23 March 2022

Health and Care Professions Council response to the DHSC's consultation Healthcare regulation: deciding when statutory regulation is appropriate

About us

1. We welcome the opportunity to respond to this consultation.

2. The Health and Care Professions Council (HCPC) is a statutory regulator of healthcare professions governed by the Health Professions Order 2001. We regulate the members of 15 professions, including allied health, scientific and psychological professions. We maintain a register of professionals, set Standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise. Our role is to protect the public.

Response to the consultation

3. As we move forward with the wider programme of regulatory reform, we welcome this consultation to consider how the powers to introduce and remove professions from regulation might be used in the future. We welcome the principles-based approach proposed and broadly agree with the principles put forward.

4. We have been closely following the passage of the Health and Care Bill through Parliament and have welcomed the commitment from Government that relevant regulators would be consulted on any use of the powers set out in the Bill to deregulate professions or abolish or merge regulatory bodies (Clause 157).

5. Regulation ensures that everyone entering a regulated health and care profession has the skills they need to care for people safely, with integrity, expertise, respect, and compassion from the moment they embark on their professional career. It brings with it a level of professionalism and, crucially, accountability to the public.

6. We agree that the decision on whether a profession should be regulated should rest with government. In our experience, there can often be confusion amongst stakeholders as to where this decision lies, and the criteria involved. This consultation provides an opportunity to provide clarity for stakeholders and to enhance transparency regarding the threshold for determining which professions should come under statutory regulation.

7. The consultation notes that, where appropriate, the government may commission the Professional Standards Authority (PSA) to provide advice on

whether professions that are subject to regulation should remain so, and whether unregulated professions should be brought into statutory regulation and, commission external bodies (including the PSA) to provide advice on certain aspects of the criteria for regulation. It will be important that any assessment against the criteria is carried out by an independent organisation to avoid potential conflicts of interest. The involvement of regulatory organisations, including both those which hold statutory and non-statutory registers, in an assessment about the need for regulation may cause confusion and could be perceived as a conflict of interest. This underlines the need for clarity and transparency of the assessment process.

8. It would be helpful to carry out an equality impact assessment to establish whether there are any differences in terms of protected characteristics between regulated and unregulated professions and also the profile of people accessing these different services. We would welcome the opportunity to contribute to further work in this area. Our latest Diversity Data Report, published in October last year, gives an overview of protected characteristics and socio-economic indications in relation to our register. This highlights one of the additional benefits of statutory regulation, in that it facilitates the collection of diversity data for regulated professionals, which in turn can contribute to a wider picture of the health and care workforce. Statutory regulation also allows regulators to embed equality, diversity and inclusion considerations into the education that our professionals receive and the standards that they must maintain throughout their career.

9. The following section sets out our response to the four specific questions posed by the consultation.

Question 1: Do you agree or disagree that a qualitative and quantitative analysis of the risk of harm to patients is the most important factor to consider when deciding whether to regulate a health or care professional?

10. We agree that the risk of harm should be the most important factor when considering whether to regulate a health or care professional. This aligns with the objectives set out in our governing legislation to protect the public and promote and maintain their health, safety and well-being.

11. Although the question focuses on the risk of harm to patients, the consultation itself speaks more broadly about the risk of harm to the public. A wider definition which encompassed the public, patients and service users would be more appropriate. Many of the people that our professionals interact with might not be considered 'patients' and therefore it is important that service users are included.

12. The consultation notes that 'harm' can refer to physical, emotional and psychological harm. We welcome the inclusion of different types of harm beyond the physical. A number of the professions that we regulate are involved in psychological interventions and often work with highly vulnerable people.

13. We agree that the assessment of risk should involve a qualitative and quantitative analysis. As noted above, following this consultation, we think that it

would be beneficial for government to set out a clear picture of the how such an assessment may be made.

Question 2: Do you agree or disagree that proportionality, targeted regulation and consistency should also be considered in deciding whether to regulate a health or care profession?

14. We agree that these factors should also be considered in deciding whether to regulate a health or care profession.

15. As part of our policy development in relation to advanced practice we considered criteria for regulation. In our deliberations we adopted the criteria put forward by the General Medical Council as part of their response to DHSC's consultation on the regulation of medical associate professions in 2017, namely:

    - The professional group must have a defined body of knowledge and standards.
    - The profession must be a clearly definable and differentiated group and have a clear role.
    - Statutory regulation is necessary to perform functions associated with the role (for example prescribing).
    - There is a high level of complexity associated with the role.
    - There is a high level of risk associated with activities necessary to fulfil the role and therefore a need for accountability.
    - Professionals have a significant degree of autonomy.
    - Regulation is necessary to be able to command public confidence.
    - Regulation is necessary to provide assurance of quality and reliability to other professional groups or agencies using the services of the profession.
    - Statutory regulation must be supported by the proposed professional group and other key stakeholders.
    - The professional group must be of sufficient size and maturity to be able to support the requirements of regulation (for example, an established educational and professional infrastructure and professional standards. This might be demonstrated through voluntary regulation)

16. To further support effective deliberations and decision-making, government may wish to incorporate additional elements from the above into its criteria.

Question 3: Do you agree or disagree that the currently regulated professions continue to satisfy the criteria for regulation and should remain subject to statutory regulation?

17. In relation to the professions within our remit, we agree that these professions meet the criteria for regulation and should remain subject to statutory regulation.

18. The professions that we regulate are varied; and professionals practice in a diverse range of settings including allied health, psychological, scientific and care settings and increasingly as part of multi-disciplinary teams. Many of these professionals work independently with vulnerable people, including children, the elderly, inmates, people with mental health problems and people with disabilities. They engage in high-risk interventions (physical and psychological) and are trusted and relied upon by other professionals and the public to provide accurate results and advice. A proportion of our professionals also work in private practice or commercial settings. These are all factors which can increase the risk of harm to patients and service users. Statutory regulation helps limit these risks ensuring that professionals have the skills that they need and are held accountable to our Standards.

Question 4: Do you agree or disagree that currently unregulated professions should remain unregulated and not subject to statutory regulation?

19. Our current legislation (article 3(17)(a) of the Health Professions Order 2001) provides our Council with a discretionary power to make recommendations to the Secretary of State concerning any professions which, in its opinion, should be regulated pursuant to the Health Act, on the grounds of public protection.

20. In the past, Council has taken a number of approaches to considering requests from professional bodies representing professions seeking statutory regulation. This included an 'aspirant groups' process which ran from 2003 until 2011, when the government published its Command Paper 'Enabling excellence' which confirmed that government would only consider regulating further groups in exceptional circumstances.

21. Under the 'aspirant groups' process, applications were assessed against published criteria that included consideration of the potential harm posed to the public as well as criteria about the existing systems established by the professions which demonstrated a commitment to the public and readiness for regulation.

22. Council made recommendations in favour of regulation on eleven occasions in relation to the following professions:

    - Operating department practitioners (now regulated by HCPC)
    - Applied psychologists (now regulated by HCPC)
    - Clinical perfusion scientists
    - Clinical physiologists
    - Dance movement therapists

- Clinical technologists
- Medical illustrators
- Maxillofacial prosthetists and technologists
- Sports therapists
- Sonographers
- Genetic counsellors

23. In 2016, Council agreed that statutory regulation should only be considered where there is a clear public safety risk that can be effectively mitigated, and that Council would not proactively seek regulation of new groups, in line with the approach set out in government's 2011 Command Paper.

24. Nonetheless, the HCPC is still regularly contacted by professions seeking statutory regulation. For example, amongst others we have been contacted by:

- Assistant Practitioners / Assistant Theatre Practitioners / AHP Associates
- Colon Hydrotherapists
- Dance Movement Psychotherapists
- Emergency Technicians
- Herbal Practitioners
- Mammography Associates
- Nuclear Medicine Technologists
- Nutritional Therapists
- Orthopaedic Practitioners
- Psychotherapists and Counsellors
- Smoking Cessation Practitioners
- Soft Tissue Therapists
- Sonographers
- Sports Therapists
- Surgical Care Practitioners
- Trichologists

25. As noted above, we closed our 'aspirant groups' process following the government's Command Paper and so no longer have a mechanism in place which would enable us to carry out the detailed and thorough evidence gathering and analysis that would be required about specific professions. However, we recognise that a number of the professions listed above either work very closely with, or are aligned to, professions which are already regulated. For example, unregulated sonographers can work alongside regulated radiographers within the same team. Unregulated practitioners can also have similar titles to regulated practitioners working in the same field, for example, 'clinical psychologist' is a regulated title, whereas 'psychologist' is not.

26. The HCPC would be ready to work with the Department should government wish to review the approach set out in the 2011 Command Paper or develop processes for successfully bringing new professions into regulation, as HCPC has done in previous years with operating department practitioners and applied psychologists, for example. As noted above (para 4), where government may be minded to bring further professions into regulation, we support the commitment to further consultation and close working with the relevant regulator.