

Council – 10 September 2009

The Calman Report

Executive summary and recommendations

Introduction

On 15 June 2009 the Calman Commission published its final report entitled 'Serving Scotland Better: Scotland and the United Kingdom in the 21st Century'. The Commission was headed by Sir Kenneth Calman, the former Chief Medical Officer of Scotland, and made 24 specific recommendations.

The report makes a wide range of recommendations ranging from greater tax powers for Holyrood to regulating drink-driving powers limits should be transferred to Scottish Ministers. Part 5-G of the report addresses health and biosecurity and recommendation 5.12 states:

'The regulation of all health professions, not just those specified by the Scotland Act, should be reserved.'

The full text of recommendation 5.12 (page 186) is attached as a background paper.

To date there have been no indications whether the recommendations will be adopted.

The full text of the report is available on www.commissiononscottishdevolution.org.uk.

Decision

The Council is requested to note the document. No decision is required.

Background information

Page 186 of the Calman report

Resource implications

None

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2009-08-03	a	CER	PPR	Calman Report	Final DD: None	Public RD: None

Financial implications

None

Appendices

None

Date of paper

3 August 2009

Regulation of the health professions

- 5.143 The Scotland Act reserves the regulation of health professions. These are defined in the interpretation paragraph as those regulated by various (listed) enactments. These include doctors, dentists, dental auxiliaries, opticians, pharmacists, nurses, midwives, health visitors, chiropodists and veterinary surgeons amongst others. Consequently, legislative and executive competence for regulation of any new profession in the health area is automatically devolved.
- 5.144 This means that the professions which have emerged and been subject to regulation subsequent to the Scotland Act are not reserved in a manner consistent with similar, previously recognised professions but, in fact, devolved to the Scottish Parliament. According to the UK Department of Health this means that currently the regulation of operating department practitioners, dental nurses, dental technicians, clinical dental technicians and orthodontic therapists is devolved, and this could be expected to increase as regulation is extended to further professions.
- 5.145 Currently, the UK Government Department of Health seeks to place new professions into the existing machinery for the regulation of the health professions. This involves an order under section 60 of the Health Act 1999 and, where such an order makes regulations which apply to a profession where competence is devolved, there is a requirement for the order to be ratified by the Scottish Parliament, as well as the UK Parliament. This process can be time-consuming and cumbersome and gives the Scottish Parliament some influence over reserved professions.
- 5.146 In written evidence to the Commission both the Royal College of Physicians and Surgeons of Glasgow and the Royal College of Physicians of Edinburgh suggest that regulation of the health professions should not be devolved because, although some flexibility in approach is to be welcomed, a potential fragmentation of standards is not in the best interest of patients. The Commission has considerable sympathy with this view.
- 5.147 The Commission believes that it is important that there should be a common approach to regulation of the health professions to ensure that there is clarity for patients as well as an assurance of common standards irrespective of the location in which they find themselves in need of care or advice. Similarly, for practitioners, a consistent approach to regulation helps to ensure that mobility within Great Britain is straightforward and that relevant continuing professional development is recognised.
- 5.148 The Commission agrees that there should be a common framework for the regulation of the health professions and has considered whether this is most effectively achieved through cooperation and the existence of UK-wide regulatory bodies or through ensuring that the regulation of all new health professions is the responsibility of the UK Parliament. The Commission has concluded that it is in the public interest and in the best interest of the people of Scotland for responsibility for legislation to regulate all health professions to return to the UK Parliament. The Commission therefore recommends that regulation of the health professions is reserved without exception and that the drafting method by which the reservation of health professions in Schedule 5 to the Scotland Act is achieved should therefore be changed.

RECOMMENDATION 5.12: The regulation of all health professions, not just those specified by the Scotland Act, should be reserved.