



Committee for Health, Social Services and Public Safety

Report on the Legislative Consent Motion

**Health and Social Care (Safety and Quality) Bill: Regulation of
Health Care Professionals**

21 January 2015

NIA 205/11-16

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BACKGROUND

1. The Health and Social Care (Safety and Quality) Bill was introduced to the House of Commons on 2 July 2014 by Jeremy Lefroy MP and had its Second Reading on 7 November 2014. The Private Members' Bill has now been committed to a Public Bill Committee for scrutiny.
2. The Bill has a wider patient safety theme that follows on from events at the former Mid Staffordshire NHS Foundation Trust. In addition to a regulatory provision which will apply on a UK-wide basis, it includes three other patient safety-related measures that will apply to England only. It is intended that the regulatory provision in the Bill will apply on a UK-wide basis because, with the exception of pharmacy, the jurisdiction of the healthcare professional regulators affected is UK- wide.
3. The regulatory provision for healthcare professional regulators and the Professional Standards Authority introduces an overarching objective of public protection, with further objectives relating to public health and safety, public confidence in the profession, and proper professional standards of conduct, each with equal importance. In exercising their functions, regulators must have regard to those, for example, when handling complaints, disciplinary hearings and fitness-to-practice cases. Regulators' panels and committees dealing with fitness-to-practice issues will also have to have regard to the objectives. In practice, that should help regulators to respond more effectively in fitness-to-practice cases by being able to take timely and robust action which in turn will help to contribute to ensuring ongoing public confidence in the professional regulatory system.

COMMITTEE CONSIDERATION

4. The Committee received correspondence from the former Minister of Health, Social Services and Public Safety, Mr Edwin Poots, MLA, in July 2014, advising that a Legislative Consent Motion would be required in relation to two regulatory provisions in the Private Members' Bill: the introduction of three objectives to ensure appropriate regulatory action by the regulators of health care professionals; and automatically erasing individuals tried and convicted of certain serious crimes from a professional register. A copy of the correspondence is attached at **Appendix 2**.
5. At its meeting on 5 November 2014, the Committee for Health, Social Services and Public Safety received an oral briefing from Departmental officials on the proposed Legislative Consent Motion, the Hansard of which is attached at **Appendix 3**.
6. During the course of the briefing, officials advised the Committee that the Automatic Erasure provision, which was originally intended for inclusion in the Bill, had been removed as the complexities of amending the statutory framework for each of the regulators to allow them to introduce this measure would result in a Bill that is much longer and more complex than is usually acceptable for a Private Members' Bill.
7. Officials also advised that the Department of Health in England had identified issues when applying the public protection objective measure to the Pharmaceutical Society of Northern Ireland because of its dual role as both regulator and the professional leadership organisation for the pharmacy profession.

8. The Committee recognised that the Society's current objectives, as set out in the 1976 Pharmacy Order, are more reflective of a leadership and membership organisation rather than focused on public protection. Therefore, introduction of the proposed new public protection objective would represent a fundamental change to its objectives. It noted that the Pharmaceutical Society had not raised any objections to its exclusion from the Bill and recognised that a fundamental change to the Society's objectives would merit careful local consideration and consultation with stakeholders.
9. The Committee welcomed that the Minister of Health, Social Services and Public Safety had recently agreed that officials should begin preparatory work to explore options for the future arrangements for the regulation of the pharmacy profession in Northern Ireland. This will include consideration of the Society's existing professional leadership role, and the exercise is aimed at providing assurance on arrangements for public protection, maintaining public confidence and upholding standards in the professional regulatory system.
10. Officials informed the Committee that, in addition to the Pharmaceutical Society, the Private Members' Bill would not introduce the public protection objective for the General Medical Council as work on this issue was being carried out on a four-country basis through a different ongoing legislative vehicle.
11. Officials advised that, as the regulation of healthcare professionals is a devolved matter in Northern Ireland, Executive approval had been sought for the Legislative Consent Motion. The Committee noted that the Department had also carried out an equality impact screening exercise of the provisions extending to Northern Ireland and no adverse impact had been identified in connection with any of the Section 75 categories.

12. Finally, the Committee noted that the regulation measure in the Private Members' Bill was derived from a key recommendation made by the Law Commission following its recent Review of the Regulation of Healthcare Professionals; a Review which involved extensive consultation with over 100 organisations in Northern Ireland.

PURPOSE OF THE LEGISLATIVE CONSENT MOTION

13. The Health and Social Care (Safety and Quality) Bill was introduced in Westminster on 2 July 2014. The latest version of the Bill can be found at: <http://services.parliament.uk/bills/201415/healthandsocialcaresafetyandquality.html>
14. The provisions of the Bill which impact on Northern Ireland and require a Legislative Consent Motion deal with objectives of bodies which regulate healthcare professionals across the UK and, in England only, social workers, and the body that oversees the regulators.
15. Clause 5 and paragraphs 1 – 6 of the Schedule seek to give the various regulators of health and social care professionals an overarching objective of public protection which includes reference to maintaining public safety, public confidence in the relevant profession, and proper professional standards and conduct.
16. Following Executive approval, the Legislative Consent Memorandum was laid in the Assembly by the Minister of Health, Social Services and Public Safety on 18 December 2014. A copy of the Legislative Consent Memorandum is attached at **Appendix 1**.

CONCLUSION

- 17. Having carefully considered the issues in relation to the regulation of healthcare professionals in Northern Ireland, the Committee for Health, Social Services and Public Safety agreed at its meeting on 14 January 2015, to support the Minister of Health, Social Services and Public Safety in seeking the Assembly’s endorsement of the Legislative Consent Motion:**

“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Health and Social Care (Safety and Quality) Bill, as introduced in the House of Commons on 2nd July 2014, contained in clause 5 and paragraphs 1 – 6 of the Schedule dealing with the objectives of regulators of health and social care professionals.”

LEGISLATIVE CONSENT MEMORANDUM
HEALTH AND SOCIAL CARE (SAFETY AND QUALITY)
BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Health, Social Services and Public Safety is:

“That this Assembly endorses the principle of the extension to Northern Ireland of the provisions of the Health and Social Care (Safety and Quality) Bill, as introduced in the House of Commons on 2nd July 2014, contained in clause 5 and paragraphs 1 – 6 of the Schedule dealing with the objectives of regulators of health and social care professionals.”

Background

2. This memorandum has been laid before the Assembly by the Minister of Health, Social Services and Public Safety under Standing Order 42A(2). The Health and Social Care (Safety and Quality) Bill was introduced as a Private Members’ Bill by Jeremy Lefroy MP in the House of Commons on 2nd July 2014. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/201415/healthandsocialcaresafetyandquality.html>
3. The Bill has a patient-safety theme following on from events at the Mid-Staffordshire NHS Trust and seeks to make a number of measures that together will improve the safety and quality of health and social care services.
4. The main purpose of the regulatory measures which will also extend to Northern Ireland is to help regulators respond more effectively in fitness to practise cases by being able to take timely, appropriately focused and robust action. This, in turn, will help contribute to ensuring ongoing public confidence in the professional regulatory system.

Provisions which deal with a Devolution Matter

5. The majority of the provisions in the Bill apply to England only. However, the Bill contains provisions relating to the regulation of healthcare professionals. This provision seeks to introduce an overarching objective of public protection for all regulators of healthcare professionals
6. As the regulation of healthcare professionals is a devolved matter in Northern Ireland, a Legislative Consent Motion is required in relation to those provisions in the Bill that deal with the regulation of healthcare professionals.
7. An overview of the provisions in the Bill which require a Legislative Consent Motion is attached at Annex A.
8. Other jurisdictions have indicated that they are content with the proposals.

Reasons for making the Provisions

9. The purpose of the regulatory measures in the Bill is to help regulators respond more effectively in fitness to practise cases by being able to take timely, appropriately focussed and robust action. This, in turn, will contribute to ensure ongoing public confidence in the professional regulatory system. A Legislative Consent Motion will enable legislative changes in Northern Ireland to the functions of the healthcare professional regulators and to the Professional Standards Authority (PSA) which oversees them.
10. Extending these provisions to Northern Ireland will ensure that there is consistent, UK-wide approach to healthcare professional regulation and will, importantly, allow Northern Ireland to maintain parity with the rest of the UK in relation to the regulation of healthcare professionals.

Reasons for utilizing the Bill rather than an Act of the Assembly

11. Enacting the provisions on the regulation of healthcare professionals by means of the Health and Social Care (Safety and Quality) Bill will ensure that Northern Ireland keeps pace with the rest of the UK. The alternative of bringing forward a separate Bill to the Assembly in

relation to Northern Ireland would inevitably take longer and may be difficult to achieve within the existing Assembly mandate.

Consultation

12. The joint Law Commissions (England and Wales, the Scottish Law Commission and the Northern Ireland Law Commission) recently completed a review of the UK-wide regulation of healthcare professionals and presented its final report and a draft Bill to the four UK Governments. This was laid at the Northern Ireland Assembly on 30th April 2014.
13. The Law Commission consulted from 1st March 2012 until 31st May 2012 on proposals which sought to simplify and modernise the law and establish a streamlined, transparent and responsive system of regulation of health care professionals, and in England only, the regulation of social workers.
14. As the regulatory measures included in the Health and Social Care (Safety and Quality) Bill are derived from the Law Commissions' recommendations, there has been no further consultation.
15. The Department of Health has engaged with the UK healthcare professional regulators to refine the detail of the proposals and all the Devolved Administrations have been involved in the process.

Human Rights and Equality

16. No human rights or equality implications for any of the section 75 groups have been identified within the provisions of the Bill extending to Northern Ireland.

Financial Implications

17. There could be a relatively small administrative cost for healthcare regulators arising from the proposals. Any such cost would be borne directly by the Regulators themselves. From a Northern Ireland perspective, there will be no financial impact on Government Departments.

Summary of Regulatory Impact

18. The provisions of the Bill requiring a Legislative Consent Motion deal with changes to Professional Regulatory healthcare bodies. As such,

they do not impact on the business and the voluntary sector and a Regulatory Impact was, therefore, not deemed necessary.

Engagement to date with the Committee for Health, Social Services and Public Safety

19. The Minister of Health, Social Services and Public Safety wrote to the Chair of the Health Committee on 22nd July 2014 to notify the Committee about the introduction of the Health and Social Care (Safety and Quality) Bill at Westminster and to inform members about the provisions of the Bill extending to Northern Ireland that would require a Legislative Consent Motion. On 5th November 2014, DHSSPS officials provided the Health Committee with a briefing on the Legislative Consent Motion.
20. At its meeting on 20 November 2014, the NI Executive approved the need for a Legislative Consent Motion.

Conclusion

21. The view of the Minister of Health, Social Services and Public Safety is that in the interests of good government that, so far as the provisions of the Bill deal with a devolution matter, they should extend to Northern Ireland.

Department of Health, Social Services and Public Safety
December 2014

Provisions of the Health and Social Care (Safety and Quality) Bill extending to Northern Ireland and which require a Legislative Consent Motion

The provisions of the Bill which impact on Northern Ireland and require a Legislative Consent Motion deal with objectives of bodies which regulate healthcare professionals across the UK and, in England only, social workers, and the body that oversees the regulators.

The overarching objective is public protection and involves the following:

- **protecting, promoting and maintaining the health, safety and well-being of the public;**
- **promoting and maintaining public confidence in the professions that the regulators regulate; and**
- **promoting and maintaining proper professional standards and conduct for members of those professions; and**

This overarching objective will involve the pursuit of objectives in relation to maintaining public safety, public confidence in the relevant profession and proper professional standards and conduct. The measure also requires the regulators' panels and committees dealing with fitness to practise issues to have regard to the objectives.

FROM THE MINISTER FOR HEALTH,
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Jim Wells MLA



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Our Ref: AGY/703/2014

Date: 23 October 2014

Dear Ms McLaughlin

JEREMY LEFROY (MP) PRIVATE MEMBERS BILL – REGULATION OF HEALTHCARE PROFESSIONALS - UPDATE ON PROVISIONS EXTENDING TO NORTHERN IRELAND

I understand that the Health Committee has invited officials to attend a meeting on 5 November at 2.00pm to discuss the provision in Jeremy Lefroy's Private Members Bill which extends to the regulation of healthcare professionals in Northern Ireland.

Please find attached a briefing paper for the meeting and a letter previously issued to the Health Committee in July 2014 on this matter.

The officials in attendance will be Heather Stevens, Director Human Resources Directorate with responsibility for Professional Regulation, along with Joyce Cairns and Kieran McAteer Human Resources Directorate and Dr Mark Timoney, DHSSPSNI Chief Pharmaceutical Officer.

Jim Wells MLA

Minister for Health Social Services and Public Safety

**BRIEFING PAPER FOR HEALTH COMMITTEE ON 5 NOVEMBER 2014
HEALTH AND SOCIAL CARE (SAFETY AND QUALITY) BILL 2014-15:
REGULATION OF HEALTHCARE PROFESSIONALS**

Background

1. In July of this year, then Minister Poots wrote to Jeremy Hunt MP (Secretary of State for Health) agreeing in principle that a Legislative Consent Motion (LCM) was required in relation to two proposed provisions in Jeremy Lefroy's Private Members Bill. The LCM is subject to the agreement of the Northern Ireland Executive and Assembly. At that time, former Minister Poots wrote to the Executive seeking their agreement to the LCM and also wrote to the Health Committee to keep members informed (see **Annex 1**).
2. The Private Members Bill (PMB) has a wider patient-safety theme following on from events at the Mid-Staffordshire NHS Trust and includes four other patient safety related measures which will apply to England only. The full text of the Bill is not yet available as PMBs are often not printed until close to the Second Reading debate (scheduled for 7 November) however the draft clause relevant to Northern Ireland is set out below.

Policy Objectives

3. The purpose of the regulatory measure in the Bill is to help regulators respond more effectively in fitness to practise cases by being able to take timely, appropriately focussed and robust action. This in turn will contribute to ensuring ongoing public confidence in the professional regulatory system.
4. At the time of issue of the letter to the Health Committee in July this year, it was expected that the PMB would include two provisions on regulation. However, one of these (ie. Automatic Erasure) has now been removed paragraph 8 below refers). The other measure, which remains in the Bill,

seeks to introduce an overarching objective of public protection for all healthcare regulators.

Public Protection objective

5. It was originally intended that this clause in the PMB would state that the healthcare professional regulators (except the GMC – see paragraph 7 below) and the Professional Standards Authority (which oversees the Regulators) were to have the three objectives of public protection, maintaining public confidence in the profession, and upholding standards when carrying out all of their functions. However, following further consideration and discussion with regulators, which highlighted in particular that the principle of public protection must have primacy, DH has since re-drafted the clauses. The clause has now been re-drafted as follows:

(1A) The over-arching objective of the Council in exercising their functions is the protection of the public.

(1B) The pursuit by the Council of their over-arching objective involves the pursuit of the following objectives.

(a) to protect, promote and maintain the health, safety and well-being of the public;

(b) to promote and maintain public confidence in the professions regulated under this Act; and

(c) to promote and maintain proper professional standards and conduct for members of those professions

6. This re-drafting secures the focus on public protection which regulators were keen to include whilst also ensuring that regulatory bodies are able to act where appropriate in the absence of a patient safety issue.

-
7. The Bill will not introduce the overarching objective for the General Medical Council (GMC) as this is being done on a UK-wide basis through an ongoing legislative Order (ie the GMC (Fitness to Practise etc.) and PSA (Referrals to Court) Order 2014).

Automatic Erasure

8. This provision was intended to require all regulators to automatically erase individuals from a professional register who have been tried and convicted of certain serious crimes. Department of Health England (DH) Minister George Freeman has recently advised that, on the advice of the Office of the Parliamentary Counsel in England, the complexities of amending the existing statutory framework for each of the regulators in order to introduce this measure would result in a Bill that is much longer and more complex than is usually acceptable for a Private Members Bill. He has therefore advised that the Bill will not include provision on automatic erasure.

Inclusion of the Pharmaceutical Society of Northern Ireland (the Society) in the Bill

9. In his letter, Minister Freeman also advised that DH had identified issues with applying the 'Public Protection objective' measure to the Society. These difficulties emanate from the dual role of the Society; that is that currently it acts as both the Regulator and as the Professional Leadership organisation for the Pharmacy profession in Northern Ireland. This development is consistent with previous considerations regarding the difficulties presented by the dual role of the Society.
10. DH officials concluded that, as the Society's current objectives (set out in the 1976 Pharmacy Order) are focused on the interests of its members, introduction of the new proposed public protection objective would represent a fundamental change to the Society. Due to the potential complexities of this,

Minister Freeman stated his view that the PMB would not be a suitable vehicle to introduce this change.

11. Minister Wells replied to Minister Freeman on 13 October 2014 indicating his agreement that introduction of the new proposed public protection objective would represent a fundamental change to the Society and therefore, due to the potential complexities of this, agreed that the PMB would not be a suitable vehicle to introduce this fundamental change to the arrangements for regulation for pharmacists in NI. A copy of the Ministerial exchange of letters is attached for your information at **Annex 2**.

12. This development, regarding the difficulties presented by the dual role of the Society, is consistent with previous considerations on the issue. For example, more recently in April 2014 the Law Commission published their review of the legislative framework for the Regulation of Healthcare Professionals and produced a draft legislative Bill. The review concluded in relation to the Society that:
 - *Recommendation 6: The Pharmaceutical Society of Northern Ireland should not be incorporated into the new legislative scheme unless its representational role is removed.*

The Department of Health, Social Services and Public Safety for Northern Ireland and the UK Government should consider removing the representational role of the Pharmaceutical Society of Northern Ireland and incorporating the Council into the new scheme, or merging it with the General Pharmaceutical Council.

13. In light of the difficulties presented by the Society's dual role, approval has been given for officials to begin preparatory work to explore options for the separation of the regulatory and professional leadership roles of the Society, with the aim of providing assurance in respect of arrangements for public protection, maintaining public confidence and upholding standards in the professional regulatory system. This project will in due course involve full

consultation and engagement with all relevant stakeholders both locally and nationally. Officials would be happy to brief the Committee further as this work develops.

14. The Chief Executive and President of the Pharmaceutical Society of Northern Ireland, and the Chair of the Pharmacy Forum Northern Ireland, have been informed that this options exercise will proceed.

Position in the rest of the UK and Ireland

15. Whilst the regulation of healthcare professionals is a devolved matter in Northern Ireland our policy position is to work on a 4-country basis with the other UK Health departments. DH England has confirmed that the healthcare professional regulation measure in the PMB will apply to all of the other UK regulators (except the GMC), and to the PSA which oversees them. Therefore, the LCM is required as the Bill is primary legislation and seeks to introduce the 'public protection objective' measure for the other healthcare professional regulators whose jurisdiction is UK-wide.

Consultation

16. The professional regulation measure contained in the PMB is derived from a recommendation made by the Law Commission in its review of the regulation of Healthcare Professional legislation. The Law Commission consulted widely when developing its report and findings. Officials have previously corresponded with the Committee regarding the work of the Law Commission and the outcome of this work.
17. Furthermore, DH England has been engaging directly with the regulators on emerging issues, including the Private Members Bill, through a series of meetings beginning in February this year. Officials have also been engaged locally with the Society regarding the Bill.

**Previous Letter to Health Committee regarding the Private Members Bill
Annex 1**

FROM THE MINISTER FOR HEALTH,
SOCIAL SERVICES AND PUBLIC SAFETY
Edwin Poots MLA



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Chairperson to the Health, Social Services and Public
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Our Ref: COR/748/2014

Date: 22 July 2014

Dear Ms McLaughlin

**PRIVATE MEMBERS BILL – JEREMY LEFROY – REGULATION OF HEALTHCARE
PROFESSIONALS**

I am writing to advise the Committee that Jeremy Hunt MP (Secretary of State for Health) has written to me, in a letter dated 24 June 2014, setting out the details of a Private Members Bill being taken forward by Jeremy Lefroy MP. The Bill has emerged in recent weeks through the ballot procedure and was presented to Westminster Parliament for its First Reading on 2 July 2014.

The Bill has a patient-safety theme following on from events at the Mid-Staffordshire NHS Trust and includes two provisions which relate to the regulation of healthcare professionals. To help ensure a consistent approach to healthcare regulation it is intended that these measures should apply on a UK-wide basis.

You will be aware that the regulation of healthcare professionals is a devolved matter in Northern Ireland and as such a Legislative Consent Motion would be required in relation to these two provisions.

The two relevant provisions are:

1. Introducing three objectives to ensure appropriate regulatory action by the regulators of health care professions
2. Automatically erasing individuals tried and convicted of certain serious crimes from a professional register

Further detail on these regulatory provisions outlined by the Department of Health is attached for your information at Annex A. The Private Members Bill includes three other patient safety related measures which will apply to England only and these are also included at Annex A for your information.

Working for a Healthier People



My officials have examined the proposals outlined in Jeremy Hunt's letter and I can confirm that I am content in principle with the two regulatory measures proposed. I am also content in principle with the requirement of a Legislative Consent Motion in relation to these provisions.

My officials continue to engage with the Department of Health (England), the other devolved administrations, and with healthcare regulators to develop the policy detail and practical implementation of both regulatory measures contained in the Bill. As I understand it, the Bill is expected to have its Second Reading debate on 7 November 2014. The full text of the Bill is not yet available but is expected to become available shortly in advance of the Second Reading debate.

Law Commission Review on the Regulation of Healthcare Professionals

I previously wrote to the Committee to advise that the joint UK Law Commissions had concluded their review of the Regulation of Healthcare Professionals. The Commissions laid their final report and draft Bill before the Northern Ireland Assembly on 30 April 2014. The recommendations contained therein aim to create a clear, modern and effective legal framework for UK-wide health and social care professional regulation, both now and for the future.

However, following the Queen's speech on 4 June the Law Commissions' draft Bill has not been given a slot in the 4th Parliamentary session at Westminster and will therefore not go ahead in this parliament. DH England and devolved administrations continue to work together to refine the Bill so that it is in a good position to be taken forward early by the new administration. In the meantime, in consultation with devolved administrations, DH England are progressing a series of legislative changes required to address priorities in relation to Professional Regulation matters. These include the two measures contained in Jeremy Lofroy's Private Members Bill. I will keep the Committee informed in due course as the other proposed legislative changes develop.

I would be very grateful for any views the Committee would wish to offer on the general principle of a Legislative Consent Motion. I will, of course, continue to keep you apprised of developments in this matter and my officials would also be happy to brief the Committee on this issue if that would be helpful.

You will also be aware that a Legislative Consent Motion will be subject to the agreement of the Executive and I have written to Executive colleagues to seek their agreement.



Edwin Poots MLA
Minister for Health Social Services and Public Safety

Working for a Healthier People



Provisions of the draft Bill which extend to Northern Ireland

The two regulatory provisions of the Bill which impact on Northern Ireland and therefore require a Legislative Consent Motion are:

- i) Introducing Three Objectives of Regulation; and
- ii) Automatic Erasure.

Introduction of Three Objectives of Regulation

Healthcare professionals who are subject to regulatory action can avoid serious sanctions in certain cases by demonstrating that they have learnt from their mistakes and are no longer a threat to public protection. While that may be appropriate in some instances, sometimes more serious sanctions may be justified in order to maintain public confidence in the profession and uphold standards.

The Bill will introduce three objectives for regulators of health care professions to help ensure appropriate action is taken by them. The clauses will make clear that the regulators and the Professional Standards Authority (which oversees the Regulators) have the three objectives of public protection, maintaining public confidence in the profession and upholding standards when carrying out all of their functions. Fitness to practise panels must have regard to these objectives in every case.

This ensures a legislative basis for regulators to take appropriate action including in those cases where there may not be explicit patient safety issue but action is necessary to uphold standards or maintain confidence in the relevant profession.

Introduction of these three objectives is supported by the Law Commission in its final report on the Regulation of Healthcare Professionals. The report identifies that while courts have long recognised these three objectives, they have not been explicitly and consistently included in the various governing Acts and Orders which underpin the nine UK regulatory bodies.

The provision of the Private Members Bill related to the three objectives will not apply to the General Medical Council (GMC) as it is introducing these objectives through its own ongoing legislative Order covering Adjudication and Fitness to Practise.

Automatic Erasure

This provision will require the regulators to automatically erase individuals from a professional register who have been tried and convicted of certain serious crimes. These would include convictions for murder, rape, trafficking people for sexual exploitation, blackmail (where a custodial sentence is imposed), sexual assault

(where a custodial sentence is imposed) and certain sexual offences against children.

At the moment, even when they have been found guilty of a serious crime in a court of law, regulators have to undergo an expensive fitness to practise process to then strike an individual off the register. Automatic erasure would enable the regulatory bodies to take swift and robust action in the most serious cases and help boost public confidence in the regulatory process.

Three measures which will apply to England only

1. An amendment to Section 20 of the Health and Social Care Act 2008, which will mean that regulations setting the Care Quality Commission's registration requirements must include a requirement on providers to provide services in a safe way and work towards the aspiration of harm-free care wherever harm is avoidable.
2. A statutory duty to use consistent identifiers across health and adult social care organisations; and
3. A statutory duty to share information in support of people's direct care in an appropriate, lawful and secure manner.



From George Freeman MP
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October 2014

**PRIVATE MEMBERS BILL – JEREMY LEFROY MP – REGULATION OF
HEALTHCARE PROFESSIONALS**

I am writing in response to Edwin Poots' letter of 22 July agreeing to a legislative consent motion (LCM) in the Northern Ireland Assembly in respect of provisions in the Health and Social Care (Safety and Quality) Bill introduced by Jeremy Lefroy on Wednesday 2 July. At that time we expected the Bill to include two measures on regulation of health professionals.

1. Introducing three objectives to ensure appropriate regulatory action by the regulators of health care professions
2. Automatically erasing individuals tried and convicted of certain serious crimes from a professional register

1. Objectives of regulation

The Department has identified issues with applying the first measure to the PSNI. My view is that due to the potential complexities this Bill would not be a suitable vehicle to implement the changes to the PSNI. As regulation of health professionals is devolved in Northern Ireland, the Department does not intend to apply the objectives and duty to have regard to these to the PSNI without your agreement.

I would be grateful if you could confirm whether you are content for this Bill not to apply the objectives to the PSNI.

2. Automatic erasure

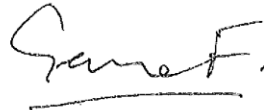
The intent of this measure has been to enable the regulators to automatically erase individuals tried and convicted of certain serious crimes from a professional register. On the advice of the Office of the Parliamentary Counsel (OPC), the complexities of amending the existing

statutory framework for each of the regulators would result in a Bill that is much longer and more complex than is usually acceptable for a Private Members' Bill.

We have also received advice from the Secretariat to the Parliamentary Business and Legislation (PBL) Committee that in light of the advice from Parliamentary Counsel, automatic erasure should not be taken forward, given the complexity of the issues. The Bill will therefore not include provision on automatic erasure.

Automatic erasure was one of the areas considered by the Law Commission in its review of the regulation of health professionals. The Government remains committed to legislate on this important issue at the earliest opportunity when Parliamentary time allows. We have explored all other possible legislative options for taking forward issues arising from the Law Commission work in this session and have not identified a suitable vehicle and would therefore propose to take forward automatic erasure in a future Parliamentary session alongside other measures in response to the Law Commission's review.

The next Parliamentary stage of the Bill will be its second reading on 7 November. My officials will continue working with your Department on this Bill and provide any support on the LCM, and I am very grateful for your officials' continued engagement.



GEORGE FREEMAN MP
MINISTER FOR LIFE SCIENCES

FROM THE MINISTER FOR HEALTH,
SOCIAL SERVICES AND PUBLIC SAFETY
Jim Wells MLA



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Our Ref: COR/1188/2014
Date: 13 October 2014

Dear Mr Freeman

Thank you for your letter in which you have provided an update regarding changes to the scope of those provisions in the Jeremy LeFroy Private Members Bill which relate to Northern Ireland. Your letter also sets out your view that the public protection objectives included in the Bill should not extend to the Pharmaceutical Society of Northern Ireland due to the potential complexities with this, and seeks my agreement for the Bill not to apply the objectives to the Society.

My officials have examined the proposals outlined in your letter. I can confirm that I content with the approach you have outlined and agree that the Bill is not a suitable vehicle to implement the changes in relation to the Society. Introduction of the new proposed public protection objectives would represent a fundamental change to the Society's objectives and as such would merit careful local consideration and consultation with stakeholders.

You will be aware that the Legislative Consent Motion is subject to the agreement of the Northern Ireland Executive and the Assembly. I continue to engage with Executive colleagues to secure their agreement on this matter.

I am fully aware that your Department is working to a challenging timescale and trust that this response is helpful. I would like to take this opportunity to thank your officials who have been working closely with my own officials on this matter. I wish you every success with the Bill and look forward to further engagement with DH England as the Bill progresses.

I am copying this letter to the Secretary of State for Northern Ireland.

Jim Wells MLA
Minister for Health Social Services and Public Safety

Working for a Healthier People





Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Health and Social Care (Safety and Quality) Bill:
Legislative Consent Motion

5 November 2014

NORTHERN IRELAND ASSEMBLY

Committee for Health, Social Services and Public Safety

Health and Social Care (Safety and Quality) Bill: Legislative Consent Motion

5 November 2014

Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Ms Paula Bradley (Deputy Chairperson)
Mr Mickey Brady
Mrs Pam Cameron
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Fearghal McKinney
Mr George Robinson

Witnesses:

Ms Joyce Cairns	Department of Health, Social Services and Public Safety
Mr Kieran McAteer	Department of Health, Social Services and Public Safety
Ms Heather Stevens	Department of Health, Social Services and Public Safety
Dr Mark Timoney	Department of Health, Social Services and Public Safety

The Chairperson (Ms Maeve McLaughlin): Today we have Heather Stevens, director of the human resources directorate at the Department, Joyce Cairns and Kieran McAteer, who are also from the human resources directorate and Dr Mark Timoney, chief pharmaceutical officer at the Department. You are all very welcome. Heather, I do not know whether you are taking the lead on this, but if you can make your presentation, we will then open it up to members.

Ms Heather Stevens (Department of Health, Social Services and Public Safety): Thanks very much, Chair, and good afternoon. I will give the Committee a brief overview of how the draft Bill has evolved as well as some background on the decision to include Northern Ireland in its scope.

In July this year, Jeremy Hunt MP, Secretary of State for Health, wrote to former Minister Poots seeking his agreement to a legislative consent motion (LCM) in relation to provisions in the private Member's Bill (PMB) introduced by Jeremy Lefroy MP. The relevant provisions relate to the regulation of healthcare professionals. That is a devolved matter in Northern Ireland, and, therefore, a legislative consent motion is required.

The full title of the Bill is the Health and Social Care (Safety and Quality) Bill, and it has a wider patient safety theme that follows on from events at the former Mid Staffordshire NHS Foundation Trust. It includes three other patient safety-related measures that apply to England only. However, it is intended that the regulatory provisions in the Bill will apply on a UK-wide basis. That is because, with the exception of pharmacy, the jurisdiction of the healthcare professional regulators affected is UK wide. The Bill, which has the Government's full support, was introduced to the House of Commons on 2 July 2014 and is scheduled to have its Second Reading on 7 November.

At the time of the initial letter from Jeremy Hunt, the Bill included two provisions that related to the regulation of healthcare professionals. However, the Bill has since been updated, and now only one measure remains that is proposed to be extended to Northern Ireland. That provision, which seeks to introduce an overarching public protection objective for healthcare professional regulators and the Professional Standards Authority (PSA), has also been updated since it was first introduced. The Department of Health considered the provision in discussion with the regulators, who highlighted in particular that the principle of public protection must have primacy.

The updated clause introduces an overarching objective of public protection, with further objectives relating to public health and safety, public confidence in the profession and proper professional standards of conduct, each with equal importance. In exercising their functions, regulators must have regard to those. That will be in, for example, handling complaints, disciplinary hearings and fitness-to-practice cases. The approach therefore secures the focus on public protection, which regulators were keen to emphasise while ensuring that regulatory bodies are able to act where appropriate in the absence of an explicit patient safety issue. That could be, for example, where a registrant has engaged in behaviour that may undermine public confidence in the profession such that it would make the public reluctant to seek their help but the issue was not related to their professional competence.

The Bill also requires the regulators' panels and committees dealing with fitness-to-practice issues to have regard to the objectives. In practice, that should help regulators to respond more effectively in fitness-to-practice cases by being able to take timely and robust action. That in turn will help to contribute to ensuring ongoing public confidence in the professional regulatory system.

Based on its discussions with the organisations, the Department of Health (DH) has confirmed that the Professional Standards Authority and the affected regulators are content with the Bill's regulatory provisions. However, the position of those bodies is that the Bill does not go far enough as a legislative framework and needs more significant reform through a Government Bill taking forward the Law Commission's recommendations. As you will be aware, the Law Commission published its review of the regulation of healthcare professionals in April 2014, and a copy was laid before the Northern Ireland Assembly. The aim of that work was to make recommendations for a clear, modern and effective legal framework for now and the future. In fact, the regulatory provisions in the private Member's Bill are derived from one of the Law Commission's recommendations.

DH and the devolved Administrations agree that a Bill is needed to achieve the reforms set out by the Law Commission, and they remain committed to taking forward that legislation when parliamentary time allows. That will be done on a four-country basis, and the Department here will be kept fully involved in that process. We will update the Committee in due course as that develops.

DH identified issues when applying the public protection objective measure to the Pharmaceutical Society of Northern Ireland. Those difficulties emanate from the society's dual role, as it is currently both the regulator and the professional leadership organisation for the pharmacy profession. Its current objectives, as set out in the 1976 Pharmacy Order, are more reflective of a leadership and membership organisation rather than focused on public protection. Therefore, introduction of the proposed new public protection objective would represent a fundamental change to the society's objectives.

As a consequence, Minister Wells wrote to his counterpart in England on 13 October this year confirming his agreement that the private Member's Bill was not the appropriate vehicle to implement such a change to the arrangements for the regulation of the pharmacy profession in Northern Ireland. The Pharmaceutical Society has not raised any objections to its exclusion from the Bill. The Minister also stated in his letter that such a fundamental change to the society's objectives would merit careful local consideration and consultation with stakeholders. That development is, in fact, consistent with previous considerations on the difficulties presented by the society's dual role. For example, in April 2014 the Law Commission reported in its review that it was concerned that, by retaining its dual role, the society has adopted a fundamentally different approach to healthcare professional regulation from that in the rest of the UK. We share the Law Commission's view that the society's role is fundamentally different to that of the other UK healthcare professional regulators, which is based on independence from the profession that they regulate.

The Law Commission's review concluded that the society should not be incorporated into the proposed legislative scheme unless its representational role is removed. In addition, former Minister Poots, during an Assembly debate in January 2012 on changes that were introduced at that time to modernise the society, noted that the society had developed a "partial separation" of its regulatory and

professional leadership functions but that he wished to follow up with the society how full separation could be achieved in the interest of the public and the profession.

The emergence of the private Member's Bill has once again brought the issue to the fore. So, Minister Wells has agreed in recent weeks that officials should begin preparatory work to explore options for the future arrangements for the regulation of the pharmacy profession in Northern Ireland. That will include consideration of the society's existing professional leadership role, and the exercise is aimed at providing assurance on arrangements for public protection, maintaining public confidence and upholding standards in the professional regulatory system. The Department has written to senior officials in the society to outline the intention to undertake that options analysis and to ensure that they are included at the outset. The project will, of course, involve full consultation and engagement with relevant stakeholders both locally and nationally. We will be happy to brief the Committee further as that work develops.

The Committee should also note that, in addition to the Pharmaceutical Society, the private Member's Bill will not introduce the public protection objective for the General Medical Council (GMC), as that is being done on a four-country basis through a different ongoing legislative vehicle.

As the regulation of healthcare professionals is a devolved matter in Northern Ireland, Executive approval has been sought for the legislative consent motion. We have also carried out an equality impact screening exercise of the provisions extending to Northern Ireland, and no adverse impact has been identified in connection with any of the section 75 categories.

As I said, the regulation measure in the private Member's Bill is, in fact, derived from a key recommendation made by the Law Commission in its review, and the commission consulted widely when developing its report and findings, including contacting over 100 organisations in Northern Ireland. Furthermore, DH England has been engaged directly with the regulators on work arising from the Law Commission's review on behalf of the UK government Departments through a series of meetings beginning in February this year. That has included ongoing engagement on the private Member's Bill. Departments from each of the devolved Administrations have also been kept involved throughout. In particular, we have also engaged directly with the Pharmaceutical Society of Northern Ireland because of its particular circumstances.

The Department supports the Bill as it relates to the regulation of healthcare professionals. We believe that it is important that those provisions extend to Northern Ireland to ensure that we retain parity with the rest of the UK in this so that the public in Northern Ireland can be assured that they are safeguarded in the same way and afforded the same protections as other UK citizens. Maintaining consistency in that way also ensures that professional registrants are treated equally across the UK and that there are no variances in the regulatory requirements or processes to which they are subject or, indeed, potential obstacles to their mobility.

Thank you again for the opportunity to discuss the proposed provisions with you. We are happy to receive any comments or questions that the Committee may have.

The Chairperson (Ms Maeve McLaughlin): Thank you, Heather. I have just a couple of comments, probably just for clarity in the first instance. You referred to the PMB as it is currently defined being taken directly from some of the Law Commission's recommendations. Is that right?

Ms Stevens: The regulatory provisions in the private Member's Bill are directly derived from the Law Commission report; that is right. It is an early opportunity to implement those recommendations.

The Chairperson (Ms Maeve McLaughlin): The other issue is that there is a view that the Bill is not the appropriate vehicle for the Pharmaceutical Society and the General Medical Council, but no objections have been raised.

Ms Stevens: The same provisions are being introduced for the General Medical Council through a slightly different mechanism. Another legislative vehicle is already being progressed for the GMC. Given that the Pharmaceutical Society's objectives and the way it is established are set up in a fundamentally different way, a private Member's Bill is not the appropriate vehicle to take forward the objectives for it. It needs further, more detailed consideration about the duality of its role.

The Chairperson (Ms Maeve McLaughlin): Is work being developed on that?

Ms Stevens: That work has just begun.

Dr Mark Timoney (Department of Health, Social Services and Public Safety): Yes, indeed, Chair. I have been in touch with the Pharmaceutical Society for some weeks now on how we progress and research the options that are available to modernise, strengthen and ensure independence for the regulation of pharmacists here in Northern Ireland. As Heather indicated, the society agrees that the private Member's Bill is not the vehicle through which to deliver that, so we will conduct a complete and comprehensive options survey and appraisal so that we can consult widely with all stakeholders on the best mechanisms to ensure that strengthening of regulation for pharmacy professionals here in Northern Ireland.

The Chairperson (Ms Maeve McLaughlin): So, that is a separate, ongoing piece of work.

The other question I have is about timescale. Is there any indication of when the LCM will be brought before the Assembly?

Ms Stevens: The Executive are due to consider it on 20 November, after which it will be tabled before the Assembly.

Mr McCarthy: For clarification, you mentioned the Law Commission — I presume that that is the Law Commission here in Northern Ireland.

Ms Stevens: The Law Commissions of all four jurisdictions were involved in the review. The Law Commission of Northern Ireland was definitely involved.

Mr McCarthy: Did the Department ask it for the way forward on that? How was its involvement —

Ms Stevens: Do you mean how it was initiated? The Law Commission is independent and can decide on its own programme, so it was not invited by the Department to look at the regulation of healthcare professionals. It decided to undertake that work.

Mr McCarthy: Our own Law Commission was involved in that. OK; that is fine.

Mr McKinney: I have one brief question. I apologise for not being here at the start of your presentation but thank you for it. How is the Pharmaceutical Society reacting to this?

Dr Timoney: As I said, the Pharmaceutical Society has been engaged on the issue, and it is agreed that the private Member's Bill is not the mechanism with which to fundamentally change the front page of the governing legislation for the society, which is the Pharmaceutical Order 1976. Any change to that is a devolved matter. We actively research the mechanisms that are available to us to bring forward modernisation of regulation for pharmacists in Northern Ireland. They are currently the only health professionals that are not regulated on a UK basis. The other anomaly is, of course, the idea that the society retains the function of professional representation as well as regulatory responsibility. It is important that regulators are seen to be independent and impartial in their regulation, and that is what we will seek to explore with the society.

Mr McKinney: Will we be exploring that further as time progresses, Chair?

The Chairperson (Ms Maeve McLaughlin): Yes.

Mr McKinney: So, this is really just an introduction. I will leave that there, then, and do some more work on it.

The Chairperson (Ms Maeve McLaughlin): Yes. I advise members at this point that, after the motion is laid before the Assembly, it will be referred back to the Committee, and we will be expected to make a short report on it at that point. We will be coming back to it.

Ms McCorley: Go raibh maith agat, a Chathaoirligh, agus go raibh maith agaibh for the presentation. I have just a small point to make. Looking at it in a different way, from your point of view, is there anything to be regretted by the fact that the Pharmaceutical Society is not going to be included?

Dr Timoney: In the past number of years, we have taken some steps to ensure a strengthening of the society's regulatory function. In 2011, we amended the Pharmacy Order to reform the society's council to ensure that there was appropriate parity between lay and professional members on that council; that the council has a responsibility to set standards for the delivery of pharmaceutical services; and that its members were attending to continuing professional development. We reconstituted its statutory committee and established a scrutiny committee. We gave it a range of sanctions, from advice and warnings all the way through to striking off, so that it has proportionate measures to take. An effort has been made to ensure the strengthening of regulation as things stand. The Professional Standards Authority has audited the society and expressed satisfaction that those processes are working well in the public interest as things stand. We have modernised it, made it more responsive and strengthened regulation. I suppose that the other issues that we need to look at very carefully now are independence and impartiality.

Ms McCorley: I wonder whether that means that you are content with the way that things are, or would you prefer it if the society were included?

Dr Timoney: The PSA, which regulates the regulators, has indicated to us through its processes that it is satisfied with how the society's council exercises its regulatory function in the public interest at present.

The Chairperson (Ms Maeve McLaughlin): As there are no other comments at this point, I thank you all for your attendance and presentation. Obviously, we will return to this as it develops. I ask members at this point whether we are generally content with the proposals, given that we will return to them. Can I assume from what we heard that we are content?

Members indicated assent.