

## Response ID ANON-8E7A-YEY3-Y

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### Information about you

#### Contact details and publishing consent:

Organisation/Group

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Publish this response

**We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?**

Yes

### Consultation Questions

#### 1 Do you have any views/observations on this Order?

**enter comments here:**

The General Medical Council (GMC) is an independent organisation that helps to protect patients and improve medical education and practice across the UK.

- We decide which doctors are qualified to work here and we oversee UK medical education and training.
- We set the standards that doctors need to follow, and make sure that they continue to meet these standards throughout their careers.
- We take action to prevent a doctor from putting the safety of patients, or the public's confidence in doctors, at risk.

Every patient should receive a high standard of care. Our role is to help achieve that by working closely with doctors, their employers and patients, to make sure

that the trust patients have in their doctors is fully justified.

Our team in Scotland helps the GMC to fulfil its statutory role as a UK wide regulator and ensure that Scotland's voice is heard across the organisation. The team represents the GMC, engages key interests in our work and leads our public affairs and professionalism work in Scotland.

#### Managing the UK medical register

As a patient safety organisation we are committed to only registering those doctors who have the knowledge, skills and professional values expected of the medical profession in the UK.

There are approximately 270,000 doctors on the UK medical register. This includes over 21,000 doctors registered in Scotland. We check every doctor's identity and qualifications before they are able to join the register. We also check with others, such as the doctor's medical school or previous employers, to find out if they have any concerns about the doctor's ability to practise safely, for example inappropriate behaviour, serious health problems, or performance. Doctors are also required to complete a Fitness to Practice Declaration which includes questions about their criminal history and any cautions or convictions received either in the UK or elsewhere. In line with the UK Supreme Court decision on blanket disclosure of all spent convictions and cautions and the subsequent amendments to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 ('the 2013 Order') our guidance advises all applicants not to disclose offences deemed 'protected' under that legislation.

As such the changes contained in the 2015 Order to the content of higher level disclosures (that is, the Standard disclosure, the Enhanced disclosure and the PVG scheme record) and the information that an individual has to disclose to employers are of significant interest to us.

There are variations in the operation of the different disclosure systems in Scotland, England and Wales and Northern Ireland. Our response to question 4 highlights a number of these areas and provides further detail about the issues that we feel this presents for regulating the medical profession across the UK.

Once you have considered our response we would welcome the opportunity to discuss with Scottish Ministers how we can successfully operate the different systems to ensure the safety of patients across the UK. We will also seek meetings with relevant Ministers in England, Wales and Northern Ireland to discuss this issue.

#### **2 In relation to the Equality Impact Assessment, please tell us about any potential impacts, either positive or negative; you feel the amendments to legislation in this consultation document may have on any particular groups of people?**

**enter comments here:**

No comment

#### **3 In relation to the Equality Impact Assessment, please tell us what potential there may be within these amendments to legislation to advance equality of opportunity between different groups and to foster good relations between different groups?**

**enter comments here:**

No comment

#### **4 In relation to the Business Regulatory Impact Assessment, please tell us about any potential impacts you think there may be to particular business or organisations?**

**enter comments here:**

We are concerned that there are number of variations in the operation of the different disclosure systems in Scotland, England and Wales and Northern Ireland. As a UK wide regulator these variations have the potential to impact upon our ability to fulfil our statutory function to only register doctors who are fit to practise. We will need to develop and implement separate processes and guidance to ensure compliance with the relevant legislation in each of the four UK countries.

One effect of the criminal disclosure system is that we will no longer receive information about offences which the judicial system consider to be relatively minor but which as a regulator we may consider relevant to a medical practitioner's fitness to practise to treat patients and to the public's confidence in the medical profession (which is part of our overarching statutory objective). For example we understand that under the 2015 Order unless an offence is captured on either the 'Offences which must always be disclosed' list or the 'Offences which must always be disclosed subject to rules' list then by default it will be protected and not require disclosure. This introduces a variation in the types of offences that Scottish applicants are required to notify us of in comparison to applicants from England, Wales and Northern Ireland.

We plan to undertake a full comparative analysis of the different disclosure systems but our analysis to date has identified a number of differences. Below are examples of three variations that will impact on how the disclosure schemes operates in practice:

1. There are differences in how some offences are classified. It appears there are some offences that are not included under the 2015 Order in the 'Offences which must always be disclosed' list but are Listed Offences under the English and Welsh system and have to be disclosed. One example we have discovered is an offence under 67 (1A) of the Medicines Act – 'Any person who gives a prescription or directions or administers a medicinal product in contravention of a condition imposed by an order under section 58 of this Act by virtue of subsection (4A) of that section shall be guilty of an offence' is a listed offence contrary to 2A(5)a.
2. The timescales set out in the 2015 Order for convictions to be spent are considerably longer than those in England, Wales and Northern Ireland.
3. There are distinctions in the disclosure of cautions, which we will need to reconcile in order to operate the schemes fairly in practice: in Scotland spent cautions will never be disclosed whereas in England, Wales and Northern Ireland spent cautions are disclosed unless they are deemed to be protected.

## Evaluation

Please help us improve our consultations by answering the questions below.

How satisfied were you with this consultation?:

Not Answered

Please enter comments here.:

How would you rate your satisfaction with using Citizen Space to respond to consultations?:

Not Answered

Please enter comments here.: