September 2011

**VETERINARY SURGEONS ACT (VSA) 1966**

As a representative for the veterinary profession, BVA will be expected to advise the Defra Minister as to the level of support for a new Act. It is therefore highly important BVA is prepared for a review of the Act (if one occurs) and that it is able to influence decisions before they are made or published.

**Current BVA position**

The BVA’s position has always been and continues to be that there is no need for a new VSA. We believe that the provisions set out in the VSA 1966 provide and adequate means of regulating the veterinary profession for the purpose of protecting animal health and welfare, and safeguarding public health. The BVA believes that there is a high level of public confidence in the veterinary profession and on this basis it can be argued that substantial changes to the 1966 Act are neither justified or necessary. We do agree that in general, the Act needs modernisation, particularly with regards to the disciplinary process and composition of the disciplinary committees, and regulation of veterinary nurses and veterinary technicians; but changes can be made without the introduction of a new Act. BVA is preparing for a review of the VSA after Council agreed that BVA should start thinking about what it might want in a new Act in March 2010, and BVA will seek the views of members in order that we can influence decisions before they are made or published. A debate at Council in December 2010 entitled “Time to act for veterinary surgeons” proposed the motion “Do we need a new Veterinary Surgeons Act”; the feeling in the room after the debate was that the majority were against a new VSA.

**Current RCVS position**

RCVS believe that the existing VSA is outdated and there are technicalities that need to be resolved. They have not specified what these technicalities are. They believe there have been vast changes in veterinary practice, business models, technology, and in public views of the profession since the inception of the VSA (1966), and that it should be replaced by new legislation as it is no longer fit for purpose.
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Timeline

2003
RCVS sent first consultation papers to veterinary surgeons, veterinary nurses and interested organisations in February and March 2003.

2004
The RCVS Council considered the responses to the consultations in March 2004.

March 2005
The RCVS Council considered further the responses to the consultations in March 2005.

June 2005
RCVS sent updated consultation papers to veterinary surgeons, veterinary nurses and interested organisations in June 2005.

November 2005
The RCVS Council considered the responses to the consultations in November 2005 and adopted proposals for a radical rewriting of the VSA, with the aim of modernising the regulation of veterinary surgeons and extending statutory regulation to veterinary nurses. The new structure which was envisaged at that time would have:
- Separated the functions of standard setting and enforcement of the standards
- Reduced the size of the RCVS Council and changed its composition, in particular with increased lay membership
- Broadened the disciplinary jurisdiction, powers and sanctions, bringing them into line with the legislation of the regulators of the human health professions
- Separated registration from licensing for practice, thus making it possible require practitioners to keep up to fate by, for example, making continuing professional development a condition of the licence, and also opening up the possibility of different categories of licence (e.g. provisional, specialist)
- Made veterinary nursing a regulated profession, with a free-standing Veterinary Nurses Council; and
- Given statutory force to practice standards, thus extending the jurisdiction of the College so as to embrace corporate entities

April 2006
RCVS sent the Summary of Council’s proposals to Defra in April 2006.
**March 2007**
No written response to the submission made in April 2006 was received. The first meeting between RCVS and Defra was March 2007.

Indications from Defra in 2007 were that amendment of the VSA was not an immediate priority and that as no parliamentary time had been allocated for legislation in that session, there was unlikely to be any developments before January 2009 at the earliest, and in reality unlikely before the general election which was due. Consideration was indicated to be possible in 2011, and there was the possibility of a change of government in May 2010. In light of this, the RCVS Veterinary Legislation Group (VLG) was commissioned to review the proposals for changes in the VSA and the issues were considered at length. The College then sought comments on a simpler and more limited set of proposals for amending the VSA, removing some of the more controversial aspects such as mandatory practise standards and focussing on the chief priorities of:
- new disciplinary machinery for veterinary surgeons
- a wider disciplinary jurisdiction and more flexible disciplinary powers; and
- a new composition for RCVS Council

**July 2007**
The BVA's VSAWP reported to BVA Council in July 2007 on the report which had been commissioned to make recommendations about how the BVA should proceed with the issues surrounding the VSA. This report recommended that BVA seek to influence the decision making process.

**September 2007**
The Environment, Food and Rural Affairs Committee (EFRACom) consulted on the need to replace the VSA and BVA submitted a response to this consultation in September 2007.

**October 2009**
The BVA responded to a further consultation by the RCVS. The BVA agreed that the current VSA should be amended to give the RCVS Council discretion to make rules determining the composition of the Preliminary Investigation (PIC) and Disciplinary Committees (DC). The BVA also agreed that Council members should not be eligible to be members of DC, and that the composition of Council should be reviewed to include lay membership.

**November 2009**
After a further consultation process, RCVS Council adopted the recommendation for revised disciplinary machinery, remitting the others for future consideration.

**December 2009**
Professor Sandy Trees, President of the RCVS, presented to BVA Council about the review of the VSA and the RCVS’s proposal for next steps. Professor Trees explained that the RCVS had written to Defra expressing its wish for a Legislative Reform Order (LRO) in order to implement the proposed changes to the composition of the Disciplinary and Preliminary Investigation Committees, which had been identified as priority areas. The Defra response was positive but stated that no internal processes could begin until after the next general election. Defra also explained that if a LRO was successful then it was likely that this would delay any proposals for a new act. Professor Trees was asked why RCVS was not considering the composition of its Council and responded that it was not thought to be a priority area. See pages 8-9 of the minutes for more details.

January 2010
BVA President wrote to the Minister supporting the proposal of the LRO to separate RCVS Council and DC.

March 2010
The BVA President met with the Minister and RCVS President to discuss the composition of RCVS Council if Council and the DC were split. Defra lawyers had indicated a LRO would not be successful unless the composition of the Council was included in the Order.

BVA Council was invited to discuss the recent activities with regard to the proposed LRO, whether the BVA should form a position of any future VSA and whether new legislation should include regulation of veterinary nurses and technicians, and cover all vertebrate species. Council supported the formation of a position on the VSA and that BVA should think about what should be included in a new Act, if one were to be made. See pages 9-10 of the minutes for more details.

May 2010
The general election resulted in a change of government.

September 2010
The Minister wrote to RCVS confirming Defra’s intention to make the LRO to amend the PIC and DC compositions and went on to discuss the possibility of more extensive changes in the longer term and that time may be given to proposals for a new Act – encouraging the RCVS to develop detailed plans for a regime for veterinary services that would replace the current Act. Any proposal would need to be clearly explained and the Minister would need reassurance that the proposals would attract support from across the veterinary profession and others who might be affected by a new Act. As a representative for the veterinary profession, BVA will be expected to advise the Minister as to the level of support for a new Act. It is therefore highly
important BVA is prepared for a review and that it seeks the views of its members so it can influence decisions before they are made or published.

December 2010
The BVA Council meeting in December 2010 hosted a debate entitled “Time to act for veterinary surgeons” with the motion “Do we need a new Veterinary Surgeons/Services Act?” with the purpose of assisting the VSA working party to develop a new position of the VSA. The long standing BVA position was that it should not be replaced. The feeling in the room was that the majority were against a new VSA. See pages 5-7 of the minutes for further details.

January 2011
The Legislative Reform Order (LRO) to amend the provisions of the Act which determines the composition of the Preliminary Investigation Committee (PIC) and the Disciplinary Committee (DC) is currently (summer 2011) in preparation by a Project Group at Defra which had its first meeting in January 2011. The LRO will remove the requirement for the PIC and DC to be made up of RCVS Council members, thereby separating the functions of regulation setting and disciplinary procedures. Consultation on the LRO is likely to place in early 2012. BVA supports the principle of the LRO to separate the PIC and DC, and is awaiting sight of the draft.

February 2011
VPG had a wide ranging discussion on the possible changes to the VSA which could be suggested by a future government.

April 2011
The RCVS Legislation Working Party (LWP) was commissioned to review the RCVS’s Charter and recommend changes to bring it up to date. They discussed the draft report at a meeting in April 2011 and agreed that the report should make a positive case for a new Charter, and in particular that it would define the role of the College as a scientific body.

May 2011
VPG were updated on a number of issues relating to the VSA, and noted that the RCVS LWP paper on potential changes to their Charter would be debated at the BVA Council meeting in July. [http://www.bva.co.uk/members/documents/VPG_May_11_Minutes.pdf](http://www.bva.co.uk/members/documents/VPG_May_11_Minutes.pdf)

June 2011
BVA VSAWP met and discussed the proposed revisions to the Royal Charter with a view to informing BVA Council discussions on the role of the RCVS and advising BVA on the draft RCVS LWP report. The also reaffirmed the BVA position n the need for a new VSA – i.e. that
a new Act was not necessary – especially taking into account the advice Counsel had given the RCVS which indicated they had more scope than originally thought under the current Act.

July 2011
The VSA and the wish of the RCVS to be seen as a scientific body were discussed at length at the BVA Council meeting in July 2011. RCVS has been preparing for a new role even before a change to the Charter by preparing to disband their Public Affairs Committee and setting up a Scientific Committee supported by a new member of staff. RCVS responses to some consultations could also be considered to be outside their remit. The VSAWP views were highlighted to Council that there was no demand for the role the RSCV wish to fulfil as it is already by others including the BVA, the rationale for adopting a new role was unclear, it would add to confusion that already existed about the difference between BVA and RCVS. Members also raised concerns over the College’s funding for the new proposed role as it is only permitted to support statutory activity from subscription income. BVA’s Board has advised that BVA take action to protect its role as the primary source of informed veterinary opinion.

Options to amend the VSA
It was originally thought that the changes proposed could only be introduced if a new Act replaced the VSA 1966. The College then identified an alternative way of introducing the change through the Health Act 1999, which deals with the regulation of (human) health care and associated professionals. Using powers similar to those set out in section 60 of the Act, which enable the regulation of the healthcare professions through Orders in Council, these Orders can amend existing provisions in primary legislation; e.g. the Medical Act 1974, the Dentists Act, the Pharmacy Act etc. Such powers could be introduced by an amendment to the Veterinary Surgeons Act 1966, and would not therefore require the introduction of any new primary legislation.

If the regulatory changes are introduced in this way, instead of a new Act of Parliament (which has to be approved by both Houses and sets out precise regulatory controls that can only be subsequently amended with difficulty), a permissive system will be introduced which facilitates change without specifying the exact nature of the change (which would be made subsequently by secondary legislation in the form of Orders in Council – a comparatively simple procedure when compared with the amendment of an Act, which is primary legislation). If new legislation is enacted in this way it is probable that the changes proposed by RCVS will be introduced over a period of years rather than all at once. If the Health Act model is followed, a mechanism would also be in place to extend regulation to other providers of veterinary services at some future date if this were considered necessary. A new Act would produce a static regulatory system, but amendment of the 1966 Act will open the way to continued change and adjustment.
RCVS have been advised they have more scope under their Charter and the current Act than initially thought and this advice, together with the LRO currently being drafted (which separates the regulation setting and disciplinary procedures) and the potential to make amendments to the Act under Section 60 of the Health Act 1999, means much of the pressure for a new Act has been removed.

**Issues which could be addressed in the future by amendments to the VSA**

RCVS is still keen to keep the other issues raised in their 2005 proposals on the agenda for change, and for these to be considered further when there is prospect of new legislation to revise the VSA. These issues include:

- reducing the size of RCVS Council and its composition
- separating registration from licensing for practise, and introducing mandatory CPD
- statutory recognition and regulation of veterinary nurses

**Exemption Orders**

The regulation of paraprofessionals (veterinary service providers, other than veterinary nurses or surgeons) was one of the controversial issues in the original RCVS proposals, withdrawn due to issues surrounding the expense to and governance of small groups, and the status that regulation may give to providers of therapies which are not evidence-based. Many providers (e.g. AI technicians, bovine ultrasound scanner operators, physiotherapists) currently work under the cover of exemption orders (EOs) made under section 19 of the VSA, which have specified conditions. The EO regime has a number of shortcomings: the orders cannot put proper regulation of conduct in place, Defra have to approve training arrangements at a level of detail not apposite for a Government department, and it has proved difficult to keep pace with the development of new technical services. BVA, RCVS and Defra are discussing improvements to the way EOs are designed, implemented and managed. The CVO has indicated that if the current VSA is replaced, then the Government would want to completely open up the Act and include provisions for all veterinary services.

**Regulation of technicians**

RCVS have been advised that they have scope to use their Charter powers to offer the essentials of professional regulation to non-veterinarians who provide veterinary services as part of a vet lead team. Participation would be voluntary and this would be a way of regulating technicians without amending the primary legislation. RCVS already uses a system such as this to regulate veterinary nurses; however they do not think it appropriate to be as closely involved as this with other groups of providers – in particular not holding examinations or awarding qualifications. Any scheme would instead have the essential features of recognising
qualifications, conferring titles on those holding the qualifications, accepting a voluntary code of conduct, and having a mechanism for investigating alleged misconduct and removing relevant titles if necessary.

These arrangements would not remove the need for EOs to enable technicians to practise the relevant elements of veterinary surgery without contravening the VSA, however, the closer relationship between RCVS and the service providers would facilitate any statutory structure or regulatory changes in the future.

Market forces should apply to disincentivise unchartered technicians, as RCVS would advise veterinary surgeons and animal owners to only use practitioners with the recognised title.
Appendix I

Section 60 of the Health Act 1999

Schedule 3 of the Health Act 1999 sets out the scope of the Orders which may be made in Council under section 60. It states that "an Order may make provision, in relation to any profession, for any of the following matters (among others)

a) the establishment and continuance of a regulatory body,
b) keeping a register of members admitted to practice,
c) education and training before and after admission to practise,
d) privileges of members admitted to practice,
e) standards of conduct and performance,
f) discipline and fitness to practise,
g) investigation and enforcement by or on behalf of the regulatory body,
h) appeals,
i) default powers exercisable by a person other than the regulatory body."

Section 62 of the Act stipulates that the power to make regulations or an Order under the Act is exercisable by statutory instrument (SI).

**Statutory Instruments (SIs)**

SIs are a form of legislation which allow the provisions of an Act of Parliament to be subsequently brought into force or altered without Parliament having to pass a new Act. They are also referred to as secondary, delegated or subordinate legislation. SIs are usually drafted by the legal office of the Government Department concerned. Whether an SI is subject to parliamentary procedure is determined by the parent Act.

Orders under section 60 of the Health Act 1999 are normally instigated by the Department of Health in England. Before drafting an Order the Department of Health has considerable dialogue with any related professional organisations and the other UK departments before providing instructions to their solicitors confirming the policies to be established in the section 60 Order. Their solicitors then draft the Order, and the draft Order is then further discussed with the profession as well as with the other UK countries so that any difficulties can be addressed before the official consultation. From the Department of Health’s experience, it usually takes about a year to complete the section 60 procedure from the point at which they instruct their solicitors.