

Council – 31 March 2011

Action points arising from the Health and Social Care Bill 2011 and
Command Paper

Executive summary and recommendations

Introduction

This paper details the key action points arising from the Health and Social Care Bill 2011 and the Command Paper 'Enabling Excellence: Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers'.

Decision

The Council is requested to note the document. No decision is required.

Background information

Resource implications

Financial implications

Appendices

Date of paper

17 March 2011

Date	Ver.	Dept/Cmte	Doc Type	Title	Status	Int. Aud.
2011-03-17	a	CER	PPR	Action points from Bill and Command Paper	Final DD: None	Public RD: None

Health Professions Council – Command Paper – *Enabling Excellence*

Park House, 184 Kennington Park Road, London
31st March 2011

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I. Foreword

Foreword...

In early 2011 the Coalition Government published two important documents that will fundamentally alter the regulation of health and care professions in the UK

- **Health and Social Care Bill 2011**
 - Published 19th January 2011
- **Command Paper**
 - Published on 16th February 2011

Ref: MJS/HPCE/CP/31.03.11

II. 2011 Health Bill

Health Bill...

The key regulatory themes in the Health and Social Care Bill 2011 were reviewed by the Council on 10th February 2011

- **GSCC to be abolished**
 - Regulatory functions transfer to HPC April 2011 (Ref: 6.5 & 7.2)
- **HPC to be renamed *Health and Care Professions Council* (HCPC)** (Ref: 6.5)
- **HCPC to have powers to open four types of voluntary registers** (Ref: 4.5)
- **OPHA to be abolished** (Ref: 7.2)

Ref: MJS/HPCE/CP/31.03.11

III. Command Paper

Command Paper...

The Government's proposed changes to the NHS in England & the economic climate are the key context of the Command Paper entitled *Enabling Excellence – Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers*

- Regulation must support the white paper *Equity and Excellence: Liberating the NHS*, Department of Health, July 2010 (Ref: Foreword)
- Difficult economic climate & the state of Public sector finances (Ref: Foreword, 6.10 & 8.3)
- Era of pay restraint (Ref: Forward, 2.4 & 8.3)

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Command Paper...

The Command Paper identifies ten themes

1. **Affirms importance of existing systems of professional regulation** (Ref: 8.2)
2. **Advantages of localization**
 - Local non-regulatory remedial action is seen as cost effective & most appropriate initial solution (Ref: Forward & 1.8)
 - Strengthens local responsibilities for managing problems effectively & promptly (Ref: 6.8)
3. **Curtailing the growth & cost of statutory regulation**
 - Intervention by Statutory regulatory is seen as a last resort (Introduction, 1.8, 1.9, 1.10 & 1.15)
 - Reduction of compulsory centralised national systems of statutory regulation (Ref: Forward, 1.7 & 6.8)
 - Extending professional & occupation statutory regulation minimized (Ref: Introduction, 1.10, 1.13, 5.4 & 8.3)

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Command Paper...

Ten themes contained in the Command paper, (Contd)

4. **Reducing the unnecessary cost of regulation** (Ref: 6.10 & 8.4)
 - All regulators' costs under scrutiny & will be constrained (Ref: Forward 1.4 & 1.7)
 - Value for money (Ref: Introduction)
 - Costs include indirect costs to third parties (Ref: 1.4)
 - Potential cost of non-medical revalidation (Ref: 5.3)
5. **Requirement for possible structural changes to statutory regulators**
 - Regulators must be flexible & adaptive (Ref: Forward & 1.4)
 - As alternative to cost savings the number of regulators will be reduced by a voluntary process or imposed consolidation (Ref: 2.7)

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Command Paper...

Ten themes contained in the Command paper, (Contd)

6. **Reducing the need for Government intervention**
 - Greater autonomy & operational freedom (Ref: Forward & 8.3)
7. **Increasing accountability to Parliament & the Public** (Ref: Forward & 8.3)
8. **Creation of Quality Assured non-statutory voluntary registers** (Ref: 8.4)
9. **Expanding the role of CHRE**
 - Local non-regulatory remedial
10. **Role of employers as provider & commissioner in assuring quality** (Ref: 1.14, 4.2 & 5.4)

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IV. Independence, Accountability & Legislation

Independence & Accountability ...

Government seeking to balance the need for regulators to be more independent & autonomous with increased accountability to Parliament & the public

- **Regulators are independent from Government** (Ref: 6.4 & 6.5)
 - Annual report & FTP efficiency & effectiveness report to Parliament (Ref: 3.2)
- **Greater autonomy required** (Ref: 3.8)
- **Accountability**
 - Regulators are accountable to Parliaments & Assemblies via Privy Council (Ref: 3.2 & 7.6)
 - Greater Parliamentary & public scrutiny to balance increased independence (Ref: 3.2 & 3.8)
 - Accountability needs strengthening (Ref: 3.2)
 - May include greater scrutiny by CHRE annual performance review (Ref: 3.8)
 - Mechanism to be consulted upon
- **Will exclude quasi-judicial function of regulators** (Ref: 3.8)
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Legislation...

Replace existing legislation with a single Act of Parliament

- **Complex web of existing legislation over regulates the regulators**
 - Different legal framework for each regulator (Ref: 2.3)
 - Regulators continually dependent on Government to adapt & modernize their legislation (Ref: 3.4)
 - Legislation often prescriptive (Ref: 3.4)
 - Long time to amend legislation (Ref: 3.5)
- **Single Act of Parliament** (Ref: 3.6 & 3.18)
 - Legislation should focus on outcomes & be simplified
 - Law Commission review (Ref: 3.6)
 - Work to start in 2011 (Ref: 7.10)
 - Report in 2014 on draft Bill following consultation
 - Proposals to introduce new legislation before end of current Parliament (Ref: 3.7)
 - To include duty to consult similar to HPO 2001 Article 3(13) & (14) (Ref: 3.7)

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Legislation...

Amending existing legislation will be considered in the short term

- **To ensure public protection** (Ref: 3.18)
- **Costs savings** (Ref: 3.18)
- **Sunset provisions in line with Reducing Regulation made simple December 2010** (Ref: 3.9)

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V. Devolution

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Devolution...

UK Government remains firmly committed to devolution

- **Committed to working with the four parts of the UK workforce regulation on a UK wide basis where possible** (Ref: Foreword & 5.1)
- **Systems of regulation must be sensitive to the needs of practitioners & those using their services in all four parts of the UK**
- **Regulation of social workers and Social Care workers is & will remain devolved** (Ref: Foreword)

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VI. Governance Arrangements

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Governance...

Proposed changes to Governance arrangements

- **Council's role to remain strategic rather than operational** (Ref: 3.16)
 - Small & Board like structures (Ref: 3.15)
 - Effective governance and constrain costs (Ref: 3.15)
 - Performance management of Executive
 - Not direct involvement in operational matters
- **Has scrutiny by the professions been reduced too far?** (Ref: 3.2)
- **Process to appoint Council members** (Ref: 3.12 & 7.9)
 - Recruitment processes must be open, independent, competence-based
 - Appointments Commission to be abolished April 2012
 - On a temporary basis the Privy Council given new powers to make appointments with the assistance of other bodies
 - Includes the regulators & CHRE
 - Alternative permanent options will be reviewed in long term
 - Advice from CHRE

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Governance...

Proposed changes to Governance arrangements, (Contd)

- **DH to request regulators to review governance arrangements** (Ref: 3.15)
 - Mechanisms to ensure interest groups' voices are properly heard (Ref:3.16)
 - Complexity of governance arrangements (Ref: 3.16)
 - Size & make-up of Councils & Committees (Ref: 3.15 & 3.16)
 - CHRE to advise on case for smaller Councils (Ref: 3.16 & 3.17)

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Governance...

Proposed changes to Governance arrangements, (Contd)

- **Appointment of Chairs of Councils**
 - Direct appointment preferred by DH (Ref: 3.14 & 7.9)
 - CHRE to advise on a system of competence-based appointments (Ref: 3.14 & 7.9)
 - HPC currently uses such a system
 - DH to consider if appointments should be considered &/or approved by Parliament (Ref: 3.14 & 7.9)
- **Mechanisms in place to ensure Special Interest Groups are heard** (Ref: 3.17)
- **How to ensure that employers & commissioners contribute directly to strategic leadership of regulators** (Ref: 3.17)
 - CHRE to advise

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VII. Regulators' Costs

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Regulator's Costs

Reducing regulators' costs now high on the Government's agenda

- **Regulators costs fall on registrants, employers & the tax payer** (Ref: 2.1)
- **Registration fees linked to economies of scale & the number of registrants per regulator** (Ref: 2.2)
- **Cost linked to the efficiency of their operations** (Ref: 2.3)
 - FTP recognized as most significant single cost (Ref: 2.4)
- **It is assumed that all regulators can be significantly more efficient** (Ref: 2.3)
- **Concerted action to constrain costs required**
- **Registration fees must not rise above current levels without clear & robust business cases essential to ensure the exercise of statutory duties** (Ref: 1.7 & 2.6)
- **CHRE to lead sector wide review to identify significant cost savings** (Ref: 2.6)
- **Government will not support the extension of the regulators responsibilities & roles that add to costs without robust evidence of significant additional protection or benefits to the public** (Ref: 2.6)
 - Advanced practice registers only if appropriate & proportionate use of registrants' fees

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VIII. Structural Changes

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The costs of regulators must be significantly reduced (Ref: 2.7)

- **Significant cost savings required**
 - CHRE to lead sector wide review
 - Three years to identify & secure significant cost reductions & contain registration fees (Ref: 2.7)
 - Identify unnecessary duplication with the roles of other bodies (Ref: 2.7)
- System regulators
- Quality assurance of education

If costs of regulators not significantly reduced structural remedies will be imposed (Ref: 2.7)

- **Voluntary mergers**
 - Simplest means of reducing costs (Ref: 2.5)
 - Can be proposed by regulators
 - Government will be "sympathetic" (Ref: 2.7)
- **Consolidate sector into a more cost-effective configuration** (Ref: 2.2)
 - Simplest option
 - Merge regulators into the regulators with large number of registrants (Ref: 2.5)
 - > GSCC /HPC used as an example (Ref: 2.5)
 - May be disruptive (Ref: 2.5)

IX. Extending Professional Statutory Regulation

Decisions to extend statutory regulation to unregulated professions & occupations will have a higher threshold (Ref: 4.2)

- **Extending regulation or deregulation remains a decision of Parliament** (Ref: 3.7)
- **Rationale for new policy**
 - Cost of regulating 1.4 million individuals (Ref: 4.1)
 - Relatively low pay of support workers
 - More flexible system required
- **Threshold** (Ref: 4.12)
 - Compelling case on basis of a public safety risk (Ref: 4.12)
 - Assured voluntary registers not considered sufficient to manage risk (Ref: 4.12)
- **Implications**
 - "Overwhelming majority of groups recommended by the HPC but not yet registered to date will not be regulated" (Ref: 4.11)
 - Limited cases for statutory regulation particularly for self employed practitioners (Ref: 4.10)

X. Quality Assured Voluntary Registers

Government will encourage the establishment of non-statutory voluntary registers which can be quality assured by CHRE (Ref: 4.4)

- **Alternative to statutory regulation**
 - Provides greater flexibility (Ref: 4.3 & 4.11)
 - Gives public & employees greater control (Ref: 4.11)
 - Provides a more effective system (Ref: 8.4)
- **The voluntary registers may be for both professionals & occupations** (Ref: 4.4)
 - Allows practitioners to demonstrate that they meet high standards (Ref: 4.3)
- **Providers of Voluntary Registers**
 - No restrictions identified in Command paper
 - Will include existing statutory regulators (Ref: 4.5)
 - > Only where the new professions or occupations are related to professions they currently regulate (Ref: 4.5)
- **Funded by individuals on the voluntary registers** (Ref: 4.6)

Government will encourage the establishment of non-statutory voluntary registers which can be quality assured by CHRE , (Contd)
(Ref: 4.3)

- **The Voluntary Registers (AVRs)** (Ref: 8.4)
 - Registration will be voluntary (Ref: 4.9)
 - No requirement for employers to require registration (Ref: 4.9)
 - Employers may require registration by employees (Ref: 4.9)
 - Public needs to be informed about the benefits of AVRs (Ref: 4.10)
- **Removing registrants from AVR of statutory regulators** (Ref:4.7)
 - By administrative means or internal panel hearings
 - Must have robust appeal mechanisms
 - Statutory regulators need to inform the public about difference between the two types of registers
- **Non-Statutory but legislation will be required**
 - To grant powers to CHRE
 - Statutory Regulators will be given powers to establish voluntary registers (Ref: 4.7)

CHRE to have powers to establish a coherent & cost effective system of accredited voluntary registers (Ref: 4.5, 4.6 & 7.2)

- **CHRE to become the National Accrediting Body for voluntary registers** (Ref:4.5)
 - Governance, procedures, registration criteria & performance (Ref: 4.5)
 - Standards for training, skills & conduct of registrants (Ref:4.5)
- **Operations** (Ref: 4.8)
 - Strategic oversight & responsibility (Ref: 4.8)
 - Devise detailed proposals on how system will operate (Ref: 4.6)
 - Avoid misuse by individual professions to enforce protectionist practices (Ref: 4.8)
- **CHRE to consult on processes** (Ref:7.3)
- **Independent Safeguarding Authority (ISA)** (Ref: 4.8)
 - Operators of voluntary schemes will be able to refer concerns to ISA

XI. Herbal Medicine

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Practitioners of Herbal Medicine & Chinese Herbal Medicine will be statutorily regulated (Ref: 4.13)

- **European law requirement**
 - Manufactured medicine require product license
 - Applies to manufactured Herbal Medicine from April 2011
 - Member States can operate national arrangements to allow authorized healthcare professionals to commission unlicensed medicines
- **HPC to be UK regulator**
 - Preventing supply would be disproportionate
 - Improved assurance of competence of practitioners
 - A register of persons authorised to dispense unlicensed herbal medicines (Ref: 7.4)
 - Focus of regulation will be solely on minimizing risk to the public
 - Devolved Administrations to jointly consult in early 2011 (Ref: 7.4)

XII. Regulation of Social Care Workforce

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Social Care workforce seen as two distinct groups (Ref: 1.8 & 6.2)

- | | |
|---|---|
| <ul style="list-style-type: none"> • Social Workers <ul style="list-style-type: none"> - Autonomous Professionals - A single group of identical professionals - Statutorily regulated throughout the UK | <ul style="list-style-type: none"> • Social Care Workers <ul style="list-style-type: none"> - Are not statutory regulated in England - Different systems of regulation in NI, S & W - Comprised of many groups <ul style="list-style-type: none"> ➢ 18 parts of register in Scotland (Ref: 6.2) - Low paid (Ref: 6.10) |
|---|---|

Social Care Workforce...

Regulation of Social Workers in England will continue to be regulated by statutory means

- **Social Workers**
 - Strategy announced in Liberating the NHS: Report of arms length bodies (Ref: 6.5)
 - Regulatory functions to be transferred from the General Social Care Council (GSCC) (Ref: 6.5)
 - To be regulated by the HPC from April 2012. (Ref: 6.5 & 7.2)
 - GSCC to be abolished (Ref: 7.2)

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Social Care Workforce...

Social Care workforce working with adults in England may be regulated by non-statutory means (Ref: 7.3)

- **Statutory regulation not justified**
 - Justification for regulation reduced by alternative methods
 - > Linking to registration by the Care Quality Commission (CQC) seen as alternative (Ref: 6.10)
 - > Vetting & Barring scheme seen as an aid (Ref: 6.10 & 7.3)
 - The commitment of the previous administration to regulate the group rescinded (Ref: 6.9)
- **Assured Voluntary Registration**
 - Should be applied to "Adult Social Care workforce" (Ref: 6.11)
 - Link to employment contracts (Ref: 4.9)
- **HPC & Government to explore "scope to establish"** (Ref: 6.11)
 - By April 2013 (Ref: 6.11)

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Social Care Workforce...

Healthcare support workers seen as distinct group compared to Social Care workers working with adults (Ref: 6.11 & 7.3)

- **Scope of regulation**
 - Healthcare support workers & adult social care workforce (Ref: 6.11 & 7.3)
 - Different from Social care workers in children's services (Ref: 6.11 & 7.3)
- **Common Standards seen as critical**
 - Options for establishing Common Standards to be explored (Ref: 6.12 & 7.3)
 - > Employer led option
 - > Single voluntary register
 - > Separate voluntary register with common standards
 - > CHRE to consult on implementation options
- **Social Care workers in Children's services**
 - Common standards may not be applicable (Ref: 6.12)

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Social Care Workforce...

Proposals awaited from the Social Work Reform Board on the need for a Licence to Practise & an Assessed Year in Employment (Ref: 6.8)

- **Licence to Practise & Assessed Year in Employment (AYIE)**
 - Recommendations of the Social Work Task Force
 - Assumes that on graduation social workers are not fit to practise & need to be assessed by employers after one year's employment
- **Government will consider recommendations before implementing & will take three issues into account**
 - Evidence base
 - Cost & benefits
 - Changes to regulation

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XIII. Revalidation

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Revalidation...

Government is seeking more evidence to justify the cost of requiring Revalidation

- **DH supports GMC medical revalidation** (Ref: 5.1 & 7.11)
 - Concerned about complexity & time requirements of doctors
 - Extend one year pilot in England followed by cost benefit analysis & evaluation
 - Role out will then be decided for implementation in late 2012
 - UK wide decision following liaison with DAs
 - Committed to Responsible Officers (Ref: 5.2)
- **DH awaits all other regulators to develop an evidence base for revalidation** (Ref: 5.3)
 - One year to complete work
 - Government will then proceed provided there is an increase in safety for users

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XIV. Language Testing & Indemnity Insurance

EU Directives...

Revised EU Directives may be used to trigger changes to language requirements for EU international applicants & EU infraction Order fines may be passed on to regulators

- **Westminster Government committed to ensuring that all international applicants have appropriate language & professional skills for safe & effective practise** (Ref: 5.5)
 - Part of Coalition Agreement
 - All registrants should be able to communicate effectively with those using services (Ref: 7.7)
 - Solution to be compatible with free movement of professions across EU
 - European Commission current review of Directive on *Mutual Recognition of Professional Qualifications* seen as possible solution (2005/36/EC)
 - DH to work with NHS Commissioning Board (England) in relation to GPs
- **EU Infraction Orders** (Ref: 3.10 & 7.8)
 - Government to explore the option of taking on new powers in Localisation Bill in 2011
 - Regulators as Competent Authorities, may be required to contribute to EU fines when caused by their failings or "infractions"

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EU Directives...

New EU Directive may be used to require registrants to have appropriate professional indemnity insurance

- **Professional Indemnity Insurance seen as advantageous** (Ref: 5.7)
 - Report published 14 July 2010
 - Greater Consistency sought across UK's nine regulators
 - To exclude registrants with insurance cover provided by employers
 - Introduction linked to EU Directive on *Patients' Rights in Cross-border Healthcare* (2008/0142(COD))
- **Information Revolution**
 - Government & regulators to ensure standards adequately reflect the IR (Ref: 5.6)

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XV. CHRE

CHRE...

White paper proposes significant changes to CHRE which will have a direct impact on the HCPC (Ref: 4.11)

- **Name to change to *Professional Standards Authority for Health and Social Care*, (PSAHSC)** (Ref: 6.5)
- **PSAHSC will become self funding & independent from Government** (Ref: 3.8 & 7.2)
 - Importance of percentage of funding from HPC
- **Council Members to be appointed by Privy Council & Devolved Administrations** (Ref: 3.13)
- **Remit will expand to include Social Workers but only in England** (Ref: 6.6 & 7.2)
- **Section 28 will be enacted, allowing for investigations of the administrative approach & policy matters of the regulators** (Ref: 3.11 & 7.5)
- **CHRE annual performance review may be enhanced** (Ref: 3.8)

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CHRE...

White paper proposes significant changes to CHRE which will have a direct impact on the HCPC

- **CHRE to become the national accrediting body for voluntary registers** (Ref: 7.2)
- **To have powers to establish a cost effective & coherent system of accredited voluntary registers** (Ref: 4.4 & 7.2)
 - Devise how system will operate (Ref: 4.5)
 - Strategic oversight & responsibility (Ref: 4.6)

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CHRE...

White paper proposes significant changes to CHRE which will have a direct impact on the HCPC (Ref: 4.5)

- **PSAHC to advise Government on a range of issues**
 - Assured voluntary registers including for healthcare support workers & adult social care workers (Ref: 6.12 & 7.3)
 - Take account of stakeholders views (Ref: 7.3)
 - Sector wide review for scope of delivering efficiency savings of the Regulators by end of 2011 (Ref: 2.6 & 7.5)
 - Mechanism to hold regulators accountable to Parliament & Assemblies (Ref: 7.6)
 - Governance arrangements (Ref: 3.16 & 7.9)
 - Council appointments (Ref: 3.19 & 7.9)
 - Competences based appointments of Chairs (Ref: 7.9)
 - Contribution by employers & commissioners to the strategic leadership of RBs (Ref: 3.17)

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