
Council – 10 February 2011

Health and Social Care Bill 2011

Executive summary and recommendations

Introduction

The Health and Social Care Bill was published on 19 January 2011.

At the same time three related documents were published. They were as follows:

Health and Social Care Bill 2011: Explanatory Notes
Health and Social Care Bill 2011: Impact Assessments
Health and Social Care Bill 2011: Equality Impact Assessment

The Bill runs for over 350 pages. Part 7 addresses issues of concern to the HPC. The following section of this paper summarises part 7 of the Bill.

It is anticipated that a White Paper or Command Paper on professional regulation will be published during the first half of February 2011. It is assumed that this paper will detail the Coalition Government's future plans for the regulation of healthcare workers, social workers and social care workers.

Summary of Part 7 of the Health and Social Care Bill

Part 7 of the Bill comprises Clauses 193 to 215 and deals with a number of areas of policy which will have an impact on the work of the HPC:

- Abolition of the General Social Care Council (GSCC) and the transfer of its regulatory functions (including approving the education and training of approved mental health professionals) to the Health Professions Council, which will be renamed the Health and Care Professions Council (HCPC). The HCPC's governing legislation, the Health Professions Order 2001 (the Order), is renamed the Health and Social Work Professions Order 2001 by the Bill;
- New powers to set up voluntary registers for unregulated professions or related professions, including students seeking to enter a regulated or unregulated profession or related occupation;

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2011-01-31	a	CER	PPR	Health and Social Care Bill	Final DD: None	Public RD: None

- Changes to the governance, functions and funding of the Council for Healthcare Regulatory Excellence (CHRE), which is renamed the Professional Standards Authority for Health and Social Care (PSAHSC). The Bill also gives PSAHSC the power to accredit voluntary registers;
- Abolition of the Office of the Health Professions Adjudicator.

Timetable

The Second Reading took place in the House of Commons on 31 January 2011. It is anticipated that the process will move to the House of Lords in June with Royal Assent in November 2011.

Implications of the Bill on the HPC

The Health and Social Care Bill 2011 provides for the transfer of the register of social workers to the HPC. The work associated with the transfer has been instigated by the Executive. In particular a PLG has been established to draft the standards of proficiency for social workers, rules are being drafted and the mechanisms for the transfer of data from the GSCC to the HPC are being prepared.

However, the Bill provides for a number of new functions to be undertaken by the HPC and the Council needs to consider if, how and when they will be incorporated into the strategy of the HPC. They are as follows.

Regulation of Social Care Workers

Article 193 details a range of types of care workers. Consideration needs to be made on when and how these groups should be regulated. The order that they are brought into regulation needs to be agreed, taking into account the principles of risk, proportionality and alignment with the processes being used in Northern Ireland, Scotland and Wales.

Voluntary Registers

Article 212 provides for the HPC to establish and maintain four new types of voluntary register. They are as follows:

- i Unregulated health professionals
- ii Unregulated health care workers
- iii Unregulated social care workers in England
- iv Students

A range of issues need to be addressed by the Council.

- Should certain groups be recommended for statutory regulation?
- In principle, should voluntary registers be established by the HPC?

- How will the HPC decide in what order new professions or occupations should be regulated?
- What standards will be used?
- What process will be used?
- What will be the associated costs of these initiatives?

Continuing Professional Development (CPD) and social workers in England

Subject to the legislative process and once social workers in England become regulated by HPC, the standards on CPD will apply to them.

Should the start of the first audit period for social workers in England be two years after the register transfer, or should it commence four years after the transfer? And, should the first audit sample of social workers' CPD be set at 5%?

Decision

The Council is requested to instruct the Executive to develop a draft work plan to address the issues detailed in the paper and present the proposals to the Council on 31 March 2011.

In particular, the Executive needs to commence the process to resolve issues concerning the voluntary registration of students.

Background information

- i Analysis of clauses 193 – 274
- ii Health and Social Care Bill: Explanatory Notes
Ref Bill 132 – EN
234 pages. Part 7 1025 page 169 – 1078 page 177
- iii Health and Social Care Bill 2011: Impact Assessments
165 pages. Annex E Public Bodies. GSCC E66 page 124 – E76 page 126
- iv Health and Social Care Bill 2011: Equality Impact Assessments
175 pages. Annex E Public Bodies. GSCC E57 page 103 – E70 page 105
- v Bills before Parliament – progress of Bill

Resource implications

Financial implications

To be assessed.

Appendices

Date of paper

31 January 2011

Clause 193 – Power to regulate social workers etc in England

This clause amends section 60 of the 1999 Act to enable Orders in Council to be made to regulate (and modify the regulation of) social workers and social care workers in England. ‘Section 60 Orders’ are currently used to regulate health professions. The clause also provides that the civil standard of proof is to apply in proceedings in relation to social workers in England (no change from the current HPC position).

Clause 194 - Training etc of AMHPs in England

This clause further amends the 1999 Act to enable section 60 Orders to modify the new functions of the HCPC in relation to the education and training of approved mental health professionals (transferred to the HCPC by the Bill).

Clause 195 – Orders regulating social care workers in England

This clause amends Schedule 3 to the 1999 Act to make clear that the Secretary of State’s duty to consult before laying a draft section 60 order before Parliament equally applies in relation to section 60 orders in respect of social care workers in England. It also provides that section 60 orders may be made in relation to those unregistered social care workers in England.

Clause 196 – Abolition of the General Social Care Council

This clause abolishes the General Social Care Council.

Clause 197 – Regulation of social workers in England

This clause renames the Order and amends to make the HCPC the regulator of social workers in England. It does so by amending the definition of a ‘relevant profession’ in Schedule 3 to the 2001 Order to include social workers in England. The clause also amends the definition of a lay member to exclude persons who are, or have been, registered as social workers with the General Social Care Council or the Care Councils of Wales, Scotland or Northern Ireland.

Clause 198 – The Health and Care Professions Council

This clause continues the Health Professions Council’s existence but renames it as the Health and Care Professions Council.

Clause 199 – HCPC Functions in relation to social work in England

This clause amends article 3(5)(b) of the Order to extend the HCPC’s duty to cooperate with certain bodies to public bodies or other persons concerned with the regulation of social work in England, the provision, supervision or management of social work in England and the Care Councils of Scotland, Wales and Northern Ireland.

It also amends article 3 of the Order to extend the HCPC's existing power make recommendations to the Secretary of State about professions which should be regulated to include social care workers in England.

The clause also makes a number of consequential amendments to the Order, including:

- Extending to social workers the current provisions relating to visiting health professionals from relevant European states;
- Amending article 12 to enable the HCPC to recognise social work training undertaken in Scotland, Wales and Northern Ireland as sufficient for admission to its register and to assess training or professional experience in social work gained outside England but within the UK, and to compare this with the standard of proficiency it requires for admission to its register as a social worker;
- Imposing a new duty on social workers to register with the HCPC if they practise in England unless they are registered with one of the Care Councils of Scotland, Wales and Northern Ireland and are only practising in England on a temporary basis;

Clause 200 – Appeals in cases involving social workers in England

This clause provides that appeals from HCPC decisions relating to social workers in England are to be heard by either a county court or the High Court of Justice in England and Wales. It also amends the definition of 'lay member' for the purpose of HCPC appeal panels to exclude persons who are, or have been, registered as social workers with the General Social Care Council or one of the Care Councils of Wales, Scotland or Northern Ireland from the definition of lay member.

Clause 201 - Approval of courses for AMHPs

Approved mental health professionals (AMHPs) are professionals with particular expertise in mental health who are approved by local social services authorities to carry out certain important functions under the Mental Health Act 1983, including applying for people to be detained in hospital for assessment or treatment of their mental disorder. Most AMHPs are social workers, but The Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008 allows occupational therapists, practitioner psychologists and mental health nurses to be appointed as AMHPs. Appointment is by the local authority but having successfully completed approved training is a condition of appointment.

The clause gives the HCPC the power to approve such courses and to publish details of current and past approved courses. In practice, courses would be approved by the Education and Training Committee, which is already responsible for approving training and education for the existing HPC professions.

Clause 202 - Exercise of function of approving courses, etc

This clause amends the Order to reflect the HCPC's role in approving AMHP courses, including enabling it to do so for professions which are not regulated by the HCPC. It also introduces the mechanism for approval which is based on the existing model in Part IV of the order.

The clause also amends the 2001 Order to make clear that the standards of conduct, performance and ethics may also cover the standards expected of registrants when acting as approved mental health professionals.

Clause 203 - Arrangements with other health or social care regulators

This clause amends the Order to enable the HCPC to provide administrative and other services to others who maintain registers of health or social work professionals, or health or social care workers. This would enable the HCPC to assist and support them in the goal of protecting service users and the public.

This clause is to be commenced on Royal Assent to enable the HCPC to provide assistance, if it is considered necessary and suitable arrangements are entered into, to the GSCC prior to its abolition.

Clause 204 - References in enactments to health professionals, etc

This clause amends various Acts to exclude social workers and social care workers in England from the definition of 'registered health care professional' and similar terms, to avoid the unintended consequence of social workers and social care workers in England, as a result of being regulated by the HCPC, being included within inappropriate definitions (e.g. in relation to prescription only medicines).

Clause 205 – Secretary of State's functions: social care workers

This clause amends the Care Standards Act 2000 to withdraw from the Secretary of State functions in relation to social workers which will be exercised by the HCPC.

The clause also enables the Secretary of State to arrange for the HCPC to perform functions of the GSCC in the period between Royal Assent and the GSCC's abolition.

Clause 206 - PSAHSC

This clause renames the Council for Healthcare Regulatory Excellence to the Professional Standards Authority for Health and Social Care, to reflect its new functions, particularly in relation to the accreditation of voluntary registers of unregulated health professionals, health care workers in and social care workers.

Clause 207 - Functions of the Authority

This clause makes amendments the functions of PSAHSC, including bringing social work and social care work within its remit (as a consequence to the

widening of the HCPC's remit). This includes referring unduly lenient decisions in respect of social workers in England to the High Court of Justice in England and Wales.

The clause enables PSAHSC to give advice to ministers etc. on both health (as now) and social care issues and, because of changes in its funding, requires the Secretary of State, the Welsh Ministers, the Scottish Ministers and the DHSSPS in Northern Ireland to pay for any advice received.

Clause 208 - Funding of the Authority

This clause changes the way in which PSAHSC is funded, requiring the Privy Council to make regulations providing for each regulatory body to fund specified PSAHSC functions.

Clause 209 - Power to advise regulatory bodies, etc

This clause enables PSAHSC to provide advice or auditing services on a fee-paying basis to the regulatory bodies and to similar bodies (whether or not their functions relate to health or social care).

The clause also transfers to the Privy Council the Secretary of State's power to make regulations about the investigation of complaints by PSAHSC.

Clause 210 - Accountability and governance

This clause amends PSAHSC's constitution and governance provisions, reducing the number of executive members from two to one. And transferring responsibility for making certain appointment from the Secretary of State to the Privy Council

The clause also requires PSAHSC to publish a strategic plan and lay its strategic reports before the four UK parliaments and assemblies after the end of the financial year.

Clause 211 - Appointments to regulatory bodies

This clause enables the Privy Council, in making appointments to the regulatory bodies, to be assisted by PSAHSC, the regulatory body in question or a third party (but still requires the Privy Council to make the appointment).

Similar power is given to the Scottish Ministers, the Welsh Ministers and the Department of Health, Social Services and Public Safety in Northern Ireland to make arrangements with PSAHSC in respect of the appointments to PSHSC made by the devolved administrations.

Clause 212 – Establishment of voluntary registers

This clause enables all of the regulatory bodies to establish and maintain voluntary registers of persons who are or have been unregulated health professionals and unregulated health care workers in the UK, and unregulated social care workers in England. The power is limited to establishing and maintaining voluntary registers of groups whose work supports or relates to the

work of the profession which the body regulates, but that limitation does not apply to the HCPC. The fees payable for voluntary registration would be determined by the relevant regulatory body.

Registers will remain 'voluntary' even if an enactment makes it compulsory for a person to be on a particular register in order to carry out work or practice of a particular kind but only for a specific purpose.

The clause will enable regulatory bodies to set up voluntary registers of certain students. This power, for each regulatory body, is limited to establishing and maintaining voluntary registers of persons studying to become a member of a profession regulated by that body or in relation to which that body maintains a voluntary register, or studying to engage in work as an unregulated health care worker or unregulated social care worker in England in relation to which that body maintains a voluntary register.

The clause provides that, before setting up a voluntary register, the regulatory body must conduct an impact assessment, publish it and have regard to it in deciding whether to proceed. The regulatory body must also consult appropriate persons before establishing a voluntary register.

Clause 213 - Accreditation of voluntary registers

This clause enables PSAHSC to accredit voluntary registers. PSAHSC is required to publish its accreditation criteria and may publish a list of accredited registers. PSAHSC must carry out an impact assessment before accrediting a voluntary register and must also consult before doing so.

The Clause also confers new powers on PSAHSC in relation to voluntary registers:

- Promoting the interests of UK health care users, users of social care and social work in England, and other members of the public in relation to the maintenance or operation of accredited voluntary registers;
- Promoting best practice in the maintenance and operation of accredited voluntary registers; and
- Developing principles of good governance for voluntary registers and encourage keepers of voluntary registers to follow these.

Clause 214 – Consequential provisions and savings, etc

This clause authorises consequential amendments and enables the Privy Council, by Order, to make transitional, etc. provision in connection with this part of the Bill.

Clause 215 - Abolition of OHPA

This clause provides for the abolition of the Office of the Health Professions Adjudicator.

Clause 274 – 5: Transfer schemes

This clause provides for the transfer of staff and property. These are standard provisions for legislation winding up or creating new organisations.

Schedule 14 covers consequential amendments to legislation and regulations. On some minor matters: the HCPC will not be subject to the Parliamentary and Health Ombudsman. Nor will it be subject to the Public Bodies (Admission to Public Meetings) Act. It will be subject to the Freedom of Information Act.