Response to Department for Business Energy and Industrial Strategy call for evidence on recognition of qualifications and regulation of professions in the UK

October 2020

1. Introduction

1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk

1.2 As part of our work we:

- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
- Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
- Conduct research and advise the four UK governments on improvements in regulation
- Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

2.1 We welcome the opportunity to contribute to the call for evidence by the Department for Business Energy and Industrial Strategy (BEIS) on the Recognition of Professional Qualifications and Regulation of Professions. We note the purpose of the consultation is to consider views around a future framework for recognition of qualifications as well as the potential for a high-level framework to promote a consistent approach to the regulation of professions in the UK.

2.2 We are broadly supportive of the proposal to consider developing a consistent approach to the regulation of professions in the UK, provided this can be done without introducing unnecessary bureaucracy or other obstacles to effective protection of the public through regulation. We have long advocated a risk-based approach to regulation based on our right-touch regulation principles[1] (building on those developed by the Better Regulation Executive).

[1] Professional Standards Authority 2015, *Right-touch regulation*. Available at: https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf?sfvrsn=eaf77f20_20

2.3 It will be important for BEIS to take into account the range of approaches already in operation across different sectors and ensure that any principles or framework are flexible enough to allow for the different characteristics of different sectors and risks associated with different professions to be appropriately managed. Health regulation for example primarily protects patients and service users from potential physical or psychological harm whilst other forms of regulation are more focussed on consumer protections.

2.4 We note that this is a particularly important time both for health and care regulation with a programme of reform under development and the health and care workforce more widely facing increased pressures both as a result of the pandemic and workforce issues arising from Brexit. The Secretary of State for Health and Social Care also recently held a call for evidence on 'reducing bureaucracy in the health sector' which referenced the reforms to professional regulation.[2]

2.5 We would urge both BEIS and the Department for Health and Social Care (DHSC) to ensure as much alignment as possible on different workstreams and to ensure sufficient clarity and certainty for regulators, employers, registrants and the public on the future policy framework.

3. Detailed comments

3.1 We have provided comments below on the specific areas identified by the consultation. In certain areas we have provided a broad overview of the landscape in health and social care regulation. However, there are significant variations between the different bodies based on differing legislation and rules therefore individual regulators will be able to provide more detail on the specifics as they relate to their particular role and remit.

How professions are regulated in the UK, both professions that are regulated by law and those that are voluntarily regulated

3.2 We have outlined the approach to professional regulation in health and care covering both statutory and voluntary regulation across the UK.

3.3 There are currently thirteen statutory health and care professional regulators across the UK. These include:

- Seven UK-wide regulators – the General Medical Council, Nursing and Midwifery Council, General Dental Council, General Optical Council, General Chiropractic Council, General Osteopathic Council, Health and Care Professions Council[3]
- Three covering regulation of social workers and the social care workforce in Scotland, Wales and Northern Ireland respectively – the Scottish Social

[2] Department of Health and Social Care, *Reducing bureaucracy in the health and social care system: background and questions*: https://www.gov.uk/government/consultations/reducing-bureaucracy-in-the-health-and-social-care-system-call-for-evidence/reducing-bureaucracy-in-the-health-and-social-care-system-background-and-questions#who-this-is-for

[3] To note the Nursing and Midwifery Council only regulate Nursing Associates in England.

Services Council (SSSC), Social Care Wales (SCW) and the Northern Ireland Social Care Council (NISCC)

- The General Pharmaceutical Council – regulates the pharmacy team in Great Britain
- The Pharmaceutical Society of Northern Ireland - regulates pharmacists in Northern Ireland
- Social Work England – regulates social workers in England.

3.4 The Professional Standards Authority for Health and Social Care ('the Authority') is response for overseeing all of the statutory professional regulators apart from the three devolved social care regulators (in Scotland, Wales and Northern Ireland). See introduction to this response for a broad overview of our powers and responsibilities. The Authority's overarching objective, in common with the regulators, is protection of the public.

The Accredited Registers programme

3.5 Operation of the Accredited Registers (AR) programme is also a statutory responsibility for the Authority. The AR programme was set up as a proportionate alternative to statutory regulation to manage the risks associated with unregulated health and care occupations. The programme seeks to provide assurance to members of the public, employers and healthcare commissioners who may wish to make use of practitioners on an AR, that they meet certain standards and therefore is it safer to select a practitioner on an Accredited Register. Membership of the registers is voluntary.[4]

3.6 The policy framework for the AR programme as a system of assured, voluntary registration was laid out in the Government White Paper *Enabling Excellence*.[5] To date the programme has accredited 26 registers covering 88,000 practitioners UK-wide. It covers occupations including counselling and psychotherapy, play therapy, healthcare science, non-surgical cosmetic practitioners, foot health, life sciences, public health practitioners and complementary therapies. We note the reference to the British Acupuncture Council which is accredited under the programme within the Annex to the consultation document.

3.7 We are undertaking a strategic review of the AR programme, which is due to make final recommendations in April 2021 following public consultation in early 2021. Our early analysis has included approaches taken by other EU countries to regulation of roles that are not statutorily regulated in the UK, such as complementary and alternative medicines (CAMs). Research such as *The Roadmap for European CAM research*[6], which was funded by the European Commission, found great variety of legal status and regulatory provisions for CAMs. There is likely to be similar variation of legal status with regard to other

[4] Professional Standards Authority, Our work with accredited registers: https://www.professionalstandards.org.uk/what-we-do/accredited-registers

[5] Department of Health and Social Care 2011, *Enabling Excellence: Autonomy and Accountability for Health and Social Care Staff*. Available at: https://www.gov.uk/government/publications/enabling-excellence-autonomy-and-accountability-for-health-and-social-care-staff

[6] https://cam-europe.eu/wp-content/uploads/2018/09/cambrella-roadmap.pdf

occupations covered by the AR programme currently such as counselling and psychotherapy.

3.8 As part of the strategic review we are considering options for the future of the programme which could include a simplification of the system for regulation of non-statutory roles, although this may require legislative change.

3.9 Whilst lack of consistency of legal status would be a major challenge, there may be value in exploring whether mutual recognition should be expanded to at least some of the occupations that are not currently regulated by statute in the UK, such as the psychological therapies. This could help address workforce needs and is likely to be welcomed by registrants and registers, some of whom already operate internationally.

Reforms to health professional regulation

3.10 Whilst we note that the BEIS call for evidence and work in this area is cross-profession and, as we understand it is intended to support a high-level approach, we note the need to be joined-up with ongoing activity relevant to health professional regulation.

3.11 In relation to the statutory professional regulators there is currently a significant ongoing programme of work by the DHSC to reform health professional regulation across the main regulatory functions (registration, education and training, fitness to practise and governance). Under these proposals, regulators will be required to consider the proportionality of amendments to their regulatory requirements. There is also a parallel workstream to streamline regulator powers relating to international registration.

3.12 As a consultation on draft legislation is expected later this year it would be helpful to understand how this work by BEIS will fit in with ongoing work by the DHSC, in particular whether it is likely to have any impact on timescales for the planned reforms.

Risk-based regulation

3.13 The Authority has been a strong advocate of risk-based regulation. We have proposed our principles of right-touch regulation as a framework for considering whether statutory regulation is needed.[7] These are based on the Better Regulation Executive's principles (consistent, proportionate, targeted, accountable, transparent)[8] but with the addition of 'agility'.

3.14 In broad terms right-touch regulation means understanding the problem before jumping to the solution and ensuring that the level of regulation is proportionate to the level of risk to the public.

3.15 We have since built on our thinking in this area in *Right-touch assurance* which outlined our framework for deciding on the most appropriate level of

[7] Ibid.
[8] Better Regulation Task Force, Principles of Good Regulation: https://webarchive.nationalarchives.gov.uk/20100407173247/http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf

occupational assurance.[9] Whilst primarily designed for health and care occupations, the premise - that the level of regulation should be based on the risk of harm to the public, is transferable to any sector. Indeed, we have had interest in our model from colleagues in a number of other sectors including education and chartered surveying as well as colleagues considering methods for manging occupational risk in other countries.

3.16 Although in health regulation the intention is primarily to mitigate risk of physical or psychological harm to patients as opposed to other sectors which are more about consumer protection, the principles are similar and risk of harm can be interpreted widely to reflect any negative impact on the consumer/service user.

3.17 We believe that the model outlined in *Right-touch assurance* provides a good basis when thinking about what level of regulation is required for different occupations. It is also flexible as it considers risk of harm to the public arising not just from the intervention or action of the practitioner in question, but also from the context in which they are working and the level of vulnerability or agency of the member of the public using their services.

3.18 It also focuses clearly on actual risk of harm arising (based on likelihood of occurrence and severity of harms resulting) which guards against regulation being pursued solely on the basis of theoretical risk or for reasons relating to professional status or standing. It avoids thinking about regulation as a binary choice – to regulate or not to regulate and instead considers the most appropriate level of regulation to match the risk level (we describe a 'continuum of assurance').

3.19 We were commissioned in 2018 by Health Education England (HEE) to provide advice on the most appropriate level of regulation to manage risk of harm to the public from sonographers, following an assessment of the evidence. This report provides an example of the methodology in use.[10]

3.20 DHSC also consulted on whether the Authority should have a statutory role advising on the most appropriate form of regulation for different groups and on the criteria of our model. The Government response to the consultation re-affirmed the UK and Devolved Government's commitment to an evidence-based methodology for assessing new groups and noted that it expected the Authority to continue to refine the model to support provision of transparent and evidence-based advice.[11]

3.21 It will be important for BEIS to take into account the range of approaches already in operation across different sectors and ensure that any principles or framework are flexible enough to allow for the different characteristics of

[9] Professional Standards Authority 2017, Right-touch assurance. Available at: https://www.professionalstandards.org.uk/publications/detail/right-touch-assurance-a-methodology-for-assessing-and-assuring-occupational-risk-of-harm

[10] https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/right-touch-assurance-for-sonographers-a-report-for-hee.pdf?sfvrsn=9cfd7420_13

[11] Department for Health and Social Care 2019, *Promoting professionalism, reforming regulation: Government response to the consultation.* Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820566/Promoting_professionalism_reforming_regulation_consultation_reponse.pdf

different sectors and risks of different professions and to avoid creating barriers to the use of regulation to protect the public. As noted, the primary purpose of health regulation is to protect patients and service users from physical or psychological harm.

3.22 However, we suggest that this may be a good model for BEIS to consider when developing any principles relating to the regulation of professionals UK-wide and would be very happy to discuss further.

Experience of professionals moving and operating within the UK internal market, to support the UK Government's thinking in relation to the effective operation of the UK's internal market (England, Wales, Scotland and NI)

3.23 Whilst we recognise and respect the moves towards greater devolution of powers and responsibilities to Scotland, Wales and Northern Ireland in recent years, we note the clear benefits to all involved in health and care of a consistent approach to professional regulation where possible. This includes facilitating movement of professionals within the UK and to supporting clarity for registrants, employers and patients.

3.24 There is currently a four-country agreement on the approach to regulation of health professionals. However, regulation of social care is devolved, with each country taking a different approach, and with four separate social care regulators. In England, only social workers are regulated, whilst in the other three countries different groups within the social care workforce have also been brought into statutory regulation.

3.25 Pharmacy technicians are regulated across Great Britain but not in Northern Ireland and the UK Government made the decision in 2019 to go ahead with regulating Nursing Associates in England only.

3.26 In 2018 we published a piece of advice produced for the Scottish Government *Regulating an occupation in fewer than all four UK countries: Implications for policy-makers, the public, and practitioners.*[12] In this report we concluded that UK-wide regulation should remain the norm, but that there might be circumstances where risk assessment justifies a different approach. A decision to regulate in fewer than all four countries might be appropriate where:

- different approaches between UK countries are justified by the outcome of an objective and robust assessment of occupational risk, and
- the impact of taking different approaches has been assessed as having a minimal impact on workforce supply across the UK, or
- measures can be taken that mitigate the impact on supply by facilitating the movement of workers around the UK.

3.27 Whilst this report focussed primarily on health and care, the learnings are likely to be relevant for other sectors which will face similar issues around

[12] https://www.professionalstandards.org.uk/docs/default-source/publications/policy-advice/regulating-an-occupation-in-fewer-than-all-4-uk-countries-2018.pdf?sfvrsn=ce3e7220_11

workforce mobility and ensuring sufficient public/consumer protections and clarity for stakeholders.

How the UK recognises professional qualifications from other countries, to inform the UK's future approach

3.28 The process for recognising professional qualifications for health and care varies depending on the profession and country of qualification. Currently a number of professionals from the EEA (doctors, dentists, nurses, midwives and pharmacists) are eligible for automatic recognition under the Recognition of Qualifications Directive[13] with the EU meaning that they are eligible for automatic registration with the relevant UK regulator.

3.29 Certain other health professionals from the EEA are eligible for recognition under the general system which allows them to apply to have their qualification recognised if it is equivalent to UK requirements.

3.30 Regulators also operate processes to consider applications from international applicants from outside of the EEA. These vary but may include review of qualifications or requirements to carry out a test or assessment of knowledge and skills.

3.31 We have provided a very broad overview but acknowledge that BEIS will receive further detail from the professional regulators themselves as there are many variations that it will be important to take into account.

3.32 More widely it is also important to emphasise the essential contribution made by overseas registrants to the health and care service and the importance of ensuring that regulators are able to establish that individuals joining the register are competent. Any future system of recognition should ensure a fair and transparent process for overseas applicants to join the health professional registers whilst maintaining public protection.

3.33 We have already noted the recent work by the DHSC in seeking to streamline the professional regulators' international registration processes. We assume that any output from the BEIS exercise will feed into this work but stress the need for a coordinated approach.

3.34 More widely we reiterate the need for clarity and certainty for regulators regarding any changes to the rules around recognition. This is important both to ensure that there is no adverse impact for example on workforce given potential pressures arising both from leaving the EU and ongoing issues resulting from Covid-19, or public safety.

3.35 In relation to current arrangements for EEA applicants, we note that in the absence of a deal with the EU there is expected to be up to two years of an interim system for those operating automatic recognition, but this could be a lot less for regulators operating the general system. DHSC and BEIS will need to ensure that clarity is provided to all regulators as soon as possible and that there is sufficient join-up across the different programmes of work.

[13] Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0036

Potential for recognition of wider groups

3.36 As outlined in our comments on the Accredited Registers programme, there may be scope to consider arrangements for recognition of wider groups who are not captured under current arrangements, for example some of the psychological therapies. This could help address workforce needs and is likely to be welcomed by registrants and registers, some of whom already operate internationally.

4. Further information

4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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