

Council meeting, 31 March 2011

The principles for establishing voluntary registers

Executive summary and recommendations

Introduction

At its meeting on 10 February 2011, the Council considered a paper on the content of the Health and Social Care Bill 2011.

In particular, the Council discussed the provisions which would, if passed, allow the regulatory bodies to establish voluntary registers (subject to impact assessment and consultation).

This paper follows-on from that discussion. It summarises the key points in this area from the Council's previous discussion, the Health and Social Care Bill 2011 and the recently published Command Paper 'Enabling excellence'; outlines the potential benefits of voluntary registration; and outlines a range of different working regulatory models.

Decision

The Council is invited to:

- discuss the attached paper;
- agree, in principle, the working regulatory models outlined in appendix 1 for further development; and
- instruct the Executive to return to the next Council meeting on 12 May 2011 to seek agreement on the principles for establishing voluntary registers (informed by the legislation) which would govern the HPC's approach in this area.

Background information

Outlined in the attached paper.

Resource implications

There are no resource implications attached to this paper, although there will be potential resource implications regarding establishing voluntary registers to consider in the future.

Financial implications

There are no financial implications attached to this paper, although there will be potential financial implications regarding establishing voluntary registers to consider in the future.

Appendices

- Regulatory models (DRAFT)

Date of paper

21 March 2011

Voluntary registration

1. Introduction

- 1.1 This paper follows on from the paper on the Health and Social Care Bill 2011 ('the Bill') considered at the Council's meeting on 10 February 2011. It sits alongside the separate papers being considered at this meeting which look at the recently published Command Paper – 'Enabling excellence – Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers'.

2. Previous discussion

- 2.1 The Council has discussed the issue of voluntary registration on a number of previous occasions, most recently at the Council strategy workshop and Council meeting which took place on 9 and 10 February 2011. In summary, the following themes emerged in the Council's discussion.

- **Benefits and risks** - for public protection and for the organisation.
- **Public understanding** - including the importance of being clear about what voluntary registration would and would not mean to a member of the public; and voluntary registration being clearly differentiated from the organisation's statutory functions.
- **CHRE** - the relationship between the CHRE's role in accrediting registers versus the role of the HCPC in establishing voluntary registers.
- **Process** - the process that should be followed in deciding whether to establish a voluntary register including whether the criteria should be based on risk.
- **Costs and resources** - the potential financial and resource implications for the organisation.

- 2.2 The Council agreed that, in principle, the establishment of voluntary registers should be actively pursued by the HPC provided they meet the needs of public protection.

- 2.3 The Council also agreed that the questions to be addressed included:

1. What standards should be used?
2. What process should be used?
3. How will the HPC decided in which order new professions or occupations should be regulated?
4. What will be the associated costs of these initiatives?

- 2.4 This paper begins to address the questions above – in particular questions 1, 2 and 4.

3. Health and Social Care Bill 2011

- 3.1 The Bill, if approved by Parliament, would allow the regulators to set-up voluntary registers for:
- unregulated health professions;
 - unregulated health care workers;
 - unregulated social care workers in England; and
 - students
- 3.2 The Bill provides that the regulators can only set up voluntary registers for those undertaking work that supports or relates to the work of the profession(s) they regulate, but this limitation would not apply to the newly renamed 'Health and Care Professions Council' (HCPC).
- 3.3 However, these powers would be subject to undertaking an impact assessment and a public consultation. In particular, the assessment must include an assessment of the likely impact of establishing the register on:
- prospective registrants;
 - employers; and
 - service users
- 3.4 The CHRE (renamed the Professional Standards Authority for Health and Social Care) would be given powers to accredit voluntary registers against published criteria. They would have to undertake an impact assessment and consultation before accrediting a particular register.

4. The Command Paper

4.1 The key points from the Command Paper in this area are outlined below.

- The paper places emphasis on achieving the right balance between national regulatory systems and effective local governance and scrutiny, as well as individual responsibility for safe and effective practice.
- The paper outlines a system of 'assured voluntary registration' including the role of CHRE in accrediting voluntary registers, and the ability of the regulators to set up voluntary registers. The Government believes that this is: '...a more proportionate way of balancing the desire to drive up the quality of the workforce with the Coalition Government's intention to avoid introducing regulation with its associated costs wherever possible.' (Page 16; 4.4)
- Voluntary registers are to be self-funding; there will need to be suitably 'proportionate' methods of removing people from registers; and voluntary registers should be clearly distinct from statutory ones. (Page 17; 4.6-4.7)
- There will be no absolute requirement to register but, over time, employers and commissioners may require registration as a condition of employment or funding, with independent practitioners making their own decisions about whether to register.
- The Government's expectation is that 'assured voluntary registration' will normally be the preferred option'; statutory regulation will only be considered in exceptional circumstances, where there is a 'compelling case' and where 'voluntary registers are not considered sufficient to manage this risk'. (Page 18; 4.11-4.12).
- Herbal medicine practitioners are to be statutorily regulated by the HPC. (See separate paper on the Command Paper for more information.)
- The Government is to explore with the HPC the setting-up of voluntary registers for adult social care workers. (See separate paper on the Command Paper for more information.)

5. The benefits of establishing voluntary registers

- 5.1 In its previous discussion, the Council discussed the potential benefits of the HCPC setting up voluntary registers, including in circumstances where no voluntary registers already exist for a given profession or occupation and where there is an existing register or registers. The Council also discussed more generally the differences and potential drawbacks of voluntary models of registration.
- 5.2 The following outlines the potential benefits to the public (including service users and employers), to the profession or occupation, and to the HPC, of setting-up voluntary registers.
- As a statutory regulator with established processes, nationally agreed standards, and a track record of delivering cost-effective, efficient regulation, the HPC would be in a strong position to deliver an effective system of voluntary registration system – in particular, where a given profession or occupation does not already have an established voluntary register.
 - The HPC has good relationships and recognition with a wide and varied range of employers – this means it is in a good position to outline the benefits of registration to employers and commissioners who may then make registration a specific requirement for employment or funding.
 - Even where a voluntary register or registers already exist, the HPC may be in an improved position to undertake this role – for example, with the capacity and previous experience to deal with conduct or competence concerns. Some organisations holding voluntary registers rely heavily on the good will and commitment of the individuals involved and might not therefore have the equivalent resources available for undertaking regulatory functions.
 - The HPC is independent from the professions it regulates. Its sole role is to protect the public. This provides assurance to the public that decisions will be made in the public interest rather than solely in the professional interest. This compares to voluntary organisations that may perform a registration function alongside supporting the interests of members and developing the profession.
 - An HPC voluntary register might have the potential to create one register, rather than many parallel registers for the same profession, which could be confusing for members of the public trying to make informed choices about practitioners.
 - Voluntary registration with a statutory regulator might be a ‘stepping-stone’ on the path to potential future statutory regulation, enabling the evidence to be gathered that might support the protection of a title or function associated with that group in the future.

6. Potential regulatory models

- 6.1 Appendix 1 outlines a range of working regulatory models which may be considered by the HPC in light of the Bill, the Command Paper and the Council's previous discussion at this topic. This is a draft for the discussion of the Council at this meeting and the Council is invited to approve the working models for further development.
- 6.2 In summary, there are three models within the HPC's potential regulatory remit. One of these is statutory professional regulation – the regulation of the existing 15 professions including protected titles and/or functions.
- 6.3 The proposed regulation of herbal medicine practitioners is not included at this stage as this has been a relatively recent announcement. As a result, the exact form and scope of that regulation is currently unclear until the four-country administrations publish a consultation on the necessary legislation. This is anticipated later this year.
- 6.4 Two potential models of voluntary registration have been suggested. These models have taken into account the key imperatives outlined in the Command Paper – that voluntary registers should be self-financing; that there should be proportionate means for dealing with concerns raised about practitioners; and that voluntary registers should be distinct from statutory ones. The potential cost involved in each model is an important factor also – as voluntary registers the fee would need to be set at a level which would not act as a deterrent for registration and it would be necessary to achieve a 'critical mass' of practitioners on a register before employers and commissioners might consider building registration into their requirements.
- 6.5 The two models are as follows.

'Type 1' - Professional voluntary registration – might be suitable for professional groups with clear standards and routes to entry. The form of regulation might be similar to statutory regulation, without a protected title or function, but with some differences – for example, a fee might be charged for approving programmes and the fitness to practise process might need to be amended to reflect that the HPC would not be able to use its statutory powers. This model might potentially be suitable for professions that the HPC has previously recommended for statutory regulation. The fee for registration might be similar or the same as the existing fee for HPC registration.

'Type 2' - Occupational voluntary registration – might be suitable for occupations where there are no specific required qualifications and/or no single defined route to entry, perhaps where individuals are directly employed or contracted by an agency. The form of regulation would be 'lighter touch' than for type one – for example, the focus might be on standards on conduct rather than competence, and registration might be linked with employer verification that an appointment had been made and an induction successfully completed. This model might potentially be

suitable for groups such as adult social care workers. The model might be more cost-effective and proportionate to the risk posed by these groups.

- 6.6 There are other models which need to be taken into account and which are included in appendix 1 – the role of CHRE in accrediting registers; 'employer-led' approaches to regulation through improved governance systems; and those groups or registers which might be 'outside of scope'.

7. Next steps

- 7.1 In light of the Council's discussion at the last meeting, the Executive has continued to discuss what establishing voluntary registers might mean for the HPC. This has included ongoing discussion about the relevant public law principles that the Council would need to adhere to and/or take account of in its discussions and decisions in this area.
- 7.2 The Executive proposes that a further paper should be brought back to the Council at its meeting in May 2011. This paper will further seek to address the questions outlined in paragraph 2.3, seeking the Council's agreement on the principles that should govern the HPC's approach to establishing voluntary registers, taking account of the Council's discussion and the legal context. For example, such principles are likely to include our approach to the financing of voluntary registers and the factors that will normally be taken into account when undertaking impact assessments.

Appendix 1: Regulatory Models (draft)

This document sets out the range of regulatory models following the publication of the Health and Social Care Bill 2011 ('HSCB 2011') and the Command Paper 'Enabling Excellence' ('CP'). It is a working document, only intended as a starting point for the discussion of the HPC Council.

N.B: This table does not include regulation of herbal medicine practitioners.

Key

| | |
|--------------------|---|
| Designation | How might the different types of registration be distinguished from each other? |
| Features | What standards are required to be registered? How does someone (who has qualified or worked in the UK) become registered? What is the requirement to register (e.g. protected title? protected function?)? How are concerns about practitioners' conduct and/or competence handled? |
| Description | What are the characteristics of the groups that might be suitable for each model? |
| Examples | Which groups might be included in each model? |

Explanatory notes

- **Designations.** The suggested 'designations' are working titles only for the purpose of this document – illustrating how the different types of registration might be differentiated from each other. It will be important that the differences between the types of regulation are clear and easy to understand.
- **Voluntary registration.** This document includes two types of voluntary registration – for 'professions' and for 'occupations'. The HSCB 2011 also includes powers related to the voluntary registration of students – this type of registration is not included in this document as it is being separately considered by the Council.
- **CHRE accreditation.** At the time of writing, the process and criteria for accreditation were under development by the CHRE. The wording here mirrors the provisions in the HSCB 2011 where appropriate.
- **Buyer beware.** The wording here uses the terminology from the DH Extending Professional Regulation report published in 2009 and is intended to reflect those groups that are not suitable for inclusion in this model; where voluntary registers do not exist or do not meet the relevant criteria; or where accreditation or registration is not sought.
- The range of models does not specifically refer to 'umbrella' or 'federal' voluntary systems, such as that operated by the Complementary and Natural Healthcare Council (CNHC), which voluntarily register a range of different professions.

| | | Statutory professional regulation | Voluntary registration (by the HCPC) | |
|----------------------------|--|--|---|--|
| | | | Type 1 | Type 2 |
| Working Designation | | <i>"HCPC registered"</i> | Professional voluntary registration – "HCPC certified" (TBC) | Occupational voluntary registration – "HCPC accredited" (TBC) |
| Features | Standards | Proficiency; conduct, performance and ethics; CPD | Proficiency; conduct, performance and ethics; CPD? | Conduct / behaviour |
| | Entry to the Register (e.g. education) | Approved education programmes | Approved education programmes (with fee for approval) | Health and character checks; recognised education programmes; employer verification of employment or appointment; tests? |
| | Need to register? | Yes - protected titles and/or functions | No, but possible requirement for registration from employers, commissioners, and individual choice | No, but possible requirement for registration from employers and commissioners |
| | Disciplinary process | Full fitness to practise process | Similar to fitness to practise process but without statutory powers – e.g. powers to demand information or compel witnesses to attend | 'Proportionate' ways of dealing with conduct issues such as breach of ethics code – e.g. single adjudicator |
| Description | | Professional groups Clear standards and routes to entry Autonomous and accountable practitioners | Professional groups Clear standards and routes to entry Autonomous and accountable practitioners | Occupational groups No qualifications; and/or no single defined route to entry Employer-employee relationships |
| Examples | | Existing regulated professions – e.g. radiographers, dietitians | To be determined by the Council. Command Paper refers to groups already recommended for regulation | Adult social care workers |

| Regulatory model | | | | |
|--------------------|-----------------------|--|---|--|
| | | CHRE accreditation of voluntary registers | Employer-led regulation | 'Buyer beware' / out of scope |
| Features | Standards | CHRE to set criteria for quality assuring voluntary registers (under development) | Employer-based codes or standards; or national standards used by employers | No standards; or standards not universally agreed; or no external quality assurance of standards |
| | Entry to the Register | Criteria to include 'establishment, operation and maintenance of the Register' (TBC) | No register; or maintained at employment level | No agreed route to entry; and/or no external quality assurance. No registers; or registers that do not meet CHRE criteria. |
| | Need to register | No. 'Kitemark' for CHRE accredited Registers. | No. | No. |
| | Fitness to practise | Criteria to include 'inclusion and removal' from the Register (TBC) | No. Employer's disciplinary processes. | Where registers, exist, limited ability, willingness or resources to consider issues which might lead to removal |
| Description | | Registers maintained by voluntary organisations that seek accreditation | Initiatives related to improving employer practices | Groups that do not seek accreditation; outside of health, social care and wellbeing; groups established to evade statutory registration? |
| Examples | | Registers maintained by voluntary organisations that seek accreditation | Employer-led approaches have been developed in Scotland and in other parts of the UK. | |