

## FAQs on the Professional Standard Authority's position on 'Healthcare regulation: deciding when statutory regulation is appropriate'

We have now published our [response](#) to the Government consultation: [Healthcare regulation: deciding when statutory regulation is appropriate](#).

We are aware that there is interest in the PSA's work in this area and therefore these FAQs are intended to sit alongside our full response to the consultation to address specific issues and queries that may not be fully covered within our response.

### 1. What is the PSA's view on the consultation on deciding when statutory regulation is appropriate for healthcare roles?

We welcome the consultation's proposals for a process which will help Government make decisions on whether to regulate or deregulate professions.

The Health and Care Bill will give the Secretary of State powers to deregulate as well as to regulate groups within health and care. It is important that the process around such decisions is transparent and evidence-based,

We support the proposals to make decisions about which professionals are regulated based on risk harm arising from practice. The criteria outlined mirror our own thinking on the factors which should be taken into account and should help to ensure that statutory regulation is used only where it is needed, and that more flexible and cost-effective alternatives such as Accredited Registration are considered more actively.

### 2. Does the PSA have a role in recommending that professions should be regulated or deregulated?

No.

We have developed a [methodology](#) that we recommend is used to make decisions about whether and how a group should be regulated, but we have no official role in making any recommendations.

The legislation that sets out what the PSA can and can't do says that we can be commissioned by ministers in any of the four countries to give advice (section 26A of the National Health Service Reform and Health Care Professions Act 2002).

The open [consultation](#) proposes that Government may seek advice from the PSA on whether different groups should be regulated or on aspects of the criteria, however this would fall under our existing powers to be commissioned to provide advice.

In our consultation response we suggest that as well as being commissioned to carry provide advice to support a decision on whether statutory regulation is required, the

PSA could fulfil a 'triage' role to help draw to Government's attention to groups which should be prioritised for assessment.

This would help to provide an agile process of responding to intelligence on emerging risks and ensuring that the full criteria can be applied to the right groups in a timely way.

The Government did consult in 2017/18 on giving the PSA a formal role advising which groups should be regulated. In their formal [response](#) to this consultation they stated that: 'The UK and Devolved Governments believe that the PSA is best placed to provide independent advice on which groups of healthcare professionals should be regulated.'

### **3. What is the Accredited Registers programme and where does this fit in?**

As well as our role overseeing the ten statutory professional regulators, the PSA is also responsible for operating the [Accredited Registers programme](#) for voluntary registers of unregulated practitioners.

Under the programme we accredit registers of unregulated practitioners who meet our standards. This helps to ensure that registers are focused on the public interest, manage risks effectively, ensure that practitioners are competent and have a in place a robust process for managing complaints.

This allows members of the public and those commissioning care or employing individuals who are on a register which meets these standards.

The consultation notes that where government and the devolved administrations do not consider that statutory regulation of a profession is required for a profession, they encourage organisations that register health and care professionals to seek accreditation from the PSA.

### **4. Would it not be a conflict of interest for the PSA to advise Government given its role overseeing the statutory regulators and the Accredited registers programme?**

We recognise that there might be concerns about a conflict of interest for the PSA in advising Government due to the funding we receive to carry out oversight of both the statutory professional regulators and to operate the Accredited Registers programme.

However, our oversight role and the information we gather through our different functions makes us uniquely well placed to advise Government on these issues and allows us access to relevant information and intelligence on risks associated with different groups of practitioners.

We have also advised Government on many different matters before and in practice we don't think this would have any impact on our ability to provide independent, impartial advice but would take all necessary steps to ensure clear separation of

functions internally. In addition, the final decision on regulation would remain with Government Ministers not the Authority.

**5. I'm a member of an unregulated occupation - can I ask the PSA to make a recommendation to Government on regulation?**

The PSA is primarily funded by the statutory professional regulators so would need to be commissioned by the Government to provide advice.

We can be commissioned by other organisations, however this is subject to our available capacity to carry out such work.

It is possible that in our role overseeing the statutory professional regulators and Accredited registers we may come across risks or issues which we may want to draw to the attention of government or other bodies with a role in managing such risks. We are considering how we manage this.

We have also suggested to the Government the potential for the PSA to fulfil a 'triage' role to help prioritise which groups should be assessed for statutory regulation however this would be subject to further discussions about the PSA's future role.

**6. Do you think there are any other occupations/roles/groups which should be statutorily regulated?**

We do not have a firm view on other groups which should be statutorily regulated.

We are however aware of some occupations or activities where regulatory gaps may be starting to appear, based primarily on information gathered through our Accredited Registers programme, as well as knowledge of stakeholder views. These are social care occupations (England) and counselling and psychotherapy. We note also that some public inquiries and reviews have put forward arguments for regulation of NHS managers.

We suggest that these occupations might be considered higher priority for an occupational risk assessment of the type proposed in the consultation, but would add the caveat that in the absence of a proper process, our attention may be drawn to certain groups somewhat arbitrarily, and that there may be others which should also be assessed.

We have recently [commented](#) separately on Government plans to introduce a licensing scheme for non-surgical cosmetic practice through an amendment to the Health and Care Bill.

**7. Do you think there are any professions that are currently regulated which should be de-regulated?**

We cannot see any strong case for deregulating any groups based on available information/evidence, however, note that this view is based on absence of any robust risk-assessment.

We note in our consultation response that any decisions on deregulation of currently regulated professions will need to take into account the potential risks of removing the safeguards provided by statutory regulation as regulation may hide the risks arising from particular groups.