

Council, 22 September 2011

Establishing voluntary registers and making recommendations for statutory regulation

Executive summary and recommendations

Introduction

At the Council meeting on 7 July 2011, the Council considered a further paper from the Executive on the issue of voluntary registers. The paper also discussed the HPC's possible future approach to exercising its powers to recommend statutory regulation under Article 3 (17) (a) of the Health Professions Order 2001.

This paper summarises the Council's previous discussion. A draft statement of policy setting out the Council's approach to the issue of voluntary registration is attached. This includes the potential benefits and risks and drawbacks of establishing voluntary registers and revised 'guiding principles' as discussed at the last meeting.

Decision

The Council is invited to discuss and agree the draft statement of policy.

Background information

As outlined in the paper.

Resource implications

There are no resource implications as a result of this paper.

Financial implications

There are no financial implications as a result of this paper.

Appendices

Draft process for establishing a voluntary register and making Article 3 (17) (a) recommendations – outline process for further development

Date of paper

12 September 2011

Establishing voluntary registers and making recommendations for statutory regulation

1. Introduction

- 1.1 At the Council meeting on 7 July 2011, the Council considered a further paper from the Executive on the issue of voluntary registers. The paper also discussed the HPC's possible future approach to exercising its powers to recommend statutory regulation under Article 3 (17) (a) of the Health Professions Order 2001.
- 1.2 At the meeting the discussion focused on the premise of voluntary registration itself – in particular, whether voluntary registration was desirable and would protect the public – and therefore the starting point for the Executive's development work.
- 1.3 This paper summarises the salient points from the paper considered by the Council in July and the Council's discussion.
- 1.4 A draft 'statement of policy' has been drafted to articulate the Council's developing views on voluntary registration - this incorporates redrafted versions of the principles and potential benefits included in the last paper and the risks and drawbacks referred to in previous papers and identified by the Council in its discussion.
- 1.5 This has been produced in order to bring together the different views expressed by the Council on this topic (including the request that the principles should become 'guiding principles' and the potential risks added alongside the potential benefits) and to facilitate communication with interested stakeholders, and can be updated appropriately as the Council's discussion progresses.
- 1.6 Further papers on this topic will follow at future Council meetings.

2. Summary of previous paper and discussion

Aims

- 2.1 The previous paper discussed the aims we seek to achieve in developing our approach to voluntary registration.
 - To produce a clearly articulated policy and process which is transparent, robust and credible and which can be easily communicated to stakeholders.
 - To develop an approach which takes account of, where appropriate, the complementary role of the CHRE in accrediting voluntary registers.
 - To develop a process which facilitates objective decision making, whilst allowing the Council to exercise its discretion in light of the

external policy context (e.g. government policy) and organisational issues such as costs and capacity.

Process

2.2 The previous paper proposed a three step process to decide a) whether to establish a voluntary register under the HPC's forthcoming powers and b) whether to recommend statutory regulation under Article 3 (17) (a) of the Health Professions Order 2001. The draft process is appended for information in Annex A (but will need to be updated appropriately in light of legal advice - see below - and in the light of the Council's discussion).

- **Prioritisation**

- Deciding which professions / groups should be considered through the process

- **Impact assessment and consultation**

- Preliminary impact assessment – assessing the likely impact of establishing a voluntary register, particular upon prospective registrants; employers; and service users
- Public consultation
- Finalisation of impact assessment

- **Outcomes**

- Suggested outcomes included recommending statutory regulation; recommending statutory regulation but establishing a voluntary register; and establishing a voluntary register of one of the types previously agreed.

2.3 At the meeting, some comments were made about the draft process, in particular whether the process might be more accurately described as a process for determining regulatory need.

2.4 An outline process was agreed by the Council, subject to further development in light of legal advice. The formal advice of the Solicitor to Council is currently being sought on this.

2.5 Two particular issues in particular are being considered which may affect the draft process that has been developed.

- The HPC's discretionary powers to recommend statutory regulation and its forthcoming discretionary powers to establish voluntary registers are functionally separate (albeit, in policy terms, very much related). Advice is being sought on whether it is possible to combine these powers in the draft process as previously suggested. It might be necessary to amend the process to provide more separation between the process of considering establishing a voluntary register and the

process of making a recommendation to government for statutory regulation.

- The HPC's forthcoming powers include requirements to undertake an impact assessment and consultation prior to establishing a voluntary register. The legislation infers that a preliminary decision is made to establish a voluntary register, with an impact assessment and consultation undertaken to think through the consequences before a final decision is made. More generally, an impact assessment is normally undertaken once an initial decision has been made to intervene, and often in light of a 'preferred' policy option. The process as currently envisaged would see a decision made about the appropriate regulatory model after an impact assessment and consultation and therefore careful consideration needs to be given to a) what the HPC would be impact assessing; and b) the legislative intent behind the requirement for impact assessment as outlined in the Health and Social Care Bill 2011.

2.6 The practical approach to undertaking an impact assessment should be informed by the current exercise being undertaken about student registration.

Developmental work and timetable

2.7 The paper identified the following broad areas of work that would need to be undertaken as part of developing the HPC's approach.

- Determine how we would prioritise professional / occupational groups.
- Develop the method, process and broad policy considerations involved in the impact assessment and consultation phase.
- Determine how we might decide the appropriate regulatory model for a particular group.
- Develop further the proposed types of voluntary registration, including the key features and the costs involved.

2.8 The Council also agreed an indicative timetable for the work that would need to be undertaken. The Executive is seeking legal advice which will inform how this work develops further. Receipt of that formal advice was pending at the time of writing this paper. The outcomes of that advice and the next stages of substantive proposals will now be considered by the Council in December 2011 and February 2012.

Principles, benefits and risks

- 2.9 The previous paper set out some proposed principles for establishing voluntary registers. At the last meeting, the Council's discussion particularly focused on the principles, potential benefits and risks of establishing voluntary registers. Much of the discussion concerned reconciling the potential drawbacks of voluntary registration with the recognition that some pragmatism was necessary in light of the clearly stated policy position of the Government. For example, the potential that voluntary registration might fall short of the level of protection afforded by statutory regulation; balanced against the appreciation that statutory regulation was currently unlikely for many groups and that voluntary registration might have the potential to improve the current situation nonetheless.
- 2.10 A small number of suggestions for changes to the wording of the draft principles were made which have been incorporated into the draft policy statement. The Council previously agreed that the HPC 'should, in principle, pursue establishing voluntary registers, provided that they meet the needs of public protection'. However, the Council considered that although it was committed to exploring this area and developing its approach, it should not be inferred or assumed that the HPC will necessarily establish voluntary registers. As a result, the Council agreed that these principles should become 'guiding principles' and should not be written in absolute terms.

Voluntary registration

1. Introduction

- 1.1 This document outlines the HPC's developing thinking on the topic of the voluntary registration of professions and occupations in light of the Health and Social Care Bill 2011.
- 1.2 In this document 'we' refers to the HPC.

2. What is voluntary registration?

- 2.1 In February 2011, the government published the Command Paper 'Enabling Excellence – Autonomy and Accountability for Healthcare Workers, Social Workers and Social Care Workers' ('the paper').
- 2.2 The paper sets out the current Government's policy on regulation, including its approach to extending regulation to new groups. In particular, it sets out the Government's policy that, in the future, statutory regulation will only be considered in 'exceptional circumstances' where there is a 'compelling case' and where voluntary registers, such as those maintained by professional bodies and other organisations, are not considered sufficient to manage the risk involved.
- 2.3 The paper also outlines a system of what is called 'assured voluntary registration'. The Council for Healthcare Regulatory Excellence (CHRE), (which has oversight of the nine regulators of healthcare professionals), is to be renamed and given powers to accredit or quality assure voluntary registers held by professional bodies and other organisations.
- 2.4 The HPC and the other regulators¹ are to be given powers to set up voluntary registers, subject to publishing an assessment of the likely assessment of doing so (an 'impact assessment') and holding a public consultation. A voluntary register would mean that registration would not be compulsory in order to practise, but, over time, registration might become a requirement of employers and commissioners and individuals could choose to register.
- 2.5 The paper also said that by the end of 2013 the HPC should explore with government the scope for putting in place a system of voluntary registration for adult social care workers. Adult social care workers include staff who work with adults in residential care homes, in day centres and who provide care in someone's home.

¹ The nine regulators overseen by the CHRE

3. HPC's position and approach

- 3.1 We are in the early stages of considering whether, how and in what circumstances we might consider exercising our future powers to establish voluntary registers.
- 3.2 We are actively exploring establishing voluntary registers in light of the government's clear statement of policy about statutory regulation and its preference for 'assured voluntary registration'. However, **we will only establish a voluntary register for a professional or occupational group if we consider that such a register would support the needs of public protection.**
- 3.3 As a result, we have not yet made any decisions about whether the HPC should establish a voluntary register for any specific professional or occupational group.
- 3.4 We have however identified what we believe might be the potential benefits of setting up voluntary registers, and the potential risks or drawbacks. We have also produced a set of guiding principles which will inform our developing approach to voluntary registration.

Benefits

- 3.5 The following outlines the potential benefits to the public, including service users, employers, to the profession or occupation, and to the HPC, of establishing voluntary registers.
 - As a statutory regulator with established processes, nationally agreed standards, and a track record of delivering cost-effective, efficient regulation, the HPC may be in a strong position to deliver a system of voluntary registration – in particular, where a given profession or occupation does not already have an established voluntary register. A voluntary register might help members of the public to make informed choices.
 - 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.
 - The HPC has good relationships and recognition with a wide and varied range of employers – this means it may be in a good position to outline the potential benefits of voluntary 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.
- 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.

Risks and drawbacks

3.6 The following outlines the potential risks and drawbacks of setting up voluntary registers.

- The level of protection afforded by a voluntary register may be lower than a statutory register because registration would not be compulsory and some practitioners may choose to practise without registration, leaving the public at risk.
- Someone removed from a voluntary register because of concerns about their conduct or competence would be able to continue to practise. The HPC would need to carefully consider the public protection risk and the reputational risk this may cause.
- Voluntary registration might confuse or mislead members of the public who may assume that it affords the same level of protection as the HPC’s statutory registers.
- A voluntary register might only be meaningful if employers, commissioners and service regulators made registration a requirement and this may only be likely to happen once a ‘critical mass’ of practitioners become registered. It might be difficult to build sufficient numbers on the register without such requirements in place.
- The cost, resource and capacity implications of the HPC establishing voluntary registers need to be explored further, but might potentially be prohibitive (at least in some cases).
- A voluntary register may not be a ‘stepping stone’ to statutory regulation - there is no guarantee that a voluntary register will eventually lead to a statutory register being introduced by the government.

Guiding principles

- 3.7 Having considered the potential benefits, and the potential risks or drawbacks involved in voluntary registration, we have developed the following 'guiding principles' which will inform our developing approach in this area.
- 3.8 We will use these 'guiding principles' as we continue to discuss whether, how and in what circumstances we might consider establishing voluntary registers.
1. The HPC will only consider establishing voluntary registers provided they support the needs of public protection.
 2. Any voluntary registers would seek to assure the standards of registered practitioners, command the confidence of stakeholders and allow the public, employers and others to make informed decisions.
 3. Although the focus would be on the needs of public protection, the HPC's approach would take into account other relevant factors such as government policy; the differences between what can be achieved through a voluntary system compared to a statutory system; the costs and feasibility of developing, establishing and maintaining voluntary registers; and the capacity of the organisation to open additional registers.
 4. Any voluntary registers maintained by the HPC would be clearly differentiated from the HPC's statutory registers so that the public could understand the different types and levels of assurance they offer.
 5. Where the HPC establishes or considers establishing a voluntary register on the invitation of the UK Government or of one of the devolved administrations, the HPC would seek funding to cover the costs involved.
 6. After development and initial set-up, all voluntary registers would be operated on a full cost-recovery basis.
 7. The model of voluntary registration should be appropriate to the group concerned, proportionate and cost-effective, taking into account, for example, the risk profile of the profession / occupation; the requirements or qualifications for entry; and the profile of practitioners, including practitioners' ability to pay for registration.
 8. Where the HPC is considering establishing a voluntary register and there already exists a credible register or registers for that group (which account for a significant proportion of practitioners), HPC voluntary registration should have the support of at least one representative organisation in the field.

9. The process for dealing with concerns about the conduct or performance of voluntarily registered practitioners should be proportionate, balancing the need to maintain the integrity of the Register and protect the public with the absence of statutory powers (for example, to demand information) and the need to control costs to maintain the viability of the Register.

10. The HPC would work with service regulators, commissioners and employers to encourage them to recognise practitioners who are voluntarily registered in their activities. (For example, by only employing practitioners who are voluntarily registered; or by recognising voluntary registration through service regulation.)

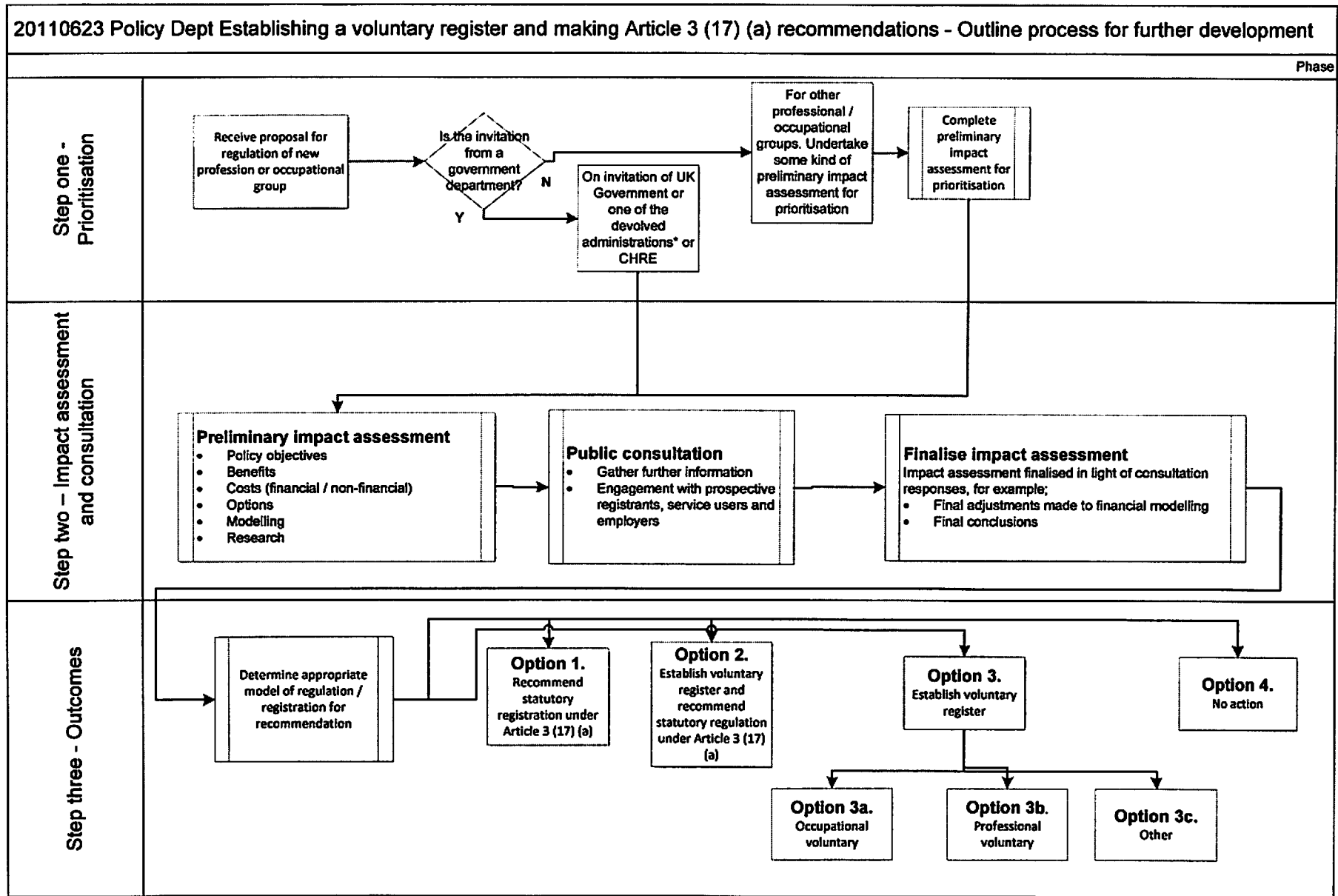
4. Next steps

4.1 We intend to agree the policy and process in this area over the course of 2011 and into early 2012 before, if we consider appropriate, beginning to consider which groups might be suitable for voluntary registration. An impact assessment and consultation would then be required before reaching a final decision in respect of a specific group.

4.2 Some of the areas we will be considering include.

- How might we identify and prioritise professional and occupational groups to consider them for voluntary registration?
- What kinds of considerations might we take into account in undertaking an impact assessment and consultation?
- What types of voluntary registration might there be and how might we determine which type would be suitable for a particular group?
- What are the cost and resource implications involved?

Annex A – Process diagram



Annex A – Process diagram

N.B. The final process may need to include an additional route which might allow the Council, in exceptional circumstances, to make a recommendation for statutory regulation under Article 3 (17) (a) of the Health Professions Order 2001 without enacting the remainder of the process. (For example, if there was clear evidence of a compelling and immediate public safety risk such that a delay in conducting an impact assessment prior to recommendation might damage public confidence.)

***As this work continues, the Council may need to consider any links with the CHRE's accreditation scheme. The CHRE might potentially identify evidence as part of its accreditation and reaccreditation of voluntary registers which might indicate that statutory regulation should be introduced and in these circumstances we might wish to work with them to make a formal recommendation for statutory regulation under Article 3 (17) (a).**