have considered whether the definition should be expanded to help clarify what is meant by ‘acting in the capacity of’ a practising pharmacist or pharmacy technician but, on balance, believe it is preferable to have a broad yet concise definition in the Order. Further clarification could then be provided in the Society’s guidance, which would be more accessible than the Order itself.

Some have questioned whether the definition in the Order would cover registrants who do not provide patient care directly but give advice on pharmacy practice, for example at a national level. We recognise that this could be encompassed within ‘advice in relation to ... the provision of health care’ but believe that, for clarity and to provide reassurance to the profession, advice on the practice of pharmacy should be mentioned explicitly within the definition.

The definition of practising we propose for inclusion in the Order is therefore:

For the purposes of this Order, a person practises as a pharmacist or a pharmacy technician if, whilst acting in the capacity of or holding himself out as a pharmacist or a pharmacy technician, he undertakes any work or gives any advice in relation to the dispensing or use of medicines, the science of medicines, the practice of pharmacy or the provision of health care.

We are also concerned about the position of overseas registrants who are registered with both the Society and an overseas regulator. Such registrants may be both registered and practising in their country of residence but may also wish to retain their registration with the Society on a non-practising basis. Currently, the Society allows pharmacists who are practising overseas but are not required to be registered with the Society to go on the non-practising section of the Society’s register. We understand that the DH’s intention is that the definition of

practising in the Order should apply worldwide. This could lead to registrants in the position described above leaving the Society's register altogether rather than having to meet the requirements for the Society's practising register as well as those of their local regulator. This would not enhance public protection as such persons would not then be bound by the Society's Code of Ethics, which applies to those on the practising and non-practising sections of the registers. We would therefore be grateful if provision could be made in the Order to allow registrants who are practising overseas and are not required to be registered with the Society to be able to be on the non-practising section of the Society's register.

Q7. Do you agree that the proposal to endorse registration certificates with the part of the register on which the registrant is entered provides an element of added public protection? Bearing in mind the penalty/sanctions contained in articles 20 (for pharmacists) and 29 (for pharmacy technicians) of the draft Order do you agree that public protection considerations are adequately addressed and that the administrative convenience and expense arguments are justified?

We agree that this proposal provides an element of added public protection and are content that the administrative convenience and expense arguments set out in the consultation document are justified. Certificates for those on the practising registers should be marked 'Part 1 - practising' rather than simply 'Part 1' so as to be meaningful to the public.

Q8. Do you consider that electronic versions of the pharmacists' and pharmacy technicians' lists which can be updated continuously are better than an annually published paper list? Can you suggest any other more accessible and economic way in which the lists could be presented?

We agree that electronic versions are a better way to present the lists and would not suggest another alternative.

Q9. Do you support the proposals for the collection of additional information by the Registrar contained in the draft Order? Do you think there is any other information which the Registrar could usefully collect as part of the registration process?

We support these proposals. The details of information to be collected by the Registrar would be set out in rules under the Order. This should provide flexibility, enabling the Registrar to respond to future requirements that may emerge eg. from monitoring of those working with vulnerable adults or children.

Q10. Do you think the link between registration as a pharmacist and membership of the Society should be removed from the draft Order?

No. We are in no doubt that the link between registration as a pharmacist and membership of the Society should be maintained, both in statute and in the Charter.

Any change to this position could confuse the public and provoke damaging reactions within the profession. We recognise that, of itself, the removal from the

Order of the article linking registration and membership would not change the current position, so long as article 5 of the Charter remains in place. It would, however, alter its statutory basis, and this would give rise to serious concern.

Regulation of pharmacists, public protection and membership of the Society have been linked since the Society's earliest days. Registration as a pharmacist and membership of the Society have been synonymous for over 70 years. Any move to de-couple the historic link between registration and membership would be difficult to communicate, both to pharmacists and to the outside world. At present, membership of the Society (MRPharmS) means that a person is a registered pharmacist and, by implication, has the necessary qualification(s) and competence to be on the register. At a time when the drive is for greater clarity, any change to this position would have the opposite effect and could make it easier for those not on the Society's register to mislead the public. This would not be in the public interest.

This link is integral to the Society's functions and to its ability to maintain a broad-based approach to regulation, in line with the recommendations of the Kennedy report. These integrated functions benefit the public by allowing the Society to take a coherent approach across the standards of education and practice, the commitment to quality, and the continuing development and improvement that are characteristic of a profession. De-coupling the link between registration and membership would weaken the Society's ability to determine and apply policy for the benefit of the public and the profession.

We have seen no logical argument to support the removal of article 19 and are convinced that it should be retained in the draft Order.

Q11. Do you think an express legislative reference to consideration of 'attitudes and behaviours' as part of the process of determining whether an applicant is 'appropriately qualified' would be helpful? How would you consider these attitudes and behaviours could best be assessed?

Pharmacists and pharmacy technicians are taking increasing personal responsibility for patient safety. For this to continue, pharmacy needs credible and competent regulation and professional leadership. As well as regulating the profession, we need to foster personal professionalism. The Society's Education Committee has looked in detail at the question of considering attitudes and behaviours as part of determining whether an applicant is appropriately qualified. Public protection depends upon individual practitioners taking responsibility for their own conduct and performance, including their attitudes and behaviour. This lies at the heart of professionalism - disciplinary systems and contractual arrangements can never replace an individual's commitment to do their best for the patient.

The report of the Bristol Royal Infirmary Inquiry clearly illustrates the importance of attitudes and behaviours. While pharmacists were not directly involved in the events leading to this inquiry, the lessons drawn from it are relevant to pharmacy. The final report of the inquiry stated:

11. *We are concerned here with attitudes – the frame of mind which the professional brings to the job. ... This calls for a recognition of the need to establish and maintain good communication with patients and with fellow professionals. ... In our view, therefore, the attitude of public service which we describe is the essence, the affirmation, of professionalism, not its antithesis.*¹

The time is right to reinforce the role of education in the area of attitudes and behaviours. Lady Justice Smith has said that tough action must be taken to ensure potential doctors have a sound awareness of medical ethics: *“I would say that knowledge and skills can be enlarged and enhanced as you progress during your professional life but ethics and attitudes are fundamental and have to be planted right at the beginning.”*²

The Department of Health has recognised the importance of professional values within the recently-published *Curriculum Framework for the Surgical Care Practitioner*, including the relationship of trust with the patient and its concomitant moral and ethical responsibilities³.

We recognise that the teaching and assessment of attitudes and behaviours is very different from, and less straightforward than, knowledge and skills. Nevertheless, attitudes and behaviours can be learnt. They can be encompassed within the Society’s indicative syllabus for pharmacists’ education. The Society also has a role in ensuring that prospective registrants acquire the attitudes and behaviours of a health professional, for example through setting preregistration programmes and seeking to ensure that preregistration tutors are appropriate mentors. The learning derived from watching a professional at work, being watched and receiving formative feedback has been described as the ‘hidden curriculum’. This needs to be more explicit. The express acknowledgement in the Order of the importance of professional attitudes and behaviours would certainly be helpful to the Society as a regulator in terms of defining outcomes and assessments.

We recognise that arrangements for pharmacy education differ from those for other health professions, and that some change may be needed. Achieving these aims would require sustainable arrangements for clinical placements for prospective pharmacists and pharmacy technicians. It would require an infrastructure within universities and other bodies to co-ordinate and oversee the quality of clinical placements. The experience of other professions could help to identify a range of methods for assessing attitudes and behaviours in ‘real life’ situations. This would have the added advantage of introducing trainees to assessment methods that may form part of future revalidation processes. Experience elsewhere (eg. Toronto, Canada) has also indicated that using an

¹ Secretary of State for Health & Kennedy I (2001). Learning from Bristol: the report of the public inquiry into children’s heart surgery at the Bristol Royal Infirmary 1984-1995. London: Stationery Office, Cm 5207, Chapter 25, para 11.

² The Guardian, 10 May 2005

³ Department of Health/NHS National Practitioner Programme (April 2006), The Curriculum Framework for the Surgical Care Practitioner. Department of Health, para 2.2.1

aptitude test can significantly reduce the drop-out rate from a course, benefiting both students and the higher education system.

The importance of professional attitudes and behaviours is reflected in the recent report *Doctors in society: medical professionalism in a changing world*⁴. Although relating to medicine, this also applies to pharmacy.

*'Education and training have critical but neglected roles in strengthening the ethos of professionalism. They provide a far better way to improve the standard of patient care than any punitive regulatory regime.'*⁵

*'During a student's undergraduate years, time must be allocated so that these values can be reflected upon and specifically developed through learning a set of behaviours in clinical settings. ... The importance placed on these values must be transmitted and sustained in the postgraduate years. Again, mentorship is the key. ... now is a good time for medical schools to consider how professional values, behaviours and relationships can be incorporated into their curricula locally and into examinations nationally.'*⁶

For these reasons, we strongly support the inclusion of an express legislative reference to consideration of 'attitudes and behaviours' as part of the process of determining whether an applicant is 'appropriately qualified'.

Q12. Do you agree that the emphasis in the draft Order on ensuring that a registrant's fitness to practise remains unimpaired strengthens the public protection function of the Society? Can you suggest a more effective way of fulfilling this objective?

We agree that the emphasis in the draft Order strengthens the Society's public protection role and do not wish to suggest an alternative.

Q13. Do you support the proposal to extend the powers of the Society to collect information from other people related to the fitness to practise of its registrants? Are there any further powers you feel the Society should have in respect of fitness to practise issues?

We wish to see the Society's powers in relation to fitness to practise extended to cover pharmacy technicians in Scotland (see Q. 3). We support the proposal to extend the Society's powers to collect information relating to the fitness to practise of its registrants.

There are two other areas where the Society believes legislative reform is required and which are not addressed in this Order.

⁴ Royal College of Physicians of London (2005). *Doctors in society: medical professionalism in a changing world*. Report of a Working Party of the Royal College of Physicians of London. London: RCP

⁵ *Ibid* para 3.29, pg 33

⁶ *Ibid* para 3.31, pg 34

Corporate bodies, premises and the Society's inspectorate

The Society has submitted a number of recommendations about premises, corporate bodies and the Society's inspectorate to the Department of Health. These recommendations reflect our belief that the current requirements do not adequately protect the public, and that the proposed changes would contribute to the Government's policy commitments to risk minimisation as set out in the NHS Plan for England together with the drive to improve service quality reflected in 'Our National Health' in Scotland and 'Improving Health in Wales'. The Society is particularly keen to strengthen its position in relation to corporate bodies and superintendent pharmacists, and to support pharmacists' capacity to act for the public benefit. It also wishes to put its inspectorate on a secure basis for the future - an important concern in the light of some of the discussions stemming from the Shipman Inquiry.

Fitness to practise of preregistration trainees and students

Developments in education and particularly in clinical teaching have highlighted the limitations of the Society's ability to deal with fitness to practise concerns about preregistration trainees and students. The Society's Education Committee has identified this as a growing concern given the increasing clinical component of education and training, bringing those studying to become pharmacists or pharmacy technicians into contact with patients at an early stage. Student disciplinary procedures are widespread but not universal in higher education and this lack of consistency is not helpful, particularly as inter-professional working becomes embedded in curricula and pharmacy students work with others whose disciplines have more developed mechanisms in this area. This is linked logically to the need to consider attitudes and behaviours as part of determining whether an applicant is 'appropriately qualified' for registration. It has become clear that student and trainee fitness to practise, selection and registration require urgent consideration.

The Society is anxious that both these areas should be addressed as a matter of urgency.

Q14. Do you think that reference to a court in these circumstances is the most appropriate approach? Do you agree that fourteen days is an appropriate time limit to trigger action?

We agree that this is the most appropriate approach and that fourteen days is an appropriate time limit after which the Society may seek a court order.

Q15. Do you support the proposal to extend the powers of the Society to share information on a registrant's fitness to practise where they feel it is in the public interest to do so? If not, how else might public interest and protection considerations be satisfactorily addressed?

We support this proposal.

Q16. Apart from the criteria proposed in article 48 of the draft Order, can you suggest any other grounds on which a registrant's fitness to practise may be adjudged to be impaired?

The DH is aware of the Society's concerns, and those of other regulators, that registrants should be able to communicate effectively in English with patients and with professional colleagues. We hope that such concerns can be addressed within the fitness to practise framework established by the Order.

Q17. Do you support the proposal that the Registrar should be able to refer cases directly to the Health Committee or Disciplinary Committee and ask the Committee to consider the issue of an interim order where circumstances dictate the need for such action?

Yes.

Q18. Do you support the proposal to replace the current Statutory Committee with the group of new statutory committees? Do you think the right titles have been selected for the new committees? Do you think there is a need for any further statutory committees and, if so, what are your reasons for thinking this?

We support the proposals for new statutory committees. We believe that a more appropriate name for the CPD Committee would be the 'CPD Review Committee', as this would better reflect the committee's main functions. The Society's Council would remain the over-arching policy-making body of the Society, on CPD and other matters. We do not wish to propose any further statutory committees.

Q19. Do you support the proposal to make the Education Committee one of the Society's statutory committees? Do you agree that this will clarify the previous uncertainty about the precise derivation of the Society's education powers?

We support this proposal and agree that it will clarify the previous uncertainty about the derivation of the Society's education powers. We welcome the recognition in the Order's provisions of the wider role of the Education Committee.

Q20. Do you agree that the functions proposed for the Continuing Professional Development Committee are appropriate? Can you suggest any other functions that the CPD Committee might reasonably fulfil?

The draft Order provides for the CPD Committee to have power to remove a person from the register where s/he has breached the CPD requirements. It also allows for the CPD Committee to suspend a person's registration pending the outcome of an appeal against a decision to remove them from the register. The Order does not state that the Committee could suspend a person's registration in any other circumstances eg. as an alternative sanction.

We believe that the CPD Committee should take a primarily developmental rather than disciplinary approach to registrants who appear not to have satisfied the CPD requirements, as this would be most conducive to establishing CPD firmly as an accepted part of pharmacy practice. For this reason, our view is that the CPD Committee should have power to suspend but not to remove a person from

the register. In addition, the CPD Committee should have power to accept undertakings (for example, that a person would undertake a period of supervised practice). We nevertheless recognise that, in some cases, the CPD Committee may feel that the person concerned should be removed from the register for the protection of the public. The CPD Committee should therefore be able to make recommendations and referrals to the Disciplinary Committee when required. When necessary, such a referral should be fast-tracked to the Disciplinary Committee.

Art. 41(2)(c) deals with restoration to the register of persons removed by the CPD Committee or the Registrar, and states:

(2) The Council may make such provision in rules in connection with applications for restoration by the Registrar pursuant to paragraph (1) as it considers appropriate, and may in particular make provision with regard to—

.....

whether any, and if so what, additional education, training, experience or other continuing professional development is required before restoration (as determined in accordance with article 14(h)(iii) and (v) and 25(f)(iii) and (iv), and the rules may make provision for these issues to be determined by the Continuing Professional Development Committee);

The rules may therefore enable the CPD Committee to require someone to undertake additional education, training, experience or CPD *before* they are restored to the register but cannot impose a CPD requirement on someone who is restored to the register, beyond that which all practising registrants must fulfil. It would be difficult for someone to undertake CPD while they were off the register (although they could undertake education & training), so it would be helpful for the CPD Committee to be able to require a person to undertake additional education, training, experience or CPD after they are restored to the register. This would also provide greater flexibility for the future.

We acknowledge that the CPD provisions may need to be reviewed in the light of experience, the outcomes of the Foster and Donaldson reviews, and moves towards revalidation.

Currently, references in the draft Order to the CPD Committee appear in a number of articles, notably 7(4)(b), 36(1)(c), 39(2)(b)-(d), 41(2)(c), 43(4)(d) and 55(3)(c). It would seem helpful, for the purposes of clarity and convenience, if these references could be brought together so far as is practicable.

Q21. Do you think that the proposal to have a Registration Appeals Committee is sensible? Do you think it will provide a more efficient route to resolving most appeals or slow down the whole process of securing a just resolution of outstanding registration issues?

We agree with this proposal. It seems likely to slow down processes and add to costs but we recognise the need to provide safeguards and ensure transparency and fairness in our registration functions.

Q22. Is there anything else about the contents of the draft Order on which you would specifically like to comment?

There are a number of other points we wish to raise about provisions in the Order. These are set out below.

Art. 4(1) The Society's general duties

Article 4(1) of the draft Order states that:

“the main purpose of the Society (including its Council, its staff and its committees) in exercising its functions that affect the health and safety of the public is to protect, promote and maintain the health and safety of the public.”

The words ‘that affect the health and safety of the public’ were added to this article following earlier discussions with the DH. We were reassured at that time that the Department would be happy to consider any further views the Society’s Council might have on the precise wording of this article.

The Council believes it important to reflect the Charter in this provision and has proposed the following amendment:

The main purpose of the Society (including its Council, its staff and its committees) in performing its duties under the third object of the Charter is to protect, promote and maintain the health and safety of the public.

For reference, the third object of the Charter reads:

...within the context of the public benefit:

(3) to promote and protect the health and well-being of the public through the regulation and professional leadership and development of the pharmacy profession and the regulation of other persons engaged in related activities.

Art 5(1) Privy Council power to alter the size and composition of Council

Under draft article 5(1), the Privy Council would have power (subject to the requirements for a pharmacist majority and a maximum membership of 35) to alter the size and composition of the Council other than at the Society's request (as provided for in the Charter).

The Charter provides for the Privy Council to vary the composition of the Council if it receives an application to do so from the Society in pursuance of a special general resolution. The Council believes that, in view of this provision, it would not be appropriate for the Order to permit the Privy Council to vary the Council's composition in the absence of any such request from the Society, and that the Order should be fully in line with the Charter on this point.

Regulations under the Society's Charter

The Order recognises the existence and, therefore, the provisions of the Society's Charter (for example, in articles 5(1) and 7(1) when read with the interpretation of 'Charter' in art. 3). It is clear that the intention is that the Order and the Charter are intended to be read and implemented so that they work together. The Society has been advised by Counsel that a court would be likely to conclude that the Charter and the Order should be read sympathetically with each other and that, to support this approach, the Order should recognise expressly the validity of regulations made under the Charter. We would be grateful for an amendment to the Order to this effect.

Art 5(4) Eligibility of non-practising pharmacists and pharmacy technicians to serve as Council members

This draft article provides that a registrant member of Council should be removed from office if they cease to be registered on part 1 of the appropriate register.

The Council recognises that a pharmacist or pharmacy technician fulfilling his/her functions as a Council member would fall within its proposed definition of practising. Nevertheless, the Council's view is that the electorate should be able to choose for themselves whether to vote for non-practising registrants, who should be able to stand for Council under the principle of "no taxation without representation". The wisdom and experience that some non-practising registrants could offer might otherwise be lost to the Council. Such candidates would need to make clear to voters that they were on the non-practising register and, if elected, would need to transfer to the practising register before taking up their seat on the Council.

Art 7(4)(d) Appointment of Chairman & Deputy Chairman of Disciplinary Committee

We welcome the clarification in draft article 7(4)(d) that the first Chairman of the Disciplinary Committee shall be the current chair of the Society's Statutory Committee. The Chairman of the Statutory Committee is appointed by the Privy Council. The Society's disciplinary committee has long been at arm's-length from the Council and this appointment method has helped to ensure the high quality of chairmen we have had to date. We therefore believe that the Chairman and Deputy Chairman of the new Disciplinary Committee should also be appointed by the Privy Council. We recognise the Government's wish to reduce the Privy Council's involvement in appointments but nevertheless believe there would be value in having the Chairman and Deputy Chairman of the Disciplinary Committee appointed by the Privy Council. A possible way forward might be for the RPSGB's Appointments Group to identify and recommend candidates for these positions, for appointment by the Privy Council. This would enhance the authority of the appointment and we understand the Privy Council Office would not object. The continued link with the Privy Council would also be appropriate in view of the functions which the Society undertakes by arrangement in the Channel Islands and the Isle of Man, as the constitutional relationship between Great Britain, the Channel Islands and the Isle of Man is through the Crown.

Arts 14, 15, 25 & 26 Assessment arrangements

The above articles all refer to ‘assessment arrangements’. However, paragraphs 15(d) and 26(e) refer to ‘assessments (including examinations)’. The Society has been advised by Counsel that, to avoid confusion, it would be helpful for the Order to include a definition of ‘assessment arrangements’ that includes examinations, or for the words ‘(including examinations)’ to be included each time assessment arrangements are mentioned, or for the words ‘(including examinations)’ to be removed from 15(d) and 26(e). We would be grateful if the Order could be amended to accommodate this point.

Arts. 15 & 26 Powers relating to education, training and experience

Articles 15 & 26 of the draft Order deal with specific powers relating to education, training and experience. The Society has been advised by Counsel that it would be helpful for these articles to include a general ‘sweep up’ power to allow the Society to do all it needs to fulfil these functions under the Order. This could be analogous to the subsidiary powers given to local authorities to do anything which is ‘calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions’ (see section 111 of the Local Government Act 1972). The exercise of such a power would, of course, be subject to the usual public law constraints – it would need to be reasonable, proportionate, fair, in accordance with the letter and purpose of the enabling power, and should not breach any applicable human rights granted under the Human Rights Act 1998. We would therefore be grateful if these articles could be amended to this effect.

Art 22(3) and art 6, Pt 2, Sch 2 Transitional provisions relating to pharmacists or former pharmacists wishing to register as pharmacy technicians

Article 22(3) of the draft Order provides that a person who:

- is in the practising part of the pharmacists’ register; or
- is in the non-practising part of the pharmacists’ register but has, within the past four years, been in the practising part of the pharmacists’ register under the s60 Order or in the register maintained under the Pharmacy Act 1954; or
- is not a pharmacist but has, within the past four years, been in the practising section of the pharmacists’ register under the s60 Order or in the register maintained under the Pharmacy Act 1954,

and applies to be registered as a pharmacy technician shall be treated as meeting the qualification, education and training requirements for such registration.

It is possible that, in time, pharmacists’ and pharmacy technicians’ roles and practice might diverge to the extent that the automatic approval described above would no longer be appropriate. However, it would be difficult to change a provision in the Order. We therefore propose that article 22(3) should be removed from the Order on the understanding that these provisions, while they remain appropriate, would be included in the Society’s Registration Criteria. This would increase the Society’s ability to ensure that those registered as pharmacy technicians have the appropriate knowledge and skills.

We would also wish to see changes to the transitional provisions. The draft Order provides (*Schedule 2, Part 2, Article 6*) that, during the first four years after the start of

the statutory two-part registers, the provisions in art 22(3) would also apply to non-practising pharmacists or unregistered persons who had been on the pharmacists' register in any category at any time over the past four years.

Having reviewed these provisions, we do not consider that either unregistered persons who have been non-practising pharmacists at some point over the past four years, or those who are non-practising pharmacists in the transitional period and who have not been practising pharmacists at any point during the previous four years, should have an automatic right to registration under these permissions. Instead, due process should be followed in these cases. We therefore propose that

-- unregistered persons who have been non-practising pharmacists at some point during the previous four years, and

-- those who are non-practising pharmacists in the transitional period and who have not been practising pharmacists at any point during the previous four years

are NOT included in these transitional permissions.

Art 30(4) Provisions applying when a person's registration is suspended

Draft art. 30(4) provides that articles 33-35 and 39 and Part 5 of the Order would continue to apply when a person's registration is suspended. This covers: registrants' duties with regard to their registration entries; corrections of the register (including fraud & error); fitness to practise matters before registration; CPD, and fitness to practise matters after registration. The S60 Order for the medical profession recently consulted upon (The Medical Act 1983 (Amendment) and Miscellaneous Amendments Order 2006) also proposed that provisions relating to voluntary removal from the register would continue to apply when a person's registration is suspended. This seems helpful (for example, if a further allegation was received concerning a person whose registration was suspended) and we would be grateful if the draft Pharmacists & Pharmacy Technicians Order could be amended such that the provisions relating to voluntary removal from the registers (art. 37) would continue to apply when a person is suspended from one of the Society's registers. This would enable the Registrar to refuse an application for voluntary removal from the register, where appropriate.

Art 49(3) Initial action in respect of allegations

Article 49(3) in the draft Order provides that, when an allegation is referred to a fitness to practise committee, Ministers and employers of the person concerned (insofar as these are known to the Registrar) shall be notified accordingly.

The Council is concerned that such a provision could harm, for example, someone applying to a commissioning body to provide pharmacy services, should they be the subject of an allegation that was later found to be unproven. Such considerations are particularly relevant in pharmacy, where the exposure to commercial competition is greater than in some other health professions. It is possible that a false allegation might be made with the aim of securing a competitive advantage.

The Council therefore believes that this ought not to be a standard requirement and that the Investigating Committee should be able to decide in each case whether to make

such notifications. We recognise that the Committee would require clear guidance and criteria to inform such decisions. This would mean that the wording relating to art. 49(3)(b)-(d) should be changed from “shall notify” to “may notify”.

Art 53 Professional Performance Assessments

The draft Order states:

53. (1) The Council may make rules authorising the Registrar and fitness to practise committees to give directions, in such circumstances as may be prescribed (including during proceedings of the committee), requiring an assessment of the standard of a registrant’s professional performance by an assessment team.

We think that the composition of an assessment team should be decided by the fitness to practise committee (or the Registrar) authorising the assessment. It should be drawn from a pool of experts and should normally include one or more of the following:

- RPSGB Inspector (separate from the Inspector investigating the complaint or concern)
- Peer review member (practising in the same field or speciality as the person being assessed)
- Lay person.

As the Society gains experience of professional performance assessments, it may be thought appropriate that, in some cases, an assessment be carried out by an Inspector with additional training in performance assessment rather than by at least two people (it would not be appropriate for a lay person to carry out an assessment alone). In order to allow for this possibility, we propose that the last four words of art. 53(1), ‘by an assessment team’, should be deleted. The assessment process could then be described in rules.

Art 59(4)-(5) Rules in respect of proceedings - Enforcing an award of costs

In an earlier draft of the Order (9 September 2005), these paragraphs read:

(4) Any sum required to be paid under an award in respect of costs or expenses shall be recoverable as if it had been adjudged to be paid by order of a relevant court.

(5) In paragraph (4), "relevant court" means-

(a) in proceedings to which this article applies in respect of a person whose address in the register is, or if he were registered would be, in Scotland, means the Court of Session; and

(b) in any other proceedings to which this article applies, means the High Court.

In the consultation draft, this has been altered to:

(4) An award of costs may by leave of the High Court be enforced in the same manner as an order of the High Court to the same effect.

(5) An award of expenses may by leave of the Court of Session be enforced in the same manner as a decree of the Court of Session to the same effect.

This seems to introduce a new hurdle - requiring an application for leave to enforce the costs awarded. We understand that the DH plans to review policy on the process of obtaining leave from the court.

The Society's view is that the most appropriate way forward would be to deal with these issues in the Rules rather than the Order. If the Rules included power to make provision for summary assessment of costs, this would give the Society the necessary flexibility and power. We therefore propose that the provisions relating to award of costs in the Order should be enabling, allowing the provisions for enforcement to be covered in the Rules.

Art 66(3) Rules and Orders

This article provides that, before making rules under Part 6 of the Order, the Council shall consult with Primary Care Trusts in England, Local Health Boards in Wales and Health Boards in Scotland. Given the rate of change in NHS structures, these specific terms provide no sense of future currency. Problems might also arise if, for example, Welsh local health boards were replaced by structures with the same name but significantly different functions. The Society therefore asks that consideration be given to replacing these terms with a more 'future-proof' form of words.

Schedule 2, Parts 4 & 5 Transitional provisions relating to outstanding fitness to practise cases and business and premises cases

The draft Order provides that, once the Society's new fitness to practise machinery is established, the current Statutory Committee will continue to operate until it has dealt with the cases assigned to it under the transitional arrangements in the Order.

It is in the interest of all concerned to complete these cases as quickly as possible and to minimise the time during which two sets of fitness to practise procedures will be operating. One way to deal with cases more quickly might be to divide the Statutory Committee into two hearing panels, each with three or four members. However, this would require another Chairman. There is no Deputy Chairman of the Statutory Committee and no power under the Pharmacy Act 1954 to appoint a Deputy Chairman. We therefore propose that a provision be included in the transitional arrangements under the Order to allow a Deputy Chairman of the Disciplinary Committee to act as Chairman of the Statutory Committee if required. This would have the added advantage of avoiding the situation whereby, if the current Chairman of the Statutory Committee were unable to sit for any reason, the Society would be unable to hold a hearing.

We also wish to draw attention to the significant increased costs to the Society of having two sets of fitness to practise committees running in parallel for a period. We therefore ask the Department of Health to seek, through the transitional arrangements, to minimise these costs.

We hope it will be possible to address the above issues before the Order is finalised.