

# **GDC consultation response**

## **DHSC consultation on provisional registration for overseas-qualified dentists**

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# General Dental Council response to DHSC consultation on provisional registration for overseas-qualified dentists

## 1. About the GDC

- 1.1. The General Dental Council (GDC) is the UK-wide statutory professional regulator of more than 121,000 members of the dental team, including over 44,000 dentists and over 76,000 dental care professionals (DCPs).
- 1.2. An individual must be registered with the GDC to practise dentistry in the UK. Unlike other health professional regulators, we register the whole professional team, across the four nations of the UK, including dental nurses, clinical dental technicians, dental hygienists, dental technicians, dental therapists, orthodontic therapists and dentists.
- 1.3. Our primary objective is to protect the public, and in doing so to:
  - Protect, promote and maintain the health, safety, and well-being of the public.
  - Promote and maintain public confidence in the professions regulated.
  - Promote and maintain proper professional standards and conduct for members of those professions.
- 1.4. All patients should be confident that the treatment they receive is provided by a dental professional who is properly trained, qualified, and meets our standards. To achieve this, we register qualified dental professionals, set standards for the dental team, investigate complaints about dental professionals' fitness to practise, and work to ensure the quality of dental education.

## 2. Introduction

### *Overview*

- 2.1. Ensuring that all those who join the dental professional registers have the skills and experience to practise safely and effectively is fundamental to the GDC's role as a regulator of healthcare professionals. The process of registration therefore needs to be rigorous in ensuring that all new registrants have reached the consistent high standard expected of dental professionals who wish to practise in the UK.
- 2.2. Subject to that, it is also important that all those who wish to join our registers have clear routes to registration which allow them to demonstrate their skills and experience with the process of registration being no more of a barrier than necessary to ensure that standards are rigorously and consistently applied.
- 2.3. Provisional registration has the potential to be a valuable additional new route for dentists with qualifications from outside the UK to demonstrate that they meet our standards for registration, offering them an opportunity to adapt to the UK practice environment while being supported to work towards full registration. We welcome the proposals set out in the consultation document and the commitment the Government has made to take forward the legislation needed to implement them. We are similarly

committed to delivering the work required to create a regulatory framework for provisional registration.

- 2.4. We also welcome the approach of setting broad principles in primary legislation and leaving the detail of a provisional registration scheme to be established through rules to be developed by the GDC. That sets an appropriate balance, consistent with the Government's wider plans for the reform of healthcare professional regulation and will support the flexibility needed as approaches for the delivery of provisional registration are developed.
- 2.5. It does though necessarily mean that the creation of a detailed approach to the development and implementation of provisional registration will come at a later stage. It is important that this draft legislation does not inadvertently constrain that process as a consequence of tacit assumptions about how provisional registration will work in practice. It is essential that there is sufficient breadth and flexibility to ensure that the eventual model or models for implementing provisional registration both meet high regulatory standards and can be delivered in practice, including arrangements to assess applicants, to create appropriate arrangements for supervision, to ensure the availability of supervisors and to support applicants in developing the skills and experience they need to be able to demonstrate that they have met the standards for full registration. The scale and scope of that work will necessarily entail commitment and engagement across the dental sector. We look forward to working closely and collaboratively with others who will be responsible for the delivery of effective working arrangements.
- 2.6. Our approach to provisional registration will be to ensure that patients can be confident in their treatment, provisional registrants are supported to practise safely, and the GDC's standards are maintained.

### **3. How we have responded to this consultation**

- 3.1. Our response to the consultation is presented under six main headings. We begin by discussing the context in which provisional registration will be delivered (section 4) before turning to the detail of the consultation proposals.
- 3.2. There are three broad areas to consider when designing a provisional registration regime: entry to provisional registration, the supervised practice period, and exit from provisional registration, which we consider in turn (sections 5 to 7).
- 3.3. It is also necessary to consider how provisional registration interacts with, or impacts, broader elements of our regulatory model, such as continuing professional development (CPD) and fitness to practise (FtP) (section 8)
- 3.4. Finally, we consider cost, benefit and equality considerations (section 9)
- 3.5. In sections 5 to 8 we address the consultation questions on:
  - whether the draft order provides the GDC with the necessary powers to provisionally register dentists

- whether the order provides the necessary powers to design, implement and oversee a provisional registration system, and
- whether the order provides appropriate safeguards for patient safety.

3.6. In section 9 we respond to the consultation questions on:

- whether the draft legislation could result in any costs or benefits to businesses, and
- how it could positively or negatively impact persons in relation to the public sector equality duty.

3.7. For clarity, we have not reached any conclusions about the design of the future provisional registration system. That will first require a thorough analysis of policy options in collaboration with stakeholders, followed by a formal consultation by the GDC on draft rules. Although this Government consultation is only about ensuring we are given the necessary powers to develop an effective regulatory approach, we have had to give some thought to the use cases of provisional registration and the parameters of the approach we want to develop, in order to comment on the draft order constructively and check there is enough flexibility to consider an appropriate range of policy options later. We have used examples of potential features or applications of provisional registration to illustrate particular points. Those examples should not be taken as an indication that any policy decisions have already been made.

3.8. The Government has made clear that provisional registration will only operate for overseas qualified dentists. Although in future we would support the exploration of provisional registration powers for UK qualified dentists, as well as UK- and overseas- qualified dental care professionals, we have not commented on these options as they are outside the scope of this consultation.

3.9. We are happy to provide further information to DHSC where necessary. We also welcome further discussion with DHSC as legislative drafting develops, to review the potential effects of any changes made and optimise the opportunities presented by provisional registration.

## **4. Provisional registration in context**

### ***International routes to registration***

4.1. Enabled by changes made to our legislation in 2023, the GDC is currently developing a comprehensive framework of routes to registration for dental professionals who have qualified overseas, facilitating access to the UK registers while maintaining the standards that ensure patient safety. There are currently two primary routes through which internationally qualified dentists can register with the GDC to practice in the UK.

- 4.2. Dentists with a qualification from an EEA member state can register either through the system of near-automatic recognition for European qualifications (post-EU Exit standstill arrangements) or through provisions derived from the trade agreements with Switzerland and EEA EFTA states.
- 4.3. Dentists with qualifications earned elsewhere must in most cases pass either the Overseas Registration Examination (ORE), run by the GDC or the similarly structured Licence in Dental Surgery examination (LDS), run by the Royal College of Surgeons of England.
- 4.4. Provisional registration will initially create an alternative route for those in the second group, either supporting preparation for or providing an alternative to the ORE or LDS. But it may also become important for those in the first group, depending on whether the Government decides to extend further the current EU standstill arrangements beyond 2028. If that route were to close, it would be essential to ensure that additional capacity were available in other routes, and provisional registration could make an important contribution to that.
- 4.5. As well as supporting provisional registrants to transition safely to full registration, a provisional registration regime would also provide a more robust basis for enabling the adaptation periods required under legislation implementing the EEA EFTA trade agreement. It could also provide a more effective means of supporting other forms of short-term registration, and may also be beneficial in supporting refugee dentists to join the register.

### ***Developing a delivery model for provisional registration***

- 4.6. Provisional registration will be a significant change to dental regulation, the complexity of which should not be underestimated. In working through the range of regulatory questions and developing our policy, we will be adhering to two key principles:
  - regulatory standards should not be compromised and, subject to that
  - regulatory processes should be no more onerous than necessary.
- 4.7. Beyond the regulatory components, the development of a workable and sustainable system will depend on a multi-agency partnership approach. That is because there will be many operational elements to develop and issues to resolve that are not in the remit of the GDC, but which are critical to the overall success of provisional registration. These will be the responsibility of various other stakeholder organisations from across the UK dental sector. For example, indemnity arrangements for provisional registrants and supervisors, approaches to the training and recruitment of supervisors, approaches to funding placements and the cost of supervision, and methods used by practices or employers for selecting provisional registration applicants (especially if securing a supervised placement potentially becomes a pre-requisite to provisional registration).
- 4.8. Amongst many others, the four UK Chief Dental Officers will be key partners in the delivery of this work. We will also need to work closely with the relevant NHS bodies,

as well as organisations with experience and expertise in designing, running and quality assuring dental training, supervision and assessment models – such as dental education providers, postgraduate deaneries and professional bodies and associations.

- 4.9. Patients and the public will also have an essential role in the creation and operation of a provisional registration regime. We will need to engage with patients and the public throughout the policy development process to hear their views, not least because we recognise that there may be confusion or concern around how provisional registration could affect the safety, quality or availability of their care. It will be particularly important to understand patient and public expectations of provisional registrants to inform the design of different aspects of the regime, and to establish how best to help patients understand the implications of being treated by a provisional registrant and the confidence they can take from the supervisory context within which their care is delivered.
- 4.10. Legislative change is therefore only the first step in the process. In addition to the detailed policy development work with stakeholders to design and prepare for a comprehensive system of provisional registration, there will need to be a further statutory consultation on draft rules which will provide the more detailed framework within which provisional registration will operate. Only then will it be possible for the practical arrangements to be put in place by potential providers of supervision and support to provisional registrants.
- 4.11. Careful consideration will also need to be given to the implementation of provisional registration. It may prove sensible for implementation to be on a limited scale or explicitly on a pilot basis. Regardless of that, the overall legislative framework will need to be in place at the outset, even if some aspects of the rules enabled by it iterate over time. For the purpose of this consultation, we have focused on a fully-developed model, as that provides the clearest view of the legislative requirements.

### ***Keeping delivery options open***

- 4.12. Within the overall framework of provisional registration, there is a range of potential delivery models. At this stage, it makes sense to keep options as open as possible, until more detailed design work has been done.
- 4.13. Neither we nor anybody else are yet in a position to describe a fully worked through approach to how provisional registration will work in practice. Not every potential model will prove feasible in practice, but alternatives should stand or fall on their merits, rather than being unintentionally constrained by the structure of the enabling legislation.
- 4.14. Here we set out some of the high level parameters for potential delivery models. A concern to keep options open also lies behind some of our more detailed comments in the later sections of this response.
- 4.15. The consultation envisages that provisional registrants will be able 'to practise in some form' and to 'contribute towards providing improved access to dental care for

patients, as detailed in the dental plan.’ That implies that provisional registrants would be able to work in a general practice environment, with supervision provided by a specific named and approved fully registered dentist working in the same practice.

- 4.16. While that is certainly a possible model, it is not the only one. It is also possible, for example, to envisage provisional registration operating more as a conversion course offered by an education or training provider, with supervision managed at the level of the institution rather than necessarily on an individual basis. Blended approaches may also be appropriate, with more intensive oversight of provisional registrants early on to ensure that their skills are well understood and that patient safety is rigorously protected, reducing as experience is built up and there is greater confidence in the provisional registrant’s skills.
- 4.17. It will similarly be important to consider different approaches to assessment, both for admission to provisional registration at the outset and for the transition to full registration at the end. For the latter, the experience of supervised practice and the potential for work based assessment may provide a useful complement to summative assessments and suggest that the ORE should not be seen as the only or even the primary assessment method for provisional registrants.
- 4.18. This is not the time to make judgements about those issues. It does though point to the need for greater flexibility in some aspects of the legislative framework, which should support options for provisional registration to operate across a spectrum of practice-based and training-based models and allow for variants within those categories. This flexibility is important not only to design an effective system now, but also to ensure that the system can evolve to fit the changing healthcare context as needed.
- 4.19. More specifically, the powers relating to supervision models and assessment in the draft legislation are too limited. There are also other gaps and restrictions in the proposed powers which would preclude us from exploring sensible policy options or force us to adopt disadvantageous positions. Sections 5 to 8 of this response cover further details of our views on the draft order and recommendations for change.

### ***Provisional registration and the wider dental workforce***

- 4.20. The Government’s proposals for provisional registration proposals have been presented in the context of the recovery plan for NHS dentistry in England. The overall aim of the plan is to improve the capacity and effectiveness of NHS dental provision, and in particular to ‘make it easier for overseas dental professionals to work in the NHS.’
- 4.21. We share the Government’s objective of streamlining the processes by which overseas dental professionals join the dental registers, subject to the overriding need to maintain standards and ensure patient safety. The extent to which that translates into increases in the NHS workforce is of course influenced by many factors, of which professional regulation processes are only one.



- 4.22. Provisional registration cannot be wholly self-contained and will have impacts on the wider dental system which will have to be taken into account as more detailed plans are developed. This consultation is about putting in place the foundations for the regulatory framework for provisional legislation. That – together with the more detailed work to follow which will build on those foundations – is necessary, but not sufficient. Delivery capacity is also essential. Unless both suitable physical practice environments and supervisory capacity are available, provisional registration cannot be successful. It is essential that the Government is able to demonstrate how that is going to be achieved before significant setup costs are incurred. We welcome the commitment made by DHSC and NHS England in the recovery plan ‘to ensure that the sector uses this new route once it becomes law.’
- 4.23. There are also implications for other groups of dental professionals. The number of provisionally registered dentists and the range of dental care they will be able to provide to patients will also be constrained by the availability of other dental professionals available to work with them, including dental nurses needed to provide chairside support when dentists are delivering treatment and dental technicians needed to construct dental appliances prescribed by dentists.
- 4.24. Since the availability of places for provisional registrants is likely to be constrained, consideration will need to be given to whether applicants should be required to have supervision arrangements in place before they are able to apply for provisional registration. It is in nobody’s interests that applicants should go through the application and entry assessment process without any realistic prospect of obtaining a supervised placement at the end of it, so it will be important to align capacity at each stage.
- 4.25. Once fully registered, former provisional registrants will have the same status as dentists who have joined the register by any other route and will make their own choices about how and where they wish to practise, and in particular about the balance between NHS and private practice. It is not a function of the professional regulation system to constrain or influence those choices. It is of course open to providers of dental services and others to offer incentives to those they wish to recruit, and those arrangements might reasonably include offers of sponsorship through the provisional registration process, but they are not a matter for the GDC.

### ***Four nations commitment***

- 4.26. Dental professional regulation operates across all four nations of the UK. Provisional registration will have a single regulatory model for the whole of the UK. Within that single model, the health services and other education and service providers of the four nations each operates separately. The planning and development work which will be needed to move from the legislative framework which is the subject of this consultation to more detailed plans for delivery will need to be done in close collaboration with the four nations, and we are strongly committed to taking the work forward on that basis.

## 5. Entry

- 5.1. This part of our response broadly relates to proposed sections 17A(1),(2),(3)(a), (4)(a) and (4)(e) in the draft order.
- 5.2. Under proposed section 17A(1), the GDC may grant provisional registration to a person with an overseas dental degree who cannot yet be fully registered as a dentist as they have not yet demonstrated that they have the requisite knowledge and skill for full registration as a dentist. We therefore envisage a number of scenarios in which provisional registration could provide an effective regulatory framework, including both where a provisional registrant practises under supervision whilst developing the requisite knowledge and skill for full registration and a mechanism for overseas qualified dentists to practise as students of conversion courses who are training in preparation for full registration.
- 5.3. In addition, the provisional registration would provide an ideal mechanism for us to safely operate adaptation periods, as required under EEA-EFTA and Swiss Free Trade Agreements as part of the process for the recognition of professional qualifications. The problems with the current legal position and our proposal for addressing them are set out from para 8.22 onwards.
- 5.4. There are also very strong arguments for taking the opportunity to create a consistent system for short-term registration which also incorporates a modernised approach to temporary registration, for the reasons set out from para 8.29 onwards.
- 5.5. It is imperative that only those who are safe to practise under supervision are allowed to enter provisional registration.
- 5.6. The effect of proposed sections 17A(1) and (4)(a) is that the minimum entry requirement for provisional registration would be an overseas dental diploma, but that the GDC could specify additional requirements as conditions of entry. We support that approach, but there can be no doubt that it will be necessary to set additional requirements. Holding an overseas dental diploma does not in itself provide sufficient assurance that someone is safe to practise under supervision, as the curricula and levels of practical experience gained will vary between degree courses and will not necessarily produce the same learning outcomes as quality assured UK dental education. For the same reason, eligibility to sit the ORE or being on the ORE candidate list will not in themselves be sufficient evidence of suitability for admission to provisional registration.
- 5.7. Since provisional registrants will be able to treat patients, it is essential that there is an assessment of applicants' clinical knowledge and skills, to ensure patient safety. That assessment will need to be designed to take account of the fact that provisional registrants will practise under supervision and will therefore not be at the same level as an assessment leading to full registration.
- 5.8. Despite our agreement with the general approach to entry in the draft order, we have identified several specific issues, as set out below.

### ***Length, maintenance and renewal of provisional registration***

- 5.9. Under proposed section 17A(3)(a), provisional registration must have effect for a fixed period to be specified in rules.
- 5.10. Under proposed section 17A(4)(a), the GDC can specify conditions which a provisional registrant must meet to maintain their registration.
- 5.11. However, in addition to these provisions, we consider that the draft order should contain a power which enables the GDC to set out the process for renewal of provisional registration.
- 5.12. We will need to determine the appropriate cap on the length of time for which provisional registration could last. This will be contingent on a number of factors (e.g., how long is reasonable to support an assessment route to full registration) and may vary depending on the use case. Even having set maximum timeframes, we may still wish to require that provisional registrants renew their provisional registration at certain points within that timeframe, to provide ongoing safety assurances (e.g., as an opportunity for provisional registrants to provide the necessary evidence or declarations to show they have met the conditions for maintenance of provisional registration) or for practical purposes (e.g., if securing a supervised placement becomes a prerequisite to provisional registration, it may be that some dental services can only commit to providing a supervised arrangement for a certain period of time, after which a provisional registrant may need to confirm they still have an appropriate arrangement in order to renew their registration). We appreciate there may also be circumstances in which renewal may not be appropriate – for example, when a provisional registrant is practising on a conversion course of predetermined length.

### ***Number of admissions to the register as a provisional registrant***

- 5.13. Under proposed section 17A(4)(e), once a person's provisional registration has ceased to have effect, they may be provisionally registered for a second time in exceptional circumstances specified by the GDC. That means there is no further possibility of provisional registration after the second provisional registration period has ended.
- 5.14. Whilst we consider it sensible that former provisional registrants should only be able to provisionally register again in exceptional circumstances, it is too restrictive to allow this sort of 're-registration' only once. Dentists may have legitimate reasons for leaving and then rejoining the provisional registration regime multiple times, due to their personal circumstances or other factors beyond their control.
- 5.15. We recommend that the wording in the draft order is changed to enable a person whose provisional registration has ceased to have effect to be provisionally registered in exceptional circumstances, without placing an absolute limit on the GDC's discretion to do so.

## **Other**

- 5.16. There is an inaccuracy in language at proposed section 17A(4)(a), which refers to conditions for being entitled to be registered or remain registered – as opposed to conditions for being entitled to be provisionally registered or remain provisionally registered. We recommend changing the wording for consistency with language in other parts of the draft order, so that it is clear that this provision relates to provisional registration and not full registration.

## **6. Supervised practice**

- 6.1. This part of our response broadly relates to proposed sections 17A(3)(a)-(e) and (4)(a)-(c) in the draft order.
- 6.2. We consider that provisional registrants should practise within a structured framework which allows them to treat patients safely and provides opportunities for them to develop their skills towards meeting the standards for full registration.
- 6.3. We note that there are already schemes in the dental sector which utilise structured supervision arrangements – for example, Foundation or Vocational Training, completion of which is required for dentists to be allocated a performer number to work in the NHS. It will be useful to apply the relevant learnings from such schemes (as well as to take account of the important differences from them), and we may need to consider if or how certain schemes could interact with provisional registration. We will also need to work with sectoral stakeholders to ensure that such schemes and the support which they provide to other groups of dental professionals are not inappropriately disrupted as a result of the supervision required for provisional registrants.
- 6.4. We strongly agree that provisional registrants should have to practise under supervision, that the GDC would have to specify the nature and degree of supervision in rules, and that the GDC would have the option to set additional restrictions on provisional registration. This gives us flexibility to set different forms of supervision for different use cases of provisional registration, and different levels of supervision over the course of a period of provisional registration.
- 6.5. However, the draft order presents significant gaps which relate to the persons or bodies that can be afforded supervisory status, and the necessary safety and quality assurance processes we would expect to see around supervised practice.

### ***Recognition of supervisory status***

- 6.6. The draft order stipulates that a provisional registrant must be supervised by a named fully registered dentist who has met specified criteria to be approved as a supervisor by the GDC. The effect of this is that supervisors must be individually approved by the GDC – a more stringent requirement than any other form of dental training or supervision, which is unduly restrictive and may disincentivise individuals from choosing to become supervisors. The GDC would also need to develop a way to check each individual's continued suitability for the supervisory role.

- 6.7. We agree that this model should be available, but the legislation should also support other approaches and in particular should recognise organisations as providers of supervision. This would allow greater flexibility in implementing supervision arrangements appropriate for particular contexts. This could allow, for example, the recognition of education providers as providers of supervision when they are running conversion courses for provisional registrants, or delegating the approval of supervisors to the four national health services or other providers, where appropriate governance and oversight is in place. It would also allow us to take advantage of existing oversight models – for example, where an organisation holds overarching supervisory responsibility but multiple registrants are involved in the day-to-day supervision of a dentist.
- 6.8. We note that under proposed section 17A(3)(b)(ii) we could set the criteria that individually approved supervisors would need to meet to obtain and maintain their approved status, including how meeting those criteria is demonstrated on an ongoing basis. A corresponding power should also be introduced in relation to providers of supervision, so that we could specify the criteria organisations would need to meet for the same purposes.
- 6.9. Additionally, there should be explicit powers to enable the GDC to remove the approved supervisory status of individual registrants or providers of supervision, to specify the circumstances in which removal of this status would occur, and to set out any processes around removal. There must be adequate safeguards in place to discontinue supervision arrangements if we do not have the necessary safety and/or quality assurances.

### ***Quality assurance of supervision***

- 6.10. Although the draft order allows the GDC to determine the nature and degree of supervision, we are concerned that there is no provision for any form of quality assurance of supervision or assessment. Quality assurance procedures will be vital to ensure patient safety, the experience of provisional registrants, the maintenance of GDC standards, and public confidence in the provisional registration regime.
- 6.11. The draft legislation should be amended so that the GDC has explicit powers to quality assure supervision arrangements, including:
- To set standards for supervision, which we could quality assure against, with a view to removing the approval of supervisory status if standards were not met
  - To require information from individuals or organisations with supervisory status at any point in time, and
  - To appoint and remunerate visitors for monitoring and inspection purposes.

### ***Assessment of provisional registrants***

- 6.12. As drafted, there are no powers to enable the assessment of provisional registrants during the course of their fixed provisional registration period. There should be explicit provision for this, so that consideration can be given to assessment not only

as a mechanism to provide ongoing safety assurances (e.g. assessment could monitor provisional registrants to indicate where they require more support in practice or where they fall well below expected standards and should be removed from the register), but also as a way of gathering information towards an eventual assessment of the requisite knowledge and skill for full registration (e.g. to allow for longitudinal assessment, or a series of summative assessments).

6.13. We understand that the legislative intention is to rely on the existing power in s16A of the Dentists Act 1984 ('the Act') to assess internationally qualified dentists for full registration. That would effectively support a single, final summative assessment, it is too narrowly drawn to allow for the potential range of assessment types and purposes that could be valuable in provisional registration.

6.14. There should also be powers which enable the GDC to appoint persons and organisations – both with and without approved supervisory status – as assessors, and for the GDC to remunerate them for this function. With careful thought given to mitigate any conflicts between the roles of supervisor and assessor, this would allow for a variety of assessment delivery models.

### **Other**

6.15. We note minor drafting errors in ss17A(3)(c) and (d). We assume that the provision at s17A(3)(c) is meant to refer to paragraph (b), rather than (c); and we assume that the provision at s17A(3)(d) is meant to refer to paragraph (b)(ii), rather than (c)(ii).

## **7. Exit**

7.1. This part of our response broadly relates to proposed s17A(4)(d) in the draft order, and existing s16A of the Act.

7.2. There are several ways in which a provisional registrant could exit from provisional registration:

- Under proposed s17A(3)(a), a dentist's provisional registration would cease to have effect at the end of its defined period – meaning the provisional registrant would exit the regime by default at that point, unless another mechanism were engaged to renew the period.
- Proposed s17A(4)(d) allows the GDC to specify circumstances in which provisional registration could cease before the end of the defined period. This could cover, for example, when a provisional registrant voluntarily chooses to leave the register, when a provisional registrant does not meet the conditions to maintain their registration, or when a provisional registrant fails an assessment during the course of their provisional registration.
- A provisional registrant could leave the regime when they are assessed to have met the standards for full registration, and subsequently become fully registered. This is catered for by s16A of the Act, but with significant limitations.

- A provisional registrant could be removed from the register as a result of Fitness to Practise proceedings, as the GDC's existing Fitness to Practise legislation would still apply to provisional registrants.
- As with any registrant, failure to pay a retention fee due to the GDC could lead to removal from the register under s19(2).

7.3. In this section, we discuss the issues around assessment for full registration and the absence of a power to pause provisional registration. The broader issues around Fitness to Practise are discussed from para 8.12 onwards.

### ***Assessment for full registration***

7.4. The drafting, taken together with s16A of the Act, suggests that assessment of a provisional registrant's readiness for full registration would be made by a single summative assessment, such as the ORE or the LDS.

7.5. We consider that this is an inappropriately narrow approach, which preclude other forms of assessment which could serve as alternatives to the ORE. Since provisional registrants will be practising under a structured framework, it will be possible to build longitudinal or multi-point assessment into the supervised practice period, for example through assessments as part of a conversion course or through work based assessment. Those are not approaches covered by the existing s16A power.

7.6. We strongly recommend the addition of specific provisions for the assessment of provisional registrants at any time over the course of their fixed provisional registration period – effectively enabling us to assess whether they meet the requirements for full registration as part of an assessment process, as opposed to a single point assessment.

7.7. This approach would also align more effectively with the approaches to assessment during provisional registration for purposes other than relating to full registration, which are discussed from para 6.12 above.

### ***Pausing provisional registration***

7.8. We recommend that powers to enable the pause of a provisional registration period, and to prescribe the circumstances in which a pause could apply, be included in the order.

7.9. A pause in this context would be administrative, and distinct from provisional registration ceasing to have effect. We envisage that a dentist would not be able to practise during the pause, and that the time passed while provisional registration was paused would not count towards the fixed period of provisional registration.

7.10. Such a pause should not last indefinitely, but having no option to pause is unnecessarily restrictive. There are a range of circumstances where pausing provisional registration could be considered appropriate, such as a supervisor leaving their post, a practice which was hosting a provisional registrant unexpectedly closing

down, concerns around the quality of a supervision provider or removal of their approved status, or a provisional registrant taking parental leave.

## 8. Wider issues

- 8.1. This part of our response covers wider parts of the GDC's regulatory model on which provisional registration will have an impact.

### **CPD**

- 8.2. All GDC registrants must fulfil CPD requirements – as set out in the General Dental Council (Continuing Professional Development) (Dentists and Dental Care Professionals) Rules 2017 ('the CPD Rules') – in order to maintain their registration.
- 8.3. With the order as drafted, the requirements in the CPD Rules would apply to provisional registrants in the same way as full registrants. This is problematic, as although provisional registrants may be required to undertake CPD in future, the existing CPD scheme is highly prescriptive and has not been designed to meet the needs of provisional registrants. For example, the existing scheme calculates the number of CPD hours required based on a five-year cycle, a period considerably longer than we would expect provisional registrants to hold that status.
- 8.4. There would also be a risk of confusion and counter-productive activity if provisional registrants were, in effect, simultaneously subject to two regimes governing their professional development. Since provisional registration inherently involves a process of development, with requirements which are most appropriately set specifically for the scheme, there is no additional value in the standard CPD model applying as well.
- 8.5. That does not mean that CPD is not relevant for provisional registrants. There may well be value in requiring explicit CPD activity and making so doing a condition for continuing provisional registration, as it is for full registrants.
- 8.6. The most straightforward way of achieving that would be to make amendments to the current CPD rules to create appropriate requirements for provisional registrants. The GDC is not able to effect such changes without Privy Council approval and the complex and time consuming process of Parliamentary scrutiny which that entails.
- 8.7. Practically, therefore, any changes to the current legal framework for CPD will need to be made on the face of this order if the risk of substantial delay to the implementation of provisional registration is to be avoided.
- 8.8. It is not possible to specify detailed rule changes at this point, because the detailed work to design the provisional registration scheme has not yet been done.
- 8.9. The most straightforward approach legislatively would be to add s34A of the Act to article 4(2) of the draft order. This would also be consistent with the approach taken in the Dentists, Dental Care Professionals, Nurses, Nursing Associates and Midwives (International Registrations) Order 2023, where sch 1 para 5 makes similar provision.



- 8.10. That option would also have the wider benefit of making it possible to make further changes to the CPD Rules to address other longstanding issues affecting all registrants which run counter to effective professional development and can result in disproportionate penalties being imposed, including erasure from the register. We recognise, of course, that that is ancillary to the creation of a provisional registration system, but since it is also the more attractive option when considered narrowly in relation to provisional registration, those wider benefits should not be overlooked. Any future amendments to the CPD Rules – as with all our rules – would also be governed by the requirement for public consultation before any changes could be introduced.
- 8.11. The less attractive alternative would be to make amendments with the effect of removing provisional registrants from the scope of the CPD rules, but that would need to be accompanied by an explicit power to make separate provision for that group of registrants on the face of the order.

### ***Fitness to practise and administrative removal***

- 8.12. The effect of the current draft order, combined with existing legislation, is that provisional registrants will be subject to fitness to practise (FtP) procedures in exactly the same way and on exactly the same basis as full registrants. It is not self-evident that a system designed to apply to fully independent practitioners will be appropriate to apply to provisional registrants, who are by definition not practising fully independently. The first tier protection in respect of provisional registrants whose performance is below the necessary standard should come from the supervisory arrangements to which they will be subject and ultimately from the power not to allow them to proceed to full registration.
- 8.13. Where there is serious and immediate cause for concern and particularly where it is apparent that the provisional registrant is not on track to reach the standard for full registration, there needs to be an exit route which does not rely on FtP. We consider that the power in s17A(4)(d) would allow for that and would intend to use it in that way when needed. Similarly, we would expect to be able to require closer oversight or restricted practice using the proposed s17A(4)(c) power. On their own, though, those powers neither support the full range of interventions which the FtP process allows (there would be no equivalent of suspension, for example), nor do they provide an effective mechanism for addressing broader issues of public protection or public interest beyond those which can be managed through supervisory arrangements.
- 8.14. The GDC has no discretion not to investigate an FtP concern. So even if an issue of clinical or wider professional performance could sensibly and best be managed within the supervised environment, if a concern were raised, we would need to run both processes in parallel, at least to some extent. The duplication and uncertainty that that would introduce is not in anybody's interest.
- 8.15. One possible solution would be simply to exclude provisional registrants from the FtP system, and rely solely on s17A powers to ensure that standards are maintained and patients kept safe. But that isn't ideal either, not least because there may be

concerns raised for which the supervisory system cannot constitute an adequate safeguard, particularly where the wider public interest is engaged. It would not be sensible to create an entire parallel FtP system for provisional registration, so it does need to be possible for some concerns to be handled within the current FtP arrangements.

8.16. Taken together, that suggests that there are three routes for handling concerns which we need to be confident are adequately provided for, together with a mechanism for ensuring that there is effective routing, including in particular that any one issue is only considered in the single most appropriate route:

- Relatively minor issues which are best managed within the provisional registration regime, through enhanced supervision arrangements, individual restrictions on practice, or other conditions
- More broadly based concerns which demonstrate that the provisional registrant is falling short of our requirements for full registration, which may well be best dealt with through administrative termination of registration (and see para 8.21 below on whether such a decision should be appealable).
- More serious issues and issues which are not appropriately managed through the supervisory process, where the standard FtP model should apply.

## **Fees**

8.17. Under s19(1) of the Act, we would be able to charge fees in relation to application for, and renewal of, provisional registration (on renewal see para 5.9 onwards). Under s16A(2) of the Act, we would be able to charge fees in relation to assessment of the knowledge and skill requirements for full registration, which will be relevant when someone is attempting to transition from provisional to full registration.

8.18. However, there is no provision in the draft order to charge fees in relation to the supervised practice component of provisional registration. The GDC would incur costs

- in assessing whether individual supervisors met and continued to meet standards set under s17A(3)(b)(ii)
- in assessing whether organisations met and continued to meet standards for ensuring effective supervision, as proposed in para 6.7 above
- in operating quality assurance processes in respect of standards of supervision and assessment of provisional registrants, as proposed in para 6.10 above.

8.19. Those are not costs which should fall to be met either by registrants in general or necessarily by attribution to individual provisional registrants. Further work will be required to develop an equitable charging model and, in particular, whether all of those costs should be met by the provisional registrants themselves or whether they should be met by the individual supervisors and institutions to which they relate. An explicit power to charge fees set to recover those costs is essential, which will need to be sufficiently broadly drawn so as not to constrain more detailed development work on charging.

## ***Appeals***

- 8.20. Under the draft order, refusal to register a person for provisional registration is an appealable decision. We agree that applicants should have this right of appeal.
- 8.21. Further, we consider it appropriate that decisions to remove a provisional registrant from the register or to cease the effect of somebody's provisional registration –should also carry a right of appeal. This is fair and proportionate, given the potential impact such decisions may have on someone's future eligibility to register.

## ***Adaptation periods***

- 8.22. The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023 made provision for the implementation in UK law of the elements of the EFTA EEA trade agreement relating to the recognition of professional qualifications and created a specific registration route for dental professionals with qualifications obtained in the states which are parties to the agreement.
- 8.23. Dental professionals who apply under this route may be required to undertake adaptation periods as part of the process for attaining UK registration, but the implementing legislation does not provide a satisfactory means for making that work in practice.
- 8.24. Any applicant subject to an adaptation period could not be a full registrant because they would not at that point have met the requirement at s15(d)(ii) of the Act, but it is inherent in the concept of an adaptation period that they should be able to treat patients. It is a basic principle of professional healthcare regulation that only registered individuals should be able to undertake regulated activities. This is ensured – and the public is protected – by the fact that it is a criminal offence for somebody who is not a dental professional to practise dentistry. Any person undertaking an adaptation period is exempt from that requirement.
- 8.25. The effect of that taken together is that a person undergoing an adaptation period, which is only required to make up for a shortfall in the knowledge and skill requirement for full registration, is legally able to treat patients, but does so without any form of regulatory oversight or any requirement to meet the legal obligations and professional standards to which all registered dental professionals are subject.
- 8.26. Provisional registration provides an ideal opportunity for bringing such people into an appropriate regulatory framework. This is important to properly address public protection risks.
- 8.27. To achieve that s17A(1) should be amended to make explicit that someone who holds a specified state diploma in dentistry and is required to undertake an adaptation period may also be entitled to provisional registration. This is necessary as s15(1)(c)(ii) of the Act does not apply to this group of applicants, who therefore do not fall within the scope of s17A as currently drafted.

8.28. Doing so will address the regulatory gap for dentists who fall into this category. The problem exists in identical form for dental care professionals, but addressing that falls outside the scope of this order.

### ***Temporary registration***

8.29. There is a significant degree of overlap between the proposed approach to provisional registration and the GDC's existing powers in relation to temporary registration. Both are short-term, time-limited opportunities, both depend on supervision to ensure professional standards and patient safety, and in consequence both limit the registrant's practice to defined environments. A temporary registrant can only practise dentistry in an approved post within a hospital or institution for a specified period, having satisfied the GDC that they have the requisite knowledge and skill for the post in question. It is a GDC policy requirement that temporary registrants must practise under supervision, with overall supervisory responsibility falling to a GDC registered consultant.

8.30. The extent of the similarity is such that, in effect, temporary registration can be seen as a special case of provisional registration. The draft legislation proposed in the consultation does everything necessary also to cover temporary registration and indeed would do so much more effectively than the existing legislation governing temporary registration. In theory, a key difference is that temporary registration does not lead to full registration, but in practice the situation is much less clear cut with many temporary registrants also being candidates for the ORE – 42 out of 148 temporary registrants were on the candidate list for the ORE, as at 24 April 2024

8.31. The current temporary registration power is contained in s17 of the Act and has continued unchanged in its essence since 1957. It is seriously deficient by modern standards in two distinct and important ways:

- The wording reflects the structures and approaches of the 1950s making it increasingly challenging to reconcile with modern NHS work structures and service needs, including models of integrated care and the vast majority of dental care being delivered in primary care and community settings.
- The primary power for temporary registration sits in isolation in the Act without any associated rule making powers. Although we currently use procedural guidelines to support temporary registration, that is an unsatisfactory substitute for an approach based on clear and consistent rules.

8.32. If temporary registration legislation is not revoked when provisional registration powers come into force, there is a risk of confusion and disruption in the system caused by two very similar regimes with slightly different requirements running in parallel:

- It will be hard to justify – or explain – why provisional and temporary registrants should be subject to very different regulatory regimes despite the underlying similarity of their situations and what ought to be the same expectations around the safety and standards of the care they provide.

- A number of posts may be suitable for either temporary or provisional registrants, and it would be bizarre to require different things of dentists and supervisors depending on which category of registration was applied for to work in such posts. Operating a single regime would better promote consistent public protection outcomes and make it clearer for patients to understand the registration status of their dentist.
- It would also be simpler and more sensible for dentists and other stakeholders involved in the administration and supervision of posts to engage with and plan their activity around a single regime.
- Keeping the two systems separate will require the GDC to operate two separate sets of administrative processes which will be less efficient to operate, and so is likely to result in higher fees to registrants.

8.33. The existing temporary registration system also creates significant obstacles to making sensible and pragmatic judgements about non-standard circumstances. We have recently had to refuse requests made by the Government to allow military dentists from other countries who have been deployed to the UK on a temporary basis to treat armed forces personnel, not because of any concern about standards or patient safety, but solely because the request could not readily be brought within the scope of s17 of the Act.

8.34. If significant additional legislative drafting were required to give effect to the safe modernisation of temporary registration, it would be understandable – if a missed opportunity – to focus solely on the new provisions for temporary registration. But nothing could be further from the case. The powers contained in the draft order already potentially deliver what would be needed to support temporary registration much more effectively than is possible under our current legislation. All that would be required in the draft order is the revocation of s17 together with some minor consequential and savings provisions. As such, doing so would be well within the spirit of the consultation proposals.

8.35. For all those reasons, we very strongly disagree with the implication in the consultation that temporary registration should continue in its current form without regard to the introduction of provisional registration. The opportunity to create a consistent, effective and modern regime for the regulation of all dental practice before full registration is too important a one to miss.

## 9. Cost, benefit and equality considerations

***Do you think there are any costs or benefits to business from the legislation as currently drafted?***

9.1. Provisional registration will lead to significant costs to the GDC. There are upfront costs associated with developing and setting up the regulatory regime; and, on implementation, there will be costs associated with the continuing regulation of provisional registrants and their supervisors.

- 9.2. These costs will ultimately be met by registrants and by the providers of dental services, since all of the GDC's costs fall to be recovered from fees.
- 9.3. There will in addition be significant costs attached to the delivery of provisional registration which will fall directly to other organisations. These include the costs of providing suitable practice environments, the cost of providing supervision, including recruitment and training as well remuneration, and the costs of supporting or remunerating the provisional registrants themselves.
- 9.4. Resources and funding will need to be considered and allowed for by delivery organisations, to ensure that provisional registration is viable and sustainable in the sector.

***Do you think the legislation as currently drafted could impact (positively or negatively) on any persons, including those with protected characteristics covered by the public sector equality duty as set out in the Equality Act 2010 or by section 75 of the Northern Ireland Act 1998?***

- 9.5. We are committed to integrating equality, diversity and inclusion considerations into all of our policy work, including development of the provisional registration scheme. We will be aiming to create a fair system that does not inappropriately discriminate against any individuals or groups, including those with protected characteristics – for example, ensuring that entry requirements are set which do not inappropriately discriminate against applicants from particular countries if they meet our standards.
- 9.6. That will be greatly facilitated by having the right powers and the right level of flexibility in the draft order – in line with our comments in previous sections – to give us scope to consider a broad range of policy options. For instance, we have highlighted from para 5.13 the need for more flexibility in relation to the number of times a dentist can re-enter provisional registration, and from para 7.8 the need for a power to pause provisional registration. These may be significant to ensure an equitable approach for dentists with disabilities or longer-term health issues, dentists who are pregnant or on maternity or paternity leave, and dentists with caring responsibilities.
- 9.7. Lastly, we recognise the opportunity for provisional registration to safely advance equality of registration opportunity for refugee dentists and other groups who may be disproportionately affected by barriers to accessing and passing the ORE. For example, provisional registration potentially provides a way for overseas qualified dentists to earn income (which may help to address financial barriers) and to access supervisory support as they work towards full registration (which may help to address barriers associated with training needs).