

# Consultation on a Proposal to use a Legislative Reform Order to make changes to the Veterinary Surgeons Act 1966

January 2012

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This document/publication is also available on our website at:

<http://www.defra.gov.uk/consult/2012/01/16/veterinary-surgeons-1201/>

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## Summary of Proposals

### A consultation paper issued by the Department of Environment, Food and Rural Affairs on behalf of the Minister of State for Agriculture and Food

#### Scope of the consultation

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| <p><b>Topic of this consultation</b></p> | <p>This consultation sets out proposals to amend the provisions in Veterinary Surgeons Act 1966 that relate to the constitution (membership and size) of the Preliminary Investigation Committee and the Disciplinary Committee of the Royal College of Veterinary Surgeons (RCVS).</p> <p>The Royal College of Veterinary Surgeons (RCVS) governs the veterinary profession through its Council and system of committees. This includes the two statutory committees that deal with disciplinary proceedings – the Preliminary Investigation Committee (PIC) and Disciplinary Committee (DC). RCVS Council both sets the standards for the profession and, through these statutory committees, deals with any possible breaches of those standards, thus there is an overlap of functions. This system is now considered to be inflexible, insufficiently impartial and out of date when compared to the ‘best practice’ seen in other comparable professions. The proposed amendment to the Veterinary Surgeons Act 1966 will separate this overlap of functions thus reflecting better the role of RCVS in balancing public and professional interests. In addition, the current legislation restricts the size of the committees making it difficult for them to manage the caseload, a situation which is unsustainable for the future.</p> | <p>Chapter 4</p>  |
| <p><b>Scope of this consultation</b></p> | <p>The purpose of the consultation is to set out the full proposals and seek your views on amendments to the Veterinary Surgeons Act 1966 that would alter the membership and size of the Disciplinary Committee and Preliminary Investigation Committee. The outcome of the consultation will assist in formulating the final proposal that we will then put before Parliament.</p> <p>We intend that the proposed changes to legislation are made through a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006.</p> <p>In this public consultation, in addition to the policy proposals we are also seeking views on:</p> <ul style="list-style-type: none"> <li>- if you believe that a Legislative Reform Order is an</li> </ul>  | <p>Paragraphs 4.4 (i) to (vi), 4.5, 4.9 to 4.10</p> <p>Paragraph 1.10</p> <p>Paragraphs</p> |

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|                           |  |   |
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|                           | <p>appropriate mechanism for making these changes</p> <p>- if you agree with our proposed Parliamentary Scrutiny procedure</p> <p>Subject to the outcome of the consultation, we propose that the draft Order is laid before Parliament in the summer of 2012 and that the changes are implemented by RCVS from July 2013.</p> | <p>4.3, 4.5, 4.6, 4.8, 4.8 and 6.1</p> <p>Paragraph 5.3</p> |
| <b>Geographical scope</b> | RCVS is the regulator for the veterinary profession across the United Kingdom, hence the geographical extent is UK   | Paragraph 4.22  |
| <b>Impact Assessment</b>  | An Impact Assessment has been prepared for these proposals and accompanies this consultation document  |   |

**Basic information**

|   |  |                                      |
|---|--|--------------------------------------|
| <b>To</b>   | This consultation is open to everyone, but will be of particular interest to the veterinary profession and animal owners.  |                                      |
| <b>Body/bodies responsible for the consultation</b> | This consultation is being carried out by team responsible for the Veterinary Surgeons Act in the Department of Environment, Food and Rural Affairs  |                                      |
| <b>Duration</b>                                     | <p>Consultation starts: 16 January 2012</p> <p>Consultation closes: 10 April 2012</p>  |                                      |
| <b>Enquiries</b>                                    | <p>During the consultation, if you have any enquiries, or wish to receive hard copies of the consultation documents, please contact:</p> <p>Aroon Korgaonkar<br/>           Veterinary Surgeons Act Team<br/>           Department for Environment, Food and Rural Affairs<br/>           Area 5D, Nobel House<br/>           17 Smith Square<br/>           London<br/>           SW1P 3JR</p> <p>Telephone: 020 7238 5592</p> <p>Email: <a href="mailto:vsa.consultation@defra.gsi.gov.uk">vsa.consultation@defra.gsi.gov.uk</a></p> |                                      |
| <b>How to respond</b>                               | <p>Any comments on the proposals in this consultation document should be sent by 10 April 2012 to:</p> <p><a href="mailto:vsa.consultation@defra.gsi.gov.uk">vsa.consultation@defra.gsi.gov.uk</a>.</p> <p>You may alternatively send your comments by post to:</p> <p>Aroon Korgaonkar<br/>           Veterinary Surgeons Act Team</p>  | <p>Paragraph 2.16</p> <p>Annex B</p> |

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|  | <p>Department for Environment, Food and Rural Affairs<br/>         Area 5D, Nobel House<br/>         17 Smith Square<br/>         London<br/>         SW1P 3JR</p>   |                |
| <p><b>After the consultation</b></p>                               | <p>When this consultation ends, we intend to put a copy of the responses in the Defra library at Ergon House, London. This is so that the public can see them. Also, members of the public may ask for a copy of responses under freedom of information legislation.</p> <p>If you do not want your response - including your name, contact details and any other personal information – to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that won't count as a confidentiality request. Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, we cannot promise that we will always be able to keep those details confidential.</p> <p>We will also summarise the responses and place this summary on our website at <a href="http://www.defra.gov.uk/consult">www.defra.gov.uk/consult</a>. This summary will include a list of names of organisations that responded but individual contact details.</p> <p>To see consultation responses and summaries, please contact the library at:</p> <p>Defra<br/>         Information Resource Centre<br/>         Lower Ground Floor<br/>         Ergon House<br/>         17 Smith Square<br/>         London<br/>         SW1P 3JR</p> <p>Telephone: 020-7238-6575<br/>         Email: <a href="mailto:defra.library@defra.gsi.gov.uk">defra.library@defra.gsi.gov.uk</a></p> <p>Please give the library 24 hours' notice. There is a charge for photocopying and postage</p> |                |
| <p><b>Compliance with the Code of Practice on consultation</b></p> | <p>This consultation is being conducted in accordance with the requirements of the Legislative and Regulatory Reform Act 2006 and the terms of the Government's Code of Practice on Written Consultations.</p>   | <p>Annex D</p> |

## Chapter 1: Introduction

### Purpose of the consultation

1.1 This consultation paper sets out in detail the Government's proposals for reforming the legislation governing the regulation of the veterinary profession; specifically those parts which deal with constitution of the committees that deal with disciplinary proceedings. These changes are limited to Schedule 2, Part I of the Veterinary Surgeons Act 1966.

### Why changes are needed

1.2 The Royal College of Veterinary Surgeons (RCVS or the College) governs the veterinary profession through its Council and system of committees, including two statutory committees that deal with disciplinary proceedings. These are the Disciplinary Committee (DC) and the Preliminary Investigation Committee (PIC). Under current legislation Council both sets the standards for the profession and deals with possible breaches of those standards, thus there is a significant overlap in functions. This system is inflexible and out of date when compared to the 'best practice' in other professions as it is deemed that there is insufficient independence and impartiality when considering disciplinary cases. There is a certain amount of public pressure for reform. RCVS needs to separate these functions of setting and enforcing standards, thus reflecting better its role in balancing public and professional interests. This will serve to bring regulation of the veterinary profession into line with others (such as doctors, through the General Medical Council and dentists through the General Dental Council). This would also reduce the potential for challenge on human rights grounds to a decision made by RCVS disciplinary committees.

1.3 In addition the College reports that RCVS Council members who are elected to the Disciplinary Committee are now overstretched. The current legislation restricts the size of the committees making it difficult to manage the caseload; the cases they are required to consider are also becoming increasingly complex and time-consuming. Reliance on this resource to devote sufficient time to considering and making judgments on important disciplinary matters is unsustainable for the future due to the current statutory limit on the number of DC members.

1.4 The Government and RCVS have discussed the possible options available and now propose to make changes to the provisions in the Veterinary Surgeons Act 1966 relating to the constitution of the Disciplinary Committee and Preliminary Investigation Committee in terms of eligibility for membership and size of the committees.

### Who the proposals will affect and how

1.5 **Members of the public and animal owners who have brought complaints to RCVS:** complainants will receive additional reassurance that consideration of a case will be by an impartial and independent group, maintaining or increasing public confidence in the complaints system and in RCVS as a regulator more generally. Seeking to introduce lay people (non-veterinarians) onto the committees explicitly in the statute should also mitigate any perceptions of bias within the profession. Having a larger pool of people to call upon to hear individual cases means that complaints can be dealt with more quickly .

1.6 **The day-to-day working of the College:** because it is proposed that members of the Preliminary Investigation and Disciplinary Committees will no longer be elected from within Council, RCVS will have to manage the process of appointments, both initially and on an on-going basis. It will also need to arrange appropriate training (although this is something that takes place under the current system) and manage the performance of the committee members through a proposed appraisal system.

1.7 **Veterinary surgeons who find themselves subject to a complaint:** the proposals being put forward should seek to reassure those who find themselves subject to a complaint that their cases will be considered by persons other than those who set the rules against which they are to be judged ensuring full separation of powers. This is in accordance with current 'best practice' followed by comparable professions. Again, the increased size of the Disciplinary Committee means that complaints can be dealt with more quickly, thereby reducing any stress caused by time delays.

1.8 **Veterinary practitioners** (persons whose names are entered in the Supplementary Register under section 8 of the Veterinary Surgeons Act 1966): the proposals seek to remove specific provisions for this group of individuals (which are explained in 3.10), making them subject to the same arrangements as veterinary surgeons. Veterinary practitioners are eligible to sit on both disciplinary committees. In practice, this group consists of a small number of retired veterinary practitioners, currently eight.

1.9 **RCVS Council members:** this group of people will no longer be eligible to be members of the Preliminary Investigation Committee or the Disciplinary Committee, as the current statute requires.

## How these proposals will be taken forward

1.10 We propose to introduce the reform by means of a Legislative Reform Order (LRO) under sections 1 and 2 of the Legislative and Regulatory Reform Act 2006 (LRRRA). This consultation is being conducted in accordance with the provisions of section 13 of the LRRRA. Views are invited on all aspects of the consultation paper, and a number of specific questions are set out in Chapters 4, 5 and 6 and in the Response Form at Annex B.

## The call for wider reform

1.11 We acknowledge that there is some more general public dissatisfaction with the way in which complaints against veterinary surgeons are handled, which goes beyond the composition of the statutory committees. Government believes that self-regulation by the veterinary profession remains the best solution. We are aware of 'extra statutory' initiatives taken by RCVS to try and meet current expectations, such as introduction of a health protocol and a voluntary system of regulation for veterinary nurses but acknowledge that the existing statutory framework needs to be strengthened. In a separate exercise, the Royal College of Veterinary Surgeons has been invited to prepare proposals, for Government consideration, recommending changes to the Veterinary Surgeons Act 1966, to include provisions for other providers of veterinary services such as nurses and technicians. This process is likely to take several years to complete. However, if you do have wider concerns, beyond the scope of this present consultation, that you wish to raise separately we shall be pleased to receive them at the address detailed in Annex B to this document.

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1.12 The scope of changes that can be introduced by a Legislative Reform Order is limited by the terms of the Legislative and Regulatory Reform Act 2006. Although wider reform of the regulation of the veterinary profession is being considered, as explained in the paragraph above, the reforms proposed under the LRO are those required most urgently and this is the most straightforward mechanism to use to effect those changes.

## Chapter 2: Legislative Reform Order-making Powers

### What can be delivered by a Legislative Reform Order?

#### Section 1

2.1 Under section 1 of the LRRRA a Minister can make a LRO for the purpose of 'removing or reducing any burden, or overall burdens, resulting directly or indirectly for any person from any legislation'.

2.2 Section 1(3) of the LRRRA defines a 'burden' as:

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

#### Section 2

2.3 Under section 2 of the LRRRA a Minister can make a LRO for the purpose of securing that regulatory activities are exercised in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed.

2.4 'Regulatory function' is defined in section 32 as:

- a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or
- a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.

#### Section 20 Orders

2.5 Section 20 of the LRRRA enables a Minister to exercise the order-making powers under sections 1 and 2 together with the power to make an order under section 2(2) of the European Communities Act 1972 in a single instrument. This enables a single order to implement Community law under section 2(2) of the 1972 Act and, for example, to remove or reduce burdens resulting from pre-existing statutory provisions.

#### Preconditions

2.6 Each proposal for a LRO must satisfy the preconditions set out in section 3 of the LRRRA. The questions in the rest of this document are designed to elicit the information that the Minister will need in order to satisfy the Parliamentary Scrutiny Committees that, among other things, the proposal satisfies these preconditions. For this reason, we would particularly welcome your

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views on whether and how each aspect of the proposed changes in this consultation document meets the following preconditions:

- (i) **Non-Legislative Solutions** – A LRO may not be made if there are non-legislative solutions which will satisfactorily remedy the difficulty which the LRO is intended to address. An example of a non-legislative solution might be issuing guidance about a particular legislative regime.
- (ii) **Proportionality** – The effect of a provision made by a LRO must be proportionate to its policy objective. A policy objective might be achieved in a number of different ways, one of which may be more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. Before making a LRO the Minister must consider that this is not the case and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.
- (iii) **Fair Balance** – Before making a LRO, the Minister must be of the opinion that a fair balance is being struck between the public interest and the interests of any person adversely affected by the LRO. It is possible to make a LRO which will have an adverse effect on the interests of one or more persons only if the Minister is satisfied that there will be beneficial effects which are in the public interest.
- (iv) **Necessary protection** - A Minister may not make a LRO if he considers that the proposals would remove any necessary protection. The notion of necessary protection can extend to economic protection, health and safety protection, and the protection of civil liberties, the environment and national heritage.
- (v) **Rights and freedoms** - A LRO cannot be made unless the Minister is satisfied that it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. This condition recognises that there are certain rights that it would not be fair to take away from people using a LRO.
- (vi) **Constitutional Significance**– A Minister may not make a LRO if he considers that the provision made by the LRO is of constitutional significance.

2.7 It should be noted that even where the preconditions of section 3 of the LRA are met, a LRO cannot:

- Deliver 'highly controversial proposals';
- Remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;
- Confer or transfer any function of legislating on anyone other than a Minister; persons or bodies that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
- Impose, abolish or vary taxation;
- Create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- Provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;

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- Amend or repeal any provision of Part 1 of the LRRRA;
- Amend or repeal any provision of the Human Rights Act 1998;
- Remove burdens arising solely from common law.

## Devolution

2.8 The LRRRA imposes certain restriction regarding LROs and the devolution agreements:

- **Scotland** – A Minister cannot make a LRO under Part 1 of the LRRRA which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
- **Northern Ireland** – A Minister cannot make a LRO under Part 1 of the LRRRA that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
- **Wales** – The agreement of the Welsh Ministers is required for any provision in a LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in a LRO which is within the legislative competence of the Assembly.

## Consultation

2.9 The LRRRA requires Departments to consult widely on all LRO proposals. The list of consultees, including the devolved administrations, to which this document has been sent, is at Annex A. It is also available on the internet at:

<http://www.defra.gov.uk/consult/2012/01/16/veterinary-surgeons-1201/>

Comments are invited from all interested parties, and not just from those to whom the document has been sent. A response form is at Annex B.

2.10 A note explaining the Parliamentary process for LROs to be made under the LRRRA can be found at Annex C. This will help consultees understand when and to whom they are able to put their views should they wish to do so.

2.11 This consultation document follows the format recommended by the BRE for such proposals. The criteria applicable to all UK public consultations under the BRE Code of Practice on Consultation are set out in Annex D.

## Disclosure

2.12 Normal practice will be for details of representations received in response to this consultation document to be disclosed, and for respondents to be identified. While the LRRRA provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LRO. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances.

2.13 You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.
- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

2.14 Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form of Annex B.

## **Confidentiality and Freedom of Information**

2.15 It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.

## **Responding to the consultation document**

2.16 Any comments on the proposals in this consultation document should be sent by 10 April 2012 to: [vsa.consultation@defra.gsi.gov.uk](mailto:vsa.consultation@defra.gsi.gov.uk).

You may alternatively send your comments, or any requests for further copies of this document to:

Aroon Korgaonkar  
Veterinary Surgeons Act Team  
Department for Environment, Food and Rural Affairs  
Area 5D, Nobel House  
17 Smith Square  
London  
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## **Chapter 3: Background to the policy and legislation at issue**

### **Background**

#### **Royal College of Veterinary Surgeons and the Veterinary Surgeons Act 1966**

3.1 The Royal College of Veterinary Surgeons (RCVS) was established by Royal Charter in 1844 and is the governing body of the veterinary profession. The Royal Charter established the veterinary profession distinguished by the title "veterinary surgeon". The first Veterinary Surgeons Act was put on the statute book in 1881. It confirmed the RCVS Charters, established the register and imposed certain restrictions on unqualified people. Today, the statutory duties of RCVS are laid out in the Veterinary Surgeons Act 1966 (VSA66), the key statute regulating the veterinary profession. Among other things, the Act specifies the requirements in order for a veterinary surgeon to practise to safeguard the interests of the public and animals.

3.2 Only those veterinary surgeons who are entered on the register held by RCVS, after having satisfied certain qualification requirements, are allowed to practise veterinary surgery in the United Kingdom or use the title of veterinary surgeon. RCVS also holds a supplementary register, a legacy from older legislation (Veterinary Surgeons Act 1948). The 1948 Act for the first time restricted the practice of veterinary surgery to members of RCVS, but with some exceptions. One of these was for persons of good personal character who during at least seven out of the last ten years had earned their living by diagnosing diseases of animals and giving medical or surgical treatment to animals. These individuals are known by the title of "veterinary practitioner". As of the end of September 2011<sup>1</sup> there were eight remaining registered veterinary practitioners, who were all declared as non-practising.

3.3 Both the statutory and Charter duties of RCVS are governed by a Council of 42 members (since September 2011 when there was the addition of 2 members appointed by the newly recognised veterinary school at Nottingham University; prior to that there was a Council of 40). Council is supported by a system of Committees, including those that deal with disciplinary proceedings: the Preliminary Investigation Committee (PIC) and the Disciplinary Committee (DC). The functions of these committees are to investigate (PIC), consider and determine (DC) disciplinary cases brought to their attention. A disciplinary case is one which could result in a suspension or removal from the register of the veterinary surgeon about whom the complaint is made. If the DC finds that any veterinary surgeon is guilty of "disgraceful conduct in any professional respect"<sup>2</sup> then it may direct that this veterinary surgeon's name should be removed or suspended from the register by the registrar of the College. It may also do so if a veterinary surgeon has been convicted of a criminal offence which renders them unfit to practise. Removal of the veterinary surgeon's name from the register means that they will be unable to practise veterinary surgery.

### **Disciplinary process**

3.4 The Veterinary Surgeons Act 1966 lays down the procedures that these Committees must follow in the case of a member of the College being accused of disgraceful conduct in any

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<sup>1</sup> The annual Register data was taken 27 September 2011

<sup>2</sup> This is the term used in the Veterinary Surgeons Act 1966 for the term commonly described as professional misconduct

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professional respect. These procedures are necessary to protect the interests of animals and animal owners from any professional misconduct by members of the veterinary profession, maintain the reputation of the profession and protect the wider public interest.

3.5 Once a complaint has been received by the College it is passed to the Professional Conduct Department and goes through initial case examination; these are the first two stages of the complaints process of RCVS. If there is an arguable case the Preliminary Investigation Committee will consider it in private, following written policies that are publically available. If the PIC decides that there is a case to answer – that there is a realistic prospect that the veterinary surgeon has behaved in such a way that amounts to serious professional misconduct and that such action will be in the public interest – it will refer the case to the Disciplinary Committee for a hearing. Historically these cases have included, inadequate professional care, failure to provide emergency cover and the misuse of veterinary medicinal products. The DC also has jurisdiction to consider whether a criminal conviction renders a veterinary surgeon unfit to practise and whether a name has been fraudulently entered in the register.

3.6 As previously mentioned, if the DC determines that there has been disgraceful conduct in any professional respect, or the veterinary surgeon is unfit to practise, then it decides on the appropriate level of sanction. This may be to direct the suspension of the respondent veterinary surgeon's name from the register for a specific period (usually not exceeding two years) or may be to direct the removal of that veterinary surgeon's name from the register. In the latter case the veterinary surgeon must wait at least ten months before applying for his/ her name to be restored to the register. If a veterinary surgeon has his/her name removed from the register it means that he/she will be unable to practise veterinary surgery. As such, the decision is a serious one with the livelihood of an individual at stake. The Veterinary Surgeons Act 1966 ensures that the DC has rules of procedure<sup>3</sup> that are of a judicial nature thus charges must be proved to the highest standard of proof so that the DC is 'sure'. DC Procedure Guidance was re-issued in January 2010 and is used as an aid to decision making at disciplinary hearings. The guidance is read in conjunction with the 'Disciplinary Committee Manual' also issued in January 2010. Any veterinary surgeon who has been before the DC and who has been told that his/her name is to be removed or suspended from the register has a right of appeal<sup>4</sup> to the Judicial Committee of the Privy Council, now part of the Supreme Court. The appeal is a full re-hearing of the case, but usually on the basis of the evidence heard by the DC. In the case of an appeal the DC direction does not take effect unless and until upheld by the Privy Council.

3.7 The DC and the PIC report to Council but only on the basis of providing information. Council does not and cannot alter decisions made by these statutory committees.

3.8 In terms of numbers, RCVS receive about 700 complaints a year, about 80% of which are screened out at the initial case examination stages. The remainder are referred to PIC with about a dozen cases each year referred to DC

### Current constitution of the committees

3.9 In addition to the procedures, the Veterinary Surgeons Act 1966 also prescribes the constitution of these two statutory committees; the members of PIC and DC must be members of Council, elected from among themselves. In addition, the PIC membership must include the

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<sup>3</sup> Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004

<sup>4</sup> Section 17 Veterinary Surgeons Act 1966

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President and two Vice-Presidents of the College (who again have been elected by Council from their own membership). In 1999 RCVS Council voted to allow lay people (ie people not eligible, nor ever having been eligible, to be registered as a veterinary surgeon) to sit as observers with its PIC. The lay observers are independent of RCVS and although not voting members of the committee, they take part in discussions and comment on the procedure and the merit of the complaints. The current statute does allow for lay members of both PIC and DC, as they can be drawn from the Privy Council and university appointees to Council. There is nothing in the statute insisting that the committees must have lay membership. In practice RCVS appoints lay Council members onto DC, as there the need is greater.

3.10 Special provision is made for the constitution of the DC in the case of proceedings relating to veterinary practitioners (persons whose names are entered in the Supplementary Register under section 8 of the Veterinary Surgeons Act 1966). Currently if a disciplinary case relating to a veterinary practitioner were to come before DC an additional four persons from the supplementary register, appointed by Ministers, would need to be added to the committee.

3.11 The Act also specifies: the detail of timings of elections to the committees; appointment of the chairmen; the quorum for individual meetings of the PIC, the DC in relation to veterinary surgeons and the DC in relation to veterinary practitioners; provision to set a term of office for members of the committees, and; a provision ensuring that no person can sit on a DC hearing if he/she has previously been a member of PIC for the same case.

## The need for reform

### Eligibility for membership of the committees

3.12 The statutory framework for the investigation of veterinary conduct is now over 40 years old and requires amendment; although functional, it needs to take account of current expectations. Best practice requires separation of responsibilities between those who set the standards (RCVS Council) and those who investigate and adjudicate on possible breaches of those standards (Preliminary Investigation Committee and Disciplinary Committee – statutory committees constituted from members of Council). Precedents exist in the legislation specifying the disciplinary machinery of the main human health regulators (General Medical Council; General Dental Council; Nursing and Midwifery Council, and; Health Professions Council).

3.13 The report "Veterinary Surgeons Act 1966" published by the Environment, Food and Rural Affairs Committee of the House of Commons on 14 May 2008 included a recommendation that there was a pressing need for the disciplinary process for veterinary surgeons to be updated. There is also public pressure to reform the College's disciplinary machinery. Between 2006 and 2011, over 80 letters were written to the Department by members of the public about the way in which the complaints against veterinary surgeons were handled by RCVS. In addition, to have a robust system which complies with article 6 to Schedule 1 of the Human Rights Act 1998 (HRA98) on the right to a fair trial, there must be independence and impartiality shown in disciplinary proceedings. Without such a system there is a real risk that an appeal against a decision made by the DC could be lodged with the Privy Council on the basis of a breach of the Human Rights Act 1998. It is also possible that a legal challenge could be made against a decision made by the PIC. Although there is no specific provision in the Veterinary Surgeons Act 1966, this would not inhibit a judicial review or challenge under the HRA98.

3.14 In the case of *Preiss v General Dental Council* (2001) 1 WLR 1926 the dual role of the President as a preliminary screener and also the chairman of the Professional Conduct Committee was considered in the context of a breach of article 6 of Schedule 1 to the Human Rights Act 1998. The appellant appealed against a decision to suspend him from the Dentist's Register on the basis that he had been denied a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law as guaranteed by article 6. It was held that the dual role of the President gave an appearance and a real danger that the Professional Conduct Committee lacked the requisite independence and impartiality (although the appeal was allowed on other grounds). Similar arguments about the independence of members of DC have been raised in a recent case before the Judicial Committee of the Privy Council (*Holmes v RCVS*); judgment was given in December and the Privy Council supported statutory reform so as to enable members of the statutory committees to be chosen from outside RCVS Council is currently awaited.

3.15 There is also a need to prescribe in statute the involvement of lay people on both the PIC and the DC. This is to address any criticism that the profession "looks after its own", thus maintaining public confidence in RCVS. RCVS also feels that there is a need to ensure that the 'rules' of serving on the statutory committees are tightened and seeks to limit the term of office and the number of terms which can be served by each committee member. It also proposes to introduce an appraisal system to accompany the new appointments process. This is in line with the Code of Practice for public appointments, although RCVS is not obligated to follow this.

3.16 Reforming the eligibility for membership of both of the statutory committees that deal with disciplinary cases would be consistent with the order-making powers under Section 2 of the Legislative and Regulatory Reform Act 2006. This is because a system of recruiting members from outside RCVS Council and, in part, outside the profession enables regulatory activities to be exercised in a way that is transparent, accountable, proportionate and consistent.

### **Prescriptive size of the committees**

3.17 As mentioned in paragraph 3.8, about a dozen cases are referred annually by the PIC to the DC and RCVS is now finding that under the present constitution the DC does not have a sufficient number of members to deal with the current workload, even sitting in quorate panels drawn from the full committee membership. Although the number of cases coming to the DC is fairly static, the cases are becoming more complex, meaning that each case is taking longer to hear. The number of sitting days has increased from 22 in 2009, to 25 in 2010, to 47 in 2011. In addition a number of days which have been scheduled for hearings are wasted at short notice as a result of applications for adjournment, made usually by the respondent veterinary surgeon. Waiting time from referral from PIC to DC is beginning to increase. From the date of the complaint to DC hearing, the times have been 11 months in 2009, and 14 months in 2010 and 2011<sup>5</sup>. In view of this, the current system is under strain as RCVS Council members struggle to find time for the increasing numbers of DC sitting days; the current level of case consideration has only been achieved largely through goodwill and would be unsustainable into the future. Continuing with this arrangement could be detrimental to the effectiveness of RCVS in discharging its disciplinary function.

3.18 In addition RCVS advises that the current constitutional arrangements for their statutory committees are unnecessarily restrictive and that the disciplinary process could be improved by the introduction of more flexible arrangements. At present there is a limited number of people

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<sup>5</sup> Data is taken from the RCVS Annual Reports.

## Department for Environment, Food and Rural Affairs

elected to sit on the committees and these are drawn from RCVS Council, which in turn is also a finite pool of people. Therefore, it would be beneficial to constitute the committees from outside Council, as proposed above, and also to increase the size of the committees in order to overcome difficulties sometimes encountered when assembling a panel to consider a particular case. In addition, the Government needs to provide for flexibility should it be needed in the future, without the need for further legislative amendment.

3.19 In introducing more flexible arrangements we would intend to use the order-making powers under Section 1 of LRA - remove or reduce burdens – specifically the removal of an obstacle to efficiency.

## Chapter 4: The proposals

4.1 Specific provisions in the Veterinary Surgeons Act 1966 provide for committees that can consider disciplinary proceedings (Section 15). Schedule 2 Part I lays down the constitution of these committees, while Schedule 2 Part II deals with the procedure of the Disciplinary Committee.

4.2 Chapter 3 discussed the need for reform in terms of changes to the constitution (membership and size) of both the PIC and the DC of the Royal College of Veterinary Surgeons. The process by which the committees investigate and consider cases will not change. The means of reforming the membership and size of the committees is through amendment of the relevant parts of the Veterinary Surgeons Act 1966. Some of the changes will be prescribed in the amended statute; others will enable RCVS to implement these changes.

### The proposals

#### **Proposal 1: to change the membership of the Disciplinary Committee and Preliminary Investigation Committee**

4.3 Reforming the eligibility for membership of both of the statutory committees that deal with disciplinary cases would be consistent with the order-making powers under Section 2 of the Legislative and Regulatory Reform Act 2006 ie ensuring that regulatory functions are exercised so as to comply with the Better Regulation Commission's five principles of good regulation (transparent, accountable, proportionate, consistent and targeted only at cases where action is needed). A proposed new membership of the committees from outside RCVS Council and, in part, outside the profession meets these principles.

4.4 There are a number of individual changes proposed:

- (i) Membership, and chairmanship, of both the DC and PIC will no longer be drawn from, and elected by, Council. Members of Council will be ineligible to serve on either committee. This ensures there is the desired best practice separation of powers between those setting standards and those who adjudicate on those standards, helping to maintain confidence in the system. This should support the principles of transparency and accountability.
- (ii) The new committee members will be formally appointed by Council. It is intended that the appointments will follow an open, transparent and independent recruitment process. This process will not be set out in primary legislation and will instead be put in place by RCVS and referred to in its internal documentation. It is intended that those appointed will have been selected against an advertised job specification and thus should ensure that those selected to serve on the committees will have the necessary skills and experience to discharge the functions required of them. Again, although not explicitly in the statute, it is intended that committee members will be appraised annually. This is given legislative backing in a flexible provision that allows Council to specify conditions of office. This proposal should support the principles of transparency, accountability and consistency. It can be seen from the accompanying Impact Assessment that the greatest cost for RCVS will be incurred on recruitment (both initial and ongoing); these costs and the effort made with the recruitment, are considered proportionate to the benefits sought.

**We ask if you support this proposal to change the membership of the RCVS' disciplinary committees from Council members to non-Council?**

- (iii) Both the DC and PIC will be comprised of registered veterinary surgeons and lay persons, with a minimum proportion of one-third lay persons required to serve on each committee. For both the committees the quorum for any single meeting must include one veterinary surgeon and one lay person. RCVS does strive for a balance of veterinary surgeons and lay people, stating it in their internal policies for DC and the appointment of lay observers for PIC. However, although the current Act does allow for lay members of DC there is no provision that insists upon it. The amendment to the Act seeks to remedy that, mitigating any perceptions of bias. This should satisfy both public confidence and the confidence of those who have a complaint made against them. This should support the principles of transparency, accountability and consistency.

**We ask if you support this proposal to ensure that the statutory committees have a mix of both lay and veterinary membership?**

- (iv) The term of office that committee members can hold will be set by RCVS; it is envisaged that the normal term will be 4 years. In order to ensure that there is an on-going cycle of retirement and replacement within the committees there will be a requirement that members will be able to hold no more than two terms of office, whether or not these were consecutive. This applies to both of the committees. Once the new system is established and there is an ongoing cycle of recruitment/ replacement this will ensure that the committees are always 'fresh' with less risk of potential conflicts of interest. This cycle is covered in greater detail in the accompanying Impact Assessment. This gives more people (both registered persons and lay persons) the opportunity to sit on the committees. As mentioned in point (ii), the term of office is subject to conditions set by Council, supported by appraisal. This should again support the principles of transparency, accountability and consistency.

**We ask if you support this proposal to restrict the terms of office and set conditions for office for members of the committees?**

- (v) The amendment to the Veterinary Surgeons Act 1966 will ensure that the current provision that a person may not sit on a DC case hearing if they were involved in the PIC for the same case is retained. This is in keeping with good judicial principles, ensuring there is no risk of bias in DC's deliberations.

**We ask if you support this proposal to retain the provision that a person may not serve on the Disciplinary Committee if they were part of the Preliminary Investigation Committee for the same case?**

- (vi) Special provisions for the constitution of the Disciplinary Committee when considering a case against any veterinary practitioner registered in the Supplementary Register (under section 8 of the Veterinary Surgeons Act 1966) will be removed. This means that veterinary practitioners would be subject to the same procedure as veterinary surgeons, supporting better regulation principles by removing outdated and unnecessary provisions through simplification and streamlining. A specially constituted DC in relation to veterinary practitioners was provided for originally to ensure that such a registrant would be assured of a fair hearing; which perhaps would not have been the case if the

panel was dominated by veterinary surgeons. This provision is no longer considered necessary for the following reasons:

- the numbers of persons registered on the supplementary register have diminished; there are now only eight and all are declared as non-practising. Therefore, the likelihood of them being subject to a disciplinary case is negligible;
- a fair hearing and removal of veterinary surgeon bias has been provided for in the statutory requirement for lay persons on both of the committees;
- having only a small pool of people from which to select the additional members for DC (in the event that they were needed) makes this provision extremely difficult to sustain. (Therefore removal of this provision also represents the removal of a burden – obstacle to efficiency);
- as “registered persons”, veterinary practitioners will be eligible to apply to sit on the committees should they choose to do so.

**We ask if you support this proposal to remove the current provision specific to veterinary practitioners registered in the supplementary register?**

## **Proposal 2: to change the size of the Disciplinary Committee and Preliminary Investigation Committee**

4.5 Reforms to the size of both PIC and DC represent a removal of a burden defined as “an obstacle to efficiency” in the exercise of the College’s existing statutory functions. It is proposed that:

- (i) the number of members of the Disciplinary Committee will increase from 12 to 20 and the Preliminary Investigation Committee from 6 to 9;
- (ii) the quorum required for any one meeting of the DC will reduce from 5 to 3, while remaining unchanged for the PIC at 3.

4.6 The effect to be achieved is that it will be much easier, and possibly quicker, to assemble a panel (for DC) for an individual case-hearing from a larger “pool” of people.

4.7 The reduction in quorum for the DC brings it into line with precedents set in other comparable professions for their disciplinary committees (e.g. General Medical Council, Nursing & Midwifery Council, and General Dental Council) and would give the College flexibility to sit with a smaller and more cost efficient panel in certain cases. RCVS has indicated that it intends to continue to convene meetings of the statutory committees with the same numbers of people in attendance as happens currently. For PIC, this is usually all 6 members plus the 3 lay observers meeting in plenary, although there may be occasions when one or two of this number cannot make the monthly meetings. It is not now usual for the DC to meet with all members present, except for training sessions. Normally it meets in smaller panels, with the number of people appropriate to a particular case. Currently, DC aims for the quorum of 5 plus 2 “spares”. This is to mitigate any risk of a challenge or conflict necessitating someone having to stand down. If the committee was barely quorate at the outset then a challenge based on some conflict of interest could bring the proceedings to a halt.

**We ask if you support the proposals regarding the overall size of the committees and the quorum size?**

4.8 The fact that the committees will be specifically appointed for that purpose, rather than drawn from Council, can also be considered a removal of a burden as well as promoting regulatory principles. Current DC members have become overstretched. Reliance on their ability to devote sufficient time to considering and making judgments on important disciplinary matters is deemed by RCVS to be unsustainable for the future.

4.9 We also want to ensure that when the legislation is amended we have anticipated future burdens. RCVS recognises that over the coming years, there could be a need to further increase the number of members of both committees if the trend for an increase in workload continues. Therefore, it is proposed that in addition to increasing the size of DC from a fixed 12 to a minimum of 20 members, flexibility would be introduced to increase the number of members up to a maximum of 40 members. Similarly, it is proposed that PIC will change from its fixed 6 members plus 3 observers to a minimum of 9 full members, but with the flexibility to raise this to a maximum of 15 members. There are no indications at this stage that RCVS will need to use this provision in the short to medium term.

4.10 The final burden that we wish to remove is prescribed timings of committee appointments and leave the flexibility with RCVS. Therefore the current provision relating to timing of elections to the preliminary investigation committee will be removed.

4.11 As laid out above, we are interested to find out if you support each of these proposals. We would also like to know:

- if you have any views on the expected benefits of the proposals;
- if you think that the changes to the membership of the committees (proposal one) do ensure that regulatory functions will be exercised so that they are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
- if you agree with our views that reforming the size of the committees (proposal 2) can be considered a removal of burdens, specifically defined as an obstacle to efficiency.

Specific questions are asked in the response form in Annex B.

4.12 For all of the changes proposed in paragraphs 4.4 to 4.10, provision will be made for transitional arrangements. Transparent, accountable and consistent processes take time to establish. The transitional arrangements will enable the committees to be fully constituted and trained, as well as ensuring continuity for those cases that are already in the system, which may be adjourned or part-heard. Further detail on the proposed phasing-in of the new committees can be found in the accompanying Impact Assessment.

### **Costs**

4.13 There are some costs that will fall upon RCVS in the first instance as a result of introducing these reforms, which relate to the selection and appointment of members to both of the committees, training provision for the additional members of DC, and the appraisal of all committee members.

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4.14 Selection/appointment will be assisted by professional recruitment consultants external to the RCVS and it is in the use of these consultants that the costs, considered additional to the pre-reform position, will be incurred. In the accompanying Impact Assessment (IA) costs for this have been estimated using comparisons of other public appointments which have used consultancy firms and followed a similar process. This cost has been estimated to be in the region of £100,000 for the initial recruitment, which will appoint members for the first three transition years.

4.15 As explained in paragraph 4.4 (iv) members of both the PIC and DC will serve a 'term of office', which will normally be set at 4 year. This means that as members' terms of office come to an end when they will retire and be replaced, there will need to be ongoing recruitment/appointments taking place. A pattern of replacement has been suggested by RCVS and is explained in full in the Impact Assessment. If it is assumed that the cost to appoint a full complement of committee members for a 4-year term is £100,000 (as in the initial recruitment costs) then it is assumed that the recruitment and appointment for half of this number every two years will incur a cost of £50,000 in the year that the recruitment is held.

4.16 Although these are cost assumptions that have been made, it could be that there are savings to be made. Appointed members of the committees will have the option of standing for appointment for a second term and we assume that there should be minimal/reduced consultancy costs associated with the selection/re-appointment of an existing committee member. However, it would be impossible at this stage to pre-empt the aspirations of future committee members and therefore the effect that this would have on the figures.

4.17 There will be some costs as a result of the reform in relation to training. Training is already provided to all members of the two statutory committees: induction training given to new members of both committees in the first year of their term of office only; annual training, a two-day session to cover issues relevant to the respective committee; ad hoc training, a one-day session to cover topical issues. The costs arising which are additional to the current situation are in relation to the increased size of DC and thus the additional training that needs to take place. This has been estimated at £10,000 per annum. The full breakdown is in the accompanying IA and we welcome your views on these cost estimates and assumptions that have been made.

4.18 Paragraphs 4.4 (ii) and (iv) explain that RCVS propose to introduce a system of appraisal for all committee members. This is a wholly new system that is not applied to Council members sitting on the committees today. It is envisaged that each Chairman will carry out the appraisal for the members of his committee, with the costs incurred being reimbursement to the individual for attending their appraisal and to the Chairman for each day that they attend to hold appraisals. For appraisal of the two Chairmen, it is proposed that their appraisals will be carried out by a legally trained person, with the costs incurred being reimbursement to the two individuals for attending their appraisal plus the cost of the two legally trained appraisers.

4.19 As there is no appraisal system under the present system, all these costs are additional to the current position. It should also be noted that this proposal regarding appraisals are at the moment in their initial stages and would need to be put to internal consultation at RCVS. The impact assessment estimates an annual average cost of around £14,000 for appraisal.

4.20 Overall, we estimate that the recruitment, training, and appraisal costs of introducing the reforms proposed are around £54,000 per annum above today's costs. This is explained in detail in section 9 of the accompanying IA.

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4.21 As part of the consultation we are inviting you to respond to our cost estimates:

- Do you broadly agree with the cost estimates, assumptions and conclusions of the Impact Assessment?
- Can you provide evidence to help quantify the cost estimates in the Impact Assessment?

### **Extent**

4.22 RCVS is the regulator for the veterinary profession across the United Kingdom, hence the geographical extent is UK.

4.23 The proposed LRO does not affect any function of Welsh Ministers. The regulation of the veterinary profession is not within the legislative competence of the Scottish Parliament. However we have the agreement of both Wales and Scotland to these reforms. There are no implications for Northern Ireland legislation, although veterinary regulation is a transferred matter for Northern Ireland. The Department for Agriculture for Northern Ireland has confirmed that they support Defra's proposal to make the LRO

### **Binding the Crown**

4.24 These proposals do not bind the Crown.

## Chapter 5: Possible Parliamentary procedure

5.1 The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. The negative resolution procedure is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The super-affirmative procedure is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

- (i) **Negative Resolution Procedure** – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made.
- (ii) **Affirmative Resolution Procedure** – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.
- (iii) **Super-Affirmative Resolution Procedure** – This is a two-stage procedure during which there is opportunity for the draft LRO to be revised by the Minister
  - This allows Parliament 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO Bullet style
  - If, after the expiry of the 60 day period, the Minister wishes to make the LRO with no changes, he must lay a statement. After 15 days, the Minister may then make a LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament.
  - If the Minister wishes to make material changes to the draft LRO he must lay the revised draft LRO and a statement giving details of any representations made during the scrutiny period and of the revised proposal before Parliament. After 25 days, the Minister may only make the LRO if it is approved by a resolution of each House of Parliament.

5.2 Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.

5.3 The Department for Environment, Food and Rural Affairs believes that the affirmative resolution procedure should apply to this LRO. The proposal for using this procedure is that while the amendments are not purely administrative or technical, which would warrant use of the negative procedure, they are considered straightforward and not of such fundamental significance as to require the super-affirmative procedure.

**We ask if you agree that the affirmative Parliamentary procedure should apply to the scrutiny of these proposals?**

## **Chapter 6: Legal analysis against requirements of the Legislative and Regulatory Reform Act 2006**

6.1 As explained in paragraph 2.6, the proposals must satisfy the preconditions set out in section 3 of LRA06. Therefore, we would welcome your views on our analysis of how the proposal to amend the constitution of the RCVS Preliminary investigation and Disciplinary Committees meets these preconditions.

### **(i) Non Legislative solutions**

The constitution of the RCVS disciplinary committees is laid down by statute. RCVS has no discretion to deviate from these arrangements. A change in the legislation is the only workable solution.

**We ask if you agree with our assessment in this regard?**

### **(ii) Proportionality**

The benefits of reform in terms of human rights compliance, public confidence in RCVS as a regulator and ability to manage the caseload are proportional to the changes proposed. There will be minimal adverse impact. Making Council members being ineligible for membership of the PIC and DC has been identified as a benefit. Any individual seeing this as an adverse impact has the choice of resigning from Council and applying through open competition to PIC or DC. There is no financial impact on the public and the increase in administrative costs to RCVS is balanced by the benefits, showing that this is a proportionate measure.

**We ask if you agree with our assessment in this regard?**

### **(iii) Fair Balance**

These proposals strike a fair balance between the public interest and those affected by the proposals. There will be minimal adverse impact. Making Council members being ineligible for membership of the PIC and DC has been identified as a benefit. Any individual seeing this as an adverse impact has the choice of resigning from Council and applying through open competition to PIC or DC. There is no financial impact on the public.

**We ask if you agree with our assessment in this regard?**

### **(iv) Necessary protection**

The additional protection that was provided for in the current legislation was in relation to special provisions for the veterinary practitioners. It has been explained (in paragraph 4.4 (vi)) that this additional protection is now unnecessary. In the context of the whole proposal, the reforms are designed to improve protection rather than remove it.

**We ask if you agree with our assessment in this regard?**

**(v) Rights and freedoms**

We are not aware of any right or freedom which would be affected by this proposal.

**We ask if you agree with our assessment in this regard?**

**(vi) Constitutional significance**

The provisions are limited to the regulation of veterinary profession and are therefore not of constitutional significance.

**We ask if you agree with our assessment in this regard?**

## **Annex A: List of consultees**

Animals Deserve Better  
British Cattle Veterinary Association  
British Equine Veterinary Association  
British Horseracing Authority  
British Horse Society  
British Small Animals Veterinary Association  
British Veterinary Nursing Association  
British Veterinary Union in Unite  
Consumer Focus  
Department for Agriculture and Rural Development, Northern Ireland  
Edinburgh University, Royal (Dick) School of Veterinary Studies  
Equine Reproduction UK  
Farmers Union of Wales  
Farriers Registration Council  
Feline Advisory Bureau  
Genus Breeding Ltd  
Governing Council of the Cat Fancy  
Greyhound Board of Great Britain  
Kennel Club  
National Farmers Union  
National Farmers Union, Scotland  
National Farmers Union of Wales  
National Sheep Association  
People's Dispensary for Sick Animals  
Rights 4 Pets @ Vets  
Royal Army Veterinary Corps  
Royal College of Veterinary Surgeons  
Royal Veterinary College, London  
Scottish Government  
Thoroughbred Breeders Association  
Twemlows Stud  
University of Aberdeen, School of Law  
University of Bristol, Veterinary School  
University of Cambridge, Department of Veterinary Medicine

**Department for Environment, Food and Rural Affairs**

University of Glasgow, Veterinary School

University of Liverpool, School of Veterinary Science

University of Nottingham, Veterinary School

Veterinary Practitioners (eight individuals registered in RCVS supplementary register)

Welsh Assembly Government

## Annex B: Response Form

Response form for consultation paper issued by Department for Environment, Food and Rural Affairs regarding proposals for a Legislative Reform Order to amend the constitution of the statutory disciplinary committees of the Royal College of Veterinary Surgeons

### Respondent Details:

Name:

Organisation:

Address:

Postcode:

Telephone:

Fax:

Email:

### Please return by 10 April 2012 to:

[vsa.consultation@defra.gsi.gov.uk](mailto:vsa.consultation@defra.gsi.gov.uk) by email, or in writing to:

Aroon Korgaonkar  
Veterinary Surgeons Act Team  
Department for Environment, Food and Rural Affairs  
Area 5D, Nobel House  
17 Smith Square  
London  
SW1P 3JR

Are you requesting non-disclosure of your response: YES/ NO

**Q1. Do you support the proposal to change the membership of the RCVS' disciplinary committees from Council members to non-Council (Chapter 4, paragraphs 4.4 (i) and (ii))?**

Yes/ No/ Don't know

Comments

**Q2. Do you support the proposal to ensure that the disciplinary committees have a mix of both lay and veterinary membership (Chapter 4, paragraph 4.4 (iii))?**

Yes/ No/ Don't know

Comments

**Q3. Do you support the proposal to restrict the terms of office and set conditions for office for members of the committees (Chapter 4, paragraph 4.4 (iv))?**

|   |
|---|
| Yes/ No/ Don't know   |
| Comments  |
| <b>Q4. Do you support the proposal to retain the provision that a person may not serve on the Disciplinary Committee if they were part of the Preliminary Investigation Committee for the same case (Chapter 4, paragraph 4.4 (v))?</b> |
| Yes/ No/ Don't know   |
| Comments  |
| <b>Q5. Do you support the proposal to remove the current provision specific to veterinary practitioners registered in the supplementary register (Chapter 4, paragraph 4.4 (vi))?</b>   |
| Yes/ No/ Don't know   |
| Comments  |
| <b>Q6. Do you support the proposal to increase the size of the committees (Chapter 4, paragraph 4.5 (i))?</b>   |
| Yes/ No/ Don't know   |
| Comments  |
| <b>Q7. Do you support the proposal regarding the quorum size of the committees (Chapter 4, paragraph 4.5 (ii))?</b>   |
| Yes/ No/ Don't know   |
| Comments  |
| <b>Q8. Do you support the proposal to provide flexibility for the future as regards the size of the committees (Chapter 4, paragraph 4.9)?</b>  |
| Yes/ No/ Don't know   |
| Comments  |
| <b>Q9. Do you have views regarding the expected benefits of the proposal as identified in Chapter 4 of this consultation document?</b>  |
| Yes/ No/ Don't know   |
| Comments  |
| <b>Q10. Do you think that the proposal will secure that regulatory functions will be exercised so that they are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed?</b>           |

|  |
|--|
| Yes/ No/ Don't know  |
| Comments   |
| <b>Q11. Do you think the proposal will remove or reduce burdens?</b>   |
| Yes/ No/ Don't know  |
| Comments   |
| <b>Q12. Do you think that there are any non-legislative means that would satisfactorily remedy the difficulties which the proposals are intended to address?</b>                               |
| Yes/ No/ Don't know  |
| Comments   |
| <b>Q13. Are the proposals put forward in this consultation document proportionate to the policy objective?</b>   |
| Yes/ No/ Don't know  |
| Comments   |
| <b>Q14. Do the proposals put forward in this consultation document taken as a whole strike a fair balance between the public interest and any person adversely affected by it?</b>             |
| Yes/ No/ Don't know  |
| Comments   |
| <b>Q15. Can you identify any necessary protections which would be reduced or lost as a result of the proposals? If so, are they needed and how could they still be provided?</b>               |
| Yes/ No/ Don't know  |
| Comments   |
| <b>Q16. Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom, which they might reasonably expect to continue to exercise?</b> |
| Yes/ No/ Don't know  |
| Comments   |
| <b>Q17. Do you agree that the proposed changes do not have a significant financial impact as set out in the impact assessment?</b>   |
| Yes/ No/ Don't know  |
| Comments   |
| <b>Q18. Do you broadly agree with the cost estimates, assumptions and conclusions of the Impact Assessment?</b>  |
| Yes/ No/ Don't know  |
| Comments   |

**Q19. Can you provide evidence to help quantify the cost estimates in the accompanying Impact Assessment?**

Yes/ No/ Don't know

Comments

**Q20. Do you agree that the proposed Parliamentary procedure as outlined in Chapter 5, paragraph 5.3 should apply to the scrutiny of these proposals?**

Yes/ No/ Don't know

Comments

**Q21. Do you have any other comments in relation to the proposals?**

Yes/ No

Comments

## **Annex C: Legislative Reform Orders – Parliamentary consideration**

### **Introduction**

1 These reform proposals in relation to the constitution of the disciplinary committees of the Royal College of Veterinary Surgeons (RCVS) will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on these reform proposals in relation to the constitution of the disciplinary committees of the RCVS as measures that might be carried forward by a LRO.

### **Legislative Reform Proposals**

2 This consultation document on proposals to amend the constitution of the Preliminary Investigation Committee and the Disciplinary Committee of the RCVS has been produced because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3 Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

- i) Explain under which power or powers in the LRRRA the provisions contained in the order are being made;
- ii) Introduce and give reasons for the provisions in the Order;
- iii) Explain why the Minister considers that: There is no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
  - The effect of the provisions are proportionate to the policy objective;
  - The provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
  - The provisions do not remove any necessary protection;
  - The provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
  - The provisions in the proposal are not constitutionally significant; and
  - Where the proposals will restate an enactment, it makes the law more accessible or more easily understood.

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- iv) Include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;
- v) Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and
- vi) Give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4 On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them from the Department of Environment, Food and Rural Affairs by emailing [vsa.consultation@defra.gsi.gov.uk](mailto:vsa.consultation@defra.gsi.gov.uk) or writing to Aroon Korgaonkar, Veterinary Surgeons Act Team, Department for Environment, Food and Rural Affairs, Area 5D, Nobel House, 17 Smith Square, London SW1P 3JR

## Parliamentary Scrutiny

5 Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6 Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

- (i) appear to make an inappropriate use of delegated legislation;
- (ii) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act)
- (iii) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (iv) secure a policy objective which could not be satisfactorily secured by non-legislative means;
- (v) have an effect which is proportionate to the policy objective;
- (vi) strike a fair balance between the public interest and the interests of any person adversely affected by it;
- (vii) do not remove any necessary protection;
- (viii) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (ix) are not of constitutional significance;
- (x) make the law more accessible or more easily understood (in the case of provisions restating enactments);
- (xi) have been the subject of, and takes appropriate account of, adequate consultation;

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- (xii) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation;
- (xiii) appear to be incompatible with any obligation resulting from membership of the European Union;

7 The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8 Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9 Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website<sup>6</sup>.

10 Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise a LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

11 Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise a LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12 Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

## How to Make Your Views Known

13 Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in paragraph 2.16 and Annex B of this consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14 In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15 Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

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<sup>6</sup> [www.parliament.uk/parliamentary\\_committees/regulatory\\_reform\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm) (Commons) or [www.parliament.uk/parliamentary\\_committees/dpr.cfm](http://www.parliament.uk/parliamentary_committees/dpr.cfm) (Lords)

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16 The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and  
Regulatory Reform Committee  
House of Lords  
London  
SW1A 0PW

Tel: 020 7219 3103  
Fax: 020 7219 2571

mailto: [DPRR@parliament.uk](mailto:DPRR@parliament.uk)

Regulatory Reform Committee  
House of Commons  
7 Millbank  
London  
SW1P 3JA

Tel: 020 7219 2830/4404/2837  
Fax: 020 7219 2441

mailto: [regrefcom@parliament.uk](mailto:regrefcom@parliament.uk)

### **Non-disclosure of responses**

17 Section 14(3) of the LRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

18 The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

### **Information about Third Parties**

19 If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclose. This applies whether or not you ask for your representation not to be disclosed.

20 The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

**Better Regulation Executive**  
**Department for Business, Innovation and Skills**

## Annex D: Consultation criteria

The criteria in the "Code of Practice on Consultation" published by the BRE apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory or external requirements (e.g. under European Community law) they should otherwise generally be regarded as binding on UK Departments and their agencies unless Ministers conclude that exceptional circumstances require a departure.

The criteria should be reproduced in consultation documents with an explanation of any departure, and confirmation that they have otherwise been followed.

- (i) **When to consult:** Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- (ii) **Duration of consultation exercises:** Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- (iii) **Clarity of scope and impact:** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- (iv) **Accessibility of consultation exercises:** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- (v) **The burden of consultation:** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- (vi) **Responsiveness of consultation exercises:** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- (vii) **Capacity to consult:** Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Defra believes that in relation to this particular consultation that we have followed the seven criteria in the Code of Practice. Criterion 7 is met through the designation of a consultation co-ordinator. If you have any comments in relation to Defra's approach to consultation then they may be contacted at [consultation.coordinator@defra.gsi.gov.uk](mailto:consultation.coordinator@defra.gsi.gov.uk) .

Please do not send specific responses to this consultation to the consultation co-ordinator. We will be happy to receive those at:  
[vsa.consultation@defra.gsi.gov.uk](mailto:vsa.consultation@defra.gsi.gov.uk)