

Council, 9 February 2012

Voluntary registration

Executive summary and recommendations

Introduction

The attached paper outlines and discusses legal advice received by the Executive about voluntary registration and the HPC's existing powers to make recommendations about statutory regulation.

The paper also provides an update about the development of the CHRE scheme to accredit voluntary registers and about the voluntary registration of adult social care workers.

Decision

The Council is invited to agree the actions outlined in section six.

Background information

See paper

Resource implications

See paper

Financial implications

None

Appendices

Annex A: Process diagram

Annex B: HPC policy statement: voluntary registration

Date of paper

30 January 2012

Voluntary registration

1. Introduction

1.1 At the Council meeting in September 2011 the Council considered a paper looking at establishing voluntary registers and making recommendations for statutory regulation. The paper advised the Council that legal advice was being sought in this area. The Council also discussed and agreed a statement of policy on this topic.

1.2 This paper:

- updates the Council about the development of the CHRE voluntary register accreditation scheme (section three);
- updates the Council about initial discussion with the Department of Health about voluntary registration for adult social care workers in England (section four);
- outlines and discusses the legal advice received (section five); and
- identifies a number of actions on which the Council's agreement is sought (section six).

1.3 With respect to voluntary registration, this paper outlines that there are three key issues that would particularly need to be addressed (see section 6).

- Establishing a new 'business model' for voluntary registration of occupational groups and professions.
- Financing of voluntary registers – including start-up costs and on-going costs until registers become self-funding.
- Linking voluntary registration to other requirements in order to require or incentivise registration.

2. Summary of previous discussion and decisions

Council meeting, July 2011

2.1 The Council discussed and agreed the following.

- A high-level outline process (for further exploration and development) for making decisions about voluntary registers and making recommendations for statutory regulation under Article 3 (17) of the Health Professions Order 2011 (the 'order'). The process combined both the existing powers to make recommendations about statutory regulation and the new powers related to voluntary registration. (See Annex A.) In summary the process included the following.
 - **Prioritisation.** Deciding which professions and occupational groups might be considered.
 - **Impact assessment and consultation.** Assessing the likely impact of establishing a voluntary register.
 - **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.
- A set of draft principles for further development.
- A list of potential work strands and an indicative timetable – as a result of the outline process and principles. This included the following.
 - Determining how the HPC would prioritise different groups.
 - Developing the method, process and broad considerations involved in the impact assessment and consultation phase – having regard to published guidance but addressing what this means in the context of the HPC.
 - Determining how the HPC might decide the appropriate regulatory model for a particular group.
 - Developing further the proposed types of voluntary registration, including the key features and the costs involved.

Council meeting, September 2011

- 2.2 At its meeting in September 2011, the Council discussed (and agreed, subject to further amendment) a policy statement setting out the Council's developing views on voluntary registration. (See Annex B.) The paper also outlined that legal advice was being sought by the Executive on the outline process agreed by the Council at its meeting in July 2011. Two particular issues had been identified and are outlined in section 5 of this document.
- 2.3 The paper outlined that pending receipt of formal advice the timetable for further work on this subject would need to be adjusted.

3. Accreditation of voluntary registers – update

- 3.1 The Council for Healthcare Regulatory Excellence (CHRE) is continuing to consider how it might approach the accreditation of voluntary registers.¹ A draft of standards for voluntary registers has been circulated to voluntary register holders for comments and a formal consultation is planned from April 2012, alongside piloting of the assessment process.
- 3.2 The CHRE has stated that it intends accreditation to act as a ‘mark of quality...it will attract commissioners, employers and members of the public to seek to contract and employ individuals who are on an accredited register’. As such they have said that the ‘bar for entry’ will be set high, with a focus on ‘good practice’ rather than ‘just good enough’.
- 3.3 There will be a two part process. The first will be an assessment against eligibility criteria before an organisation proceeds to a full application. The eligibility test will include the organisation demonstrating that their register relates to a profession or occupation within the scope of health or social care; is of good standing; requires its registrants to hold professional indemnity insurance; can demonstrate its credibility within its sector; and has engaged with service users about registration arrangements.
- 3.4 The assessment process will include a variety of different approaches, including the following.
- Review of documents.
 - Registrar interview.
 - Observation of at least one complaints panel.
 - Publication of applications to invite feedback from external stakeholders.
 - Completion of a practitioner/discipline risk assessment tool commissioned by the CHRE. (This is to be commissioned in January 2012 and would be used to check that a group had identified the relevant risks related to their practise and adequately addressed these in standards and processes.)
- 3.5 In its planning, the CHRE has assumed the fee for accreditation to be £11,000, with subsequent renewal £9,000. The CHRE will consider whether any adjustment should be made for the size or income of those holding voluntary registers. The scheme would become self-funding (i.e. without the need for Department of Health subsidy) by 2015. The scheme is currently due to launch in December 2012.

¹ Voluntary registers – proposed model for the accreditation scheme, Council for Healthcare Regulatory Excellence (CHRE) Council paper, 26 January 2012
<http://www.chre.org.uk/satellite/102/>

4. Adult social care workers in England

- 4.1 The Command Paper stated that the Department of Health (DH) would work with the HPC to explore, by the end of 2013, the feasibility of establishing a voluntary register for adult social care workers in England.
- 4.2 The Chief Executive and other members of the Executive recently met the DH to discuss a number of areas, one of which was the voluntary registration of this group. The DH indicated that this was likely to be forthcoming area that it would wish to begin exploring in more detail. The Executive will keep the Council informed of developments in this area and future papers will focus on the issues around the potential voluntary registration of this group.
- 4.3 Separately, the government has commissioned Skills for Health and Skills for Care to develop standards for healthcare support workers and adult social care workers in England with the intention, we understand, that those standards might be used for registration, should a voluntary register or registers be established.

5. Legal advice received

- 5.1 The Executive sought legal advice on the potential interaction between the Council's power to make recommendations to ministers about the statutory regulation of professions and the powers in the Health and Social Care Bill 2011 ('the Bill'). A summary and explanation of the key points of that advice is given below.

Article 3(17) – powers to recommend statutory regulation

- 5.2 The Council has powers under this article to make recommendations to the Secretary of State and to Scottish Ministers about any profession which in its opinion should be regulated by statute. The Council may publish guidance on the criteria to be taken into account in making a recommendation decision. The Bill does not remove this power.
- 5.3 The outline process considered at the meeting in July 2011 combined the HPC's functionally separate discretionary powers to recommend statutory regulation; and the forthcoming discretionary powers to establish voluntary registers. Legal advice was sought on whether it would be possible to 'combine' these powers in this way or whether more separation was necessary.
- 5.4 These are discretionary powers and advice has confirmed that there is flexibility in the use of these powers. The aspirant groups or 'new professions' process previously provided a way in which organisations could make applications to the Council, which were assessed, and a decision reached about whether a recommendation should be made. This arrangement was

closed in March 2011 in light of the Command Paper; in recognition that at that time the statutory regulation of new groups appeared unlikely; and in order to better manage the expectations of stakeholders aspiring to statutory regulation.

- 5.5 The legal advice received has said that these powers ‘should not be fettered or otherwise compromised by being linked in any way to any process or procedure which the Council may develop in determining whether or not to establish and maintain a voluntary register’. The flexibility of the Article 3(17) powers means that the Council could adopt two different approaches.
- In situations where statutory regulation may be desirable but there is not a pressing urgency, the Council might adopt a process where the issue is considered in detail before a recommendation is reached.
 - In more pressing circumstances (for example, a situation is identified which demonstrably affects public safety), where swift action to protect the public is necessary, the Council might simply debate the issue before making a recommendation.
- 5.6 The legal advice therefore concludes: ‘...regardless of how the Council decides to advance any proposals in respect of voluntary registers, it must be careful not to compromise its ability to use the Article 3(17) powers as it sees fit, which includes the flexibility for rapid and procedurally unconstrained decision-making in appropriate cases’.

Voluntary registers

- 5.7 The HPC’s forthcoming powers to establish voluntary registers will be contained within the NHS Reform and Health Care Professions Act 2002 and will not form part of the Order. Legal advice has confirmed the following.
- The legislation does not impose any duty or obligation upon the regulators to establish voluntary registrants or to seek out groups for which such registration might be appropriate.
 - This is a stand-alone power that does not form part of the Order and, beyond the requirement for a voluntary registrant to pay a fee determined by the regulator, the legislation is silent on matters relating to finance.
 - The HPC cannot expend funds derived from its ‘statutory registrants’ on establishing and maintaining voluntary registers, beyond any necessary initial expenditure relevant to HPC’s overall public protection role – for example, the costs that might be involved in putting together an impact assessment.

- Voluntary registers must therefore be self-funding and the on-going financial viability of any register must be a factor which the Council takes into account as part of any decision to establish such a register.

Impact assessment

- 5.8 The HPC would only be able to establish a voluntary register once it has undertaken an impact assessment of the likely impact of establishing such a register; held a public consultation; and had regard to that assessment in reaching a final decision.
- 5.9 In the September 2011 Council paper the Executive identified that an impact assessment is normally undertaken once an initial decision has been made taken to intervene, and in light of an identified 'preferred' policy option. This is the model followed in the past in impact assessments which have accompanied legislation to introduce statutory regulation, for example. The outline process, however, suggested that a decision would only be made about the appropriate regulatory model after an impact assessment and consultation, and that this range of models would include statutory regulation. The paper said that careful consideration would need to be given to a) what the HPC would be impact assessing and b) the legislative intent behind the relevant provisions in the Bill.
- 5.10 The legal advice has confirmed the above and that the decision making process must be as follows.
- The Council reaches a preliminary 'minded to' decision that establishing a voluntary register may be appropriate.
 - The Council conducts an assessment of the likely impact of that proposal.
 - The Council consults on the impact assessment and the proposal more generally.
 - The Council reaches a final conclusion having regard to the impact assessment and the results of the consultation.
- 5.11 The purpose of the impact assessment is therefore to determine whether the preliminary decision to introduce a voluntary register should be pursued further. The advice received concludes as a result that 'it would be inconsistent with that purpose for that assessment and the associated consultation to be used to canvass views on whether the profession in question should be subject to statutory regulation'. In effect, that question should be considered prior to undertaking the voluntary register exercise.

5.12 Instead, it is suggested that, if, in the course of a voluntary register exercise, evidence emerged to show that the nature or extent of the risk posed by the profession was far greater than anticipated and that voluntary registration was likely to be inadequate, the Council might have to consider stopping the process to consider separately whether statutory regulation was a more appropriate solution.

Criteria

5.13 The advice suggests that in part issues of this kind could be avoided if the Council published risk-based criteria of some kind for its exercise of its powers under Article 3(17) which took account of whether voluntary registration may provide an adequate regulatory solution. If voluntary registration was considered to be a viable proposition and pursued further (i.e. an impact assessment and consultation were conducted) then, in effect, the Council would be limiting the scope for debate about an Article 3(17) recommendation, other than where a significant and unforeseen risk was identified as part of the consultation process.

6. Discussion and actions

6.1 The legal advice received by the Executive has confirmed a number of issues already addressed by the Council and clarified a number of others. The following conclusions can be drawn.

- The exercise of discretionary powers to recommend statutory regulation under Article 3(17) of the Health Professions Order 2001 should be kept separate from the forthcoming discretionary powers to establish voluntary registers.
- Any voluntary registers should be capable of being self-funding on an on-going basis.
- The process of impact assessment and consultation is instigated following a preliminary decision to establish a voluntary register.

6.2 Ultimately the points raised by the legal advice, in the policy statement agreed by the Council, and generally in previous discussion, **will need to be considered further and explored in the context of a specific group**. Early discussions have begun about adult social care workers in England, where there is specific government policy about exploring the feasibility of a voluntary register. The Council has already identified in its policy statement some factors that are likely to be crucial in any forthcoming discussion with the DH and in the Council's subsequent decisions. They are as follows.

- **Finances and funding.** Government funding would be required. This would include funding to cover start-up costs and funding until a register reached a break-even position. Any voluntary register must be capable of being self-financing on an on-going basis.²
- **Business model.** The model adopted for any voluntary register will need to be appropriate to the group, proportionate to risk and cost-effective.³
- **Linkage.** For any voluntary register to be meaningful, registration will need to be required or incentivised in some way – for example, through being linked to service regulation requirements or contracts of employment.⁴

6.3 The Council is invited to agree the following actions.

- The Executive to update the outline process diagram in Annex A in line with the content of this paper and bring it back to a future Council meeting.
- The Executive to bring back a further paper to seek further discussion on a policy and criteria for how the Council might exercise its Article 3(17) powers to recommend statutory regulation in the future.
- The Executive to bring back a further paper to look at the kinds of issues that might be considered or included in an impact assessment on establishing a voluntary register (recognising that impact assessment is a dynamic process and that the content of any future assessment would be determined by the specific group and specific circumstances).
- The Executive to bring back a further paper looking at the adult social care workforce in England – its size, shape, constituents and previous work undertaken to explore regulation. The Executive to keep the Council updated regarding any changes or developments in government policy in this area.

² The policy statement says: ‘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.’

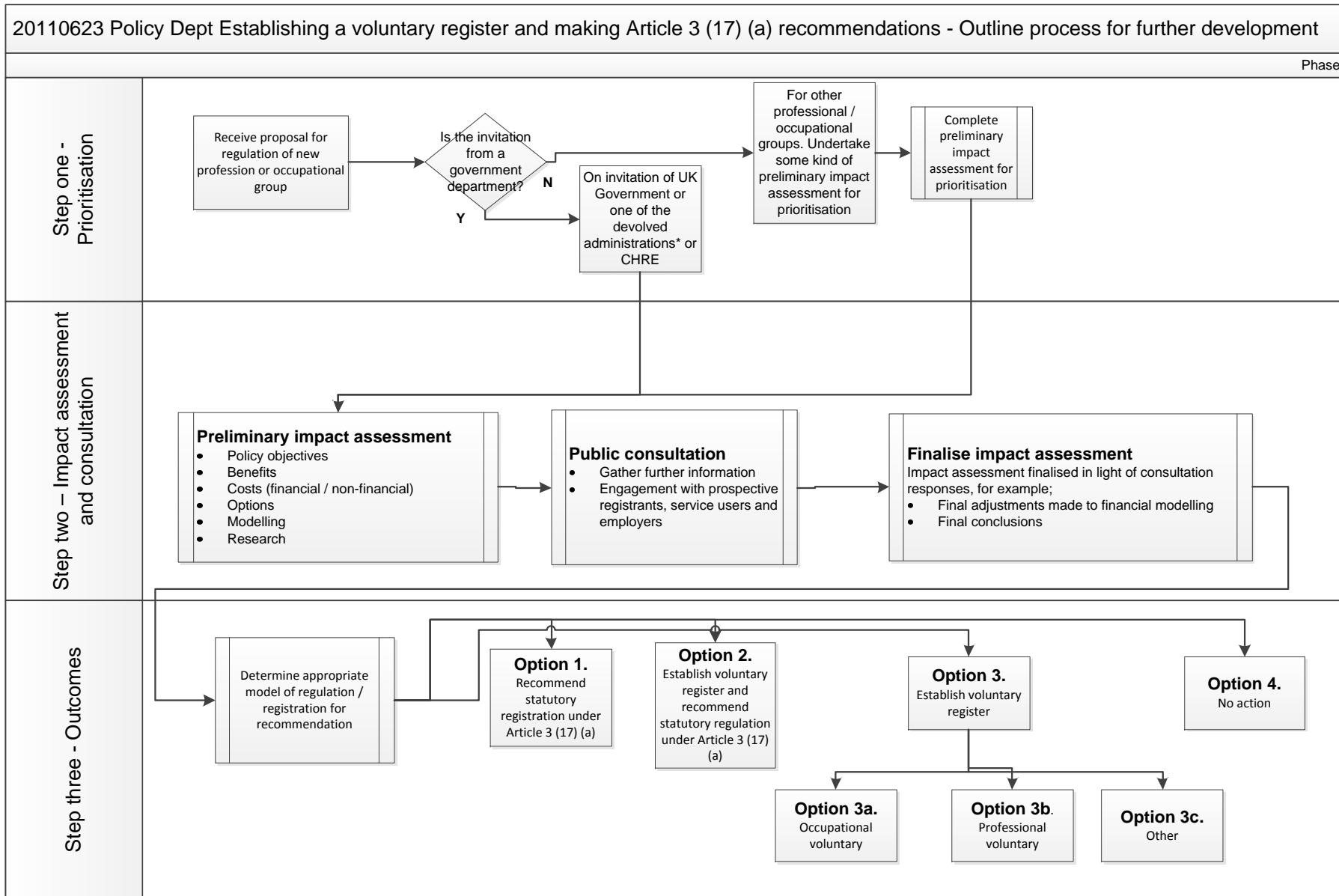
‘After development and initial set-up, all voluntary registers would be operated on a full cost-recovery basis.’

³ The policy statement says: ‘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.’

⁴ The policy statement says: ‘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.)’

- The Executive to begin to develop a possible business model for the voluntary registration of occupational groups (with specific reference to adult social care workers in England).

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).

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 in England.² 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: www.chre.org.uk

² The regulation of social workers and social care workers is devolved to the four countries

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 strengthen 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 identified, however, 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 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 would 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 a voluntary 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.

Principles

- 3.7 Having considered the potential benefits, and the potential risks or drawbacks involved in voluntary registration, we have developed a guiding principle and nine principles relating to implementation which will inform our developing approach in this area.
- 3.8 We will use the principles outlined below as we continue to discuss whether, how and in what circumstances we might consider establishing voluntary registers.

The HPC will only consider establishing voluntary registers provided they strengthen public protection.

- 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.
- 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.
- 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.
- 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.
- After development and initial set-up, all voluntary registers would be operated on a full cost-recovery basis.
- 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.
- 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.

- 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.
- 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?