

Review of the Veterinary Surgeons Act

Consultation on recommendations of
the Veterinary Legislation Group

July 2009

SUMMARY OF PROPOSALS ON WHICH COMMENTS ARE INVITED

Disciplinary machinery

- The Act should be amended to give the RCVS Council discretion to make rules determining the composition of the Preliminary Investigation (PIC) and Disciplinary Committees (DC).
- Council members should not be eligible to be members of DC.
- The rules should be subject to approval by the Government.

Disciplinary jurisdiction and powers

The DC should have jurisdiction over:

- professional conduct;
- clinical performance;
- health;
- criminal convictions relevant to fitness to practise.

The PIC should have power to dispose of a complaint by:

- giving a caution, with the respondent's agreement; or
- giving advice.

The DC should have power to:

- give a warning as to future conduct; or
- impose conditions or restrictions on future practice by the respondent.

Composition of the RCVS Council

- Council should have no more than 30 members.
- Between 30% and 50% of the members should be non-veterinarians.
- At least half of the veterinary members of Council should be elected.
- Council should include a veterinary nurse as an appointed member.
- There should be one Council member nominated jointly by the UK universities with recognised veterinary degrees.
- Council members other than elected members and the member to be nominated jointly by the universities should be appointed by the Government of the day.

REVIEW OF THE VETERINARY SURGEONS ACT

Introduction

The Council of the Royal College of Veterinary Surgeons invites comments on new proposals for changes in the Veterinary Surgeons Act 1966.

The need to bring the Act up to date has long been recognised. Early in 2003, the RCVS invited views on a range of issues, and later that year the Department for Environment, Food and Rural Affairs launched its own consultation on the modernisation of the Act. In 2005, following a further consultation by the College, the RCVS Council adopted proposals for a new legislative framework.

At that time it was expected that the Government would pick up the baton and prepare proposals for amending legislation. In 2008, however, the then Minister, Lord Rooker, announced that recent decisions on the Department's budget and a review of its priorities meant that it would not devote resources to this before 2011.

In the light of that announcement the RCVS had to reconsider its position. Council has received advice from a working group made up of Council members, a member of the Veterinary Nurses Council and outside experts. The report of the Veterinary Legislation Group can be seen on RCVSonline at www.rcvs.org.uk/VSA. Before taking a firm view on the recommendations, Council would welcome comments from veterinary surgeons and veterinary nurses and their organisations and from other interested bodies and the public at large.

Reasons for changing the Act

The Veterinary Surgeons Act 1966 was largely a consolidation of earlier legislation, and the regulatory model does not measure up to modern expectations. There are three main respects in which it is out of line with current ideas on how a profession should be regulated.

First, Council, which ultimately sets the framework of guidance within which veterinary surgeons in the UK operate, also supplies the members of the committees which consider allegations against individual practitioners. The Act stipulates that the Preliminary Investigation and Disciplinary Committees (PIC and DC) have to be composed entirely of Council members, and as a result there could be a perception of bias.

Secondly, the regulatory powers available to the RCVS are limited and inflexible. The grounds for removal from the Register are still substantially as laid down in the Veterinary Surgeons Act 1881, namely criminal convictions and disgraceful professional conduct. If action is necessary following disciplinary proceedings, the Act only gives the options of removal or suspension from the Register. Under procedural rules DC can give a reprimand or warning as to future conduct, but it would be good to have these possibilities on the face of the Act, as well as be able to do more.

Thirdly, the Act requires the affairs of the College to be managed by a Council with, currently, 40 members, at least 30 of whom must be veterinary surgeons. At the moment, Council includes six members who are not veterinary surgeons, but this is not a statutory requirement. The RCVS regulates the veterinary profession in the public interest and for the benefit of animal welfare, so the viewpoint of users of veterinary services and the general public ought to be formally represented on Council.

The need to set priorities

The package of proposals adopted by Council in 2005 implied extensive rewriting of the Veterinary Surgeons Act. The Veterinary Legislation Group has recommended focusing specifically on the three areas mentioned above, namely a new composition for the RCVS Council, new disciplinary machinery for veterinary surgeons, and a wider disciplinary jurisdiction with more flexible disciplinary powers. The reasons for narrowing the target in this way concern the practicalities of getting the Act amended.

The College itself has no power to change the legislation. Normally, if an Act of Parliament is to be amended the Government introduces into Parliament a Bill for this purpose. If approved by the House of Commons and the House of Lords the Bill becomes an Act and replaces the existing legislation. It is not easy, however, to secure the passing of a new Act. There is always competition for a place in the Government's legislative programme, and steering a Bill through Parliament makes heavy demands on the resources of the department concerned.

The Government has a further option: to make an order under the Legislative and Regulatory Reform Act 2006. This gives Ministers powers to make orders designed, among other things, to ensure that regulatory activities are carried out in a transparent, accountable, proportionate and consistent fashion. An order under the 2006 Act is subject to Parliamentary procedure, but the process is less onerous than the passage of a Bill. Some of the changes needed in the Veterinary Surgeons Act, notably relating to the composition of Council, PIC and DC, could be brought about through this route. (Amendments to the disciplinary jurisdiction and powers would need main legislation.)

Whichever approach were adopted, the Department for Environment, Food and Rural Affairs would need to consider the issues, carry out consultations and commission legal drafting. It is impossible to say when Ministers might agree to find time to amend the Veterinary Surgeons Act, given their other priorities, but this is more likely to happen if the changes proposed by the College are clear, simple, uncontentious and obviously desirable.

There is a further possibility. Any MP or member of the House of Lords can introduce a Bill, and they may be prompted to do so by organisations which seek a change in the law. The odds against a Private Member's Bill becoming law are, however, quite high, there are subjects for which such a Bill is generally regarded as unsuitable, and it may be amended during its passage through Parliament in ways that are unwelcome to its sponsors. For these reasons the Veterinary Legislation Group has not recommended seeking to promote a Private Member's Bill to bring the Veterinary Surgeons Act up to date. Again, though, if this approach were to be tried, the chances of success would be higher if the proposals were short and simple.

The changes which the Group has recommended pursuing are set out below.

Disciplinary machinery

The report recommends that the Act should be amended to give the RCVS Council discretion to decide the composition of PIC and DC, with one stipulation: DC should not include Council members. Subject to that proviso, there would be flexibility to change the make-up of the committees from time to time in the light of experience. Council would make rules laying down how the two committees should be constituted, and as a safeguard the rules would be subject to approval by the Government. The rules could provide for Council itself to choose the members of the committees, or they could specify some form of independent appointment process.

Disciplinary jurisdiction and powers

The Group has recommended that DC should, like the corresponding bodies for the human health professions, have jurisdiction over “fitness to practise”. This would be defined as covering:

- professional conduct;
- clinical performance (the human health legislation uses such expressions as “deficient professional performance” and “lack of competence”);
- health; and
- criminal convictions relevant to fitness to practise.

More flexible disposal powers are recommended for PIC and DC. The former would have power to dispose of a complaint by giving a caution, with the respondent’s agreement, or advice. Following disciplinary proceedings the DC would, in addition to the present powers to remove or suspend from the Register, have power to give a warning as to future conduct or impose conditions or restrictions on future practice by the respondent.

The proposed power to impose conditions or restrictions would formalise existing practice, in that DC may already defer judgment in suitable cases on the strength of an undertaking by the respondent to abide by specified conditions. As the law stands, however, that can only be done by agreement, and the case has to be kept open.

Composition of the RCVS Council

The Group’s report does not offer a specific formula for the composition of Council but recommends that:

- Council should have no more than 30 members;
- between 30% and 50% of the members should be non-veterinarians;
- at least half of the veterinary members of Council should be elected;

- Council should include a veterinary nurse as an appointed member;
- there should be one Council member nominated jointly by the UK universities with recognised veterinary degrees; and
- the power to appoint Council members other than elected members and the member to be nominated jointly by the universities should rest with the Government of the day.

Regulation of veterinary nurses

The RCVS remains committed to achieving statutory regulation for veterinary nurses. Veterinary nursing should be formally recognised as a profession and veterinary nurses should be subject to statutory regulation on the same lines as veterinary surgeons. The Veterinary Legislation Group has not, however, recommended including this in the shortlist of proposals for changes to the Veterinary Surgeons Act, for two reasons:

- the necessary legislation will be substantial; and
- the Veterinary Nurses Council has already taken the right steps to prepare the ground by setting up the Register of Veterinary Nurses under powers in the Royal Charter. A new profession will normally only be recognised and made subject to statutory regulation when voluntary arrangements are well-established.

Other changes

The other proposals which Council adopted in November 2005 remain for consideration in the longer term. In the meanwhile, Council has accepted the Veterinary Legislation Group's recommendation that, for clarity, these proposals should be formally withdrawn.

Invitation to comment

Comments on the recommendations outlined above are invited by 21 October 2009. They should, preferably, be sent by email to j.gill@rcvs.org.uk, or by post to Jeff Gill, Communications Department, RCVS, Belgravia House, 62-64 Horseferry Road, London SW1P 2AF. Copies of this paper can be obtained from the same address (or ring 020 7202 0735).

In accordance with the Government Code of Practice on Consultation, copies of the responses received may be made available publicly at the end of the consultation period, and the information they contain may also be published in a summary of responses. If you do not consent to this, please make clear that your response is to be treated as confidential. You should also be aware that the RCVS may be required to communicate information to third parties on request under the Freedom of Information Act 2000.

