Department of Health

The consultation document sets out the reasons why the Government's preferred regulator for this group is the HCPC and asks some specific questions about the draft Section 60 Order which will amend the Health and Social Work Professions Order 2001 to statutorily regulate public health specialists by this means. The Health and Care Professions (Public Health Specialists and Miscellaneous Amendments) Order 2015 will extend statutory regulation to public health specialists from backgrounds other than medicine or dentistry through the Health and Care Professions Council

This is the Nursing and Midwifery Council's response to the Department of Health consultation on the regulation of public health specialists

We are the Nursing and Midwifery Council (NMC). We are the statutory regulator for nurses and midwives in the UK. We exist to:

- protect the health and wellbeing of the public;
- set standards of education, training, conduct and performance so that nurses and midwives can deliver high quality healthcare consistently throughout their careers; and,
- ensure that nurses and midwives keep their skills and knowledge up to date and uphold our professional standards.

We hold the register of those who have qualified and meet those standards. If an allegation is made that a registered nurse or midwife is not fit to practise, we have a duty to investigate that allegation and, where necessary, take action to safeguard the health and wellbeing of the public.

NMC registration is based on an individual being registered in the first or second parts (i.e. a registered nurse or registered midwife) of our register. This is set out in the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 (as amended)[1]. We also have a third part of our register, for specialist community public health nurses (SCPHN)[2]: to be registered here, an individual must first be registered as a nurse or a midwife. More information can be found on our website[3].

[1] http://www.nmc-uk.org/About-us/legislation/Our-Orders-and-Rules/

[2] This is a registered nurse or registered midwife who work in a public health or community role and has completed a relevant NMC approved qualification. A SCPHN may be a health visitor, school nurse, occupational health nurse or family health nurse.

[3] http://www.nmc-uk.org/Nurses-and-midwives/Regulation-in-practice/Specialist-community-public-health-nursing/ ; http://www.nmc-uk.org/Registration/Useful-information/Registration-qualifications/

Question 1: Do you agree with the Department's decision that the HCPC should be the statutory regulator for public health specialists from backgrounds other than medicine or dentistry? If not, why not?
We do not agree with the Department's decision that HCPC should be the statutory regulator for **all** public health specialists from backgrounds other than medicine or dentistry. In order to explain our response it is necessary to separate the proposal for statutory regulation from the implicit requirement of dual registration for some individuals. We recognise that the Scally review provided some evidence to support the proposal that all individuals practising as public health specialists should be subject to statutory rather than voluntary regulation. We do not consider that the Scally review, or any of the other material cited in the consultation document, provides a clear evidence base to justify a requirement for dual registration on those individuals who are already regulated by another statutory healthcare regulator, where their scope of professional practice encompasses their practice as a public health specialist. If a system of statutory regulation for those individuals practising in the public health field who are not regulated by another professional regulator is considered to be necessary to protect the health and well-being of the public, then we have no concerns about the proposal that HCPC should regulate those unregulated individuals. <u>Dual registration</u> If an individual is already regulated by another healthcare professional regulators we see no legitimate reason why that individual should be obliged to hold dual registration with their existing regulator and the HCPC simply because the scope of their professional practice includes work as a public health specialist. No clear evidence is presented in the consultation as to why dual registration would enhance public protection in these circumstances. We also see no reason why there should be a requirement to hold dual registration placed on nurses working as public health specialists but no similar requirement placed on doctors and dentists carrying out a similar role. If dual registration is not considered necessary for public protection if the individual is registered with the General Medical Council (GMC) or General Dental Council (GDC) then it is difficult to understand why it is necessary for a nurse registered with the NMC. The requirement to hold dual registration in a selected number of instances is inconsistent and disadvantageous to some professionals, including any of the 680,000 nurses and midwives that we regulate who choose to undertake specialist public health training. The proposals also fail to reflect the fact that, as a professional regulator, we regulate the individual nurses and midwives on our register against their professional Code regardless of their scope of practice; they could for

example be a front line adult nurse or midwife, a health visitor, a researcher, or an advisor. If a registered nurse is practising as a public health specialist, this could constitute a legitimate scope of their professional nursing practice, so they would be able to maintain their registration with the NMC if they chose to do so in the same way as a doctor or dentist fulfilling the same role. Alternatively, if they no longer considered themselves primarily as a registered nurse or midwife and wished to be solely registered as a public health specialist, they could choose to give up their registration with the NMC and seek sole registration as a public health specialist with HCPC. A requirement for dual registration in these circumstances is both unnecessary and unjustified and would not enhance public protection. Indeed, for the reasons outlined below it might actually impede effective regulation.

We are also concerned that the proposals to include nurses and midwives but exclude doctors and dentist may be based upon a misunderstanding of the current regulatory position, as not all medical and dental public health specialists are on the GMC or GDC specialist registers.

We note the reference in paragraph 3.21 of the consultation document to the appointments of Directors of Public Health in the NHS and we have reviewed the specimen job descriptions[4] from the Faculty of Public Health for directors of public health (and consultants of public health) which appear to be the source of the current appointment requirements. We note the job descriptions refer back to the specialist qualification overseen by the Faculty as an essential requirement. They also require all applicants to be on the GMC or GDC Specialist Register or the UK Public Health (Specialist) Register (UKPHR). However, in the specimen person specification it is made clear that if candidates are not registered in the public health specialist parts of the GMC/GDC registers, they must have equivalent training and/or experience of public health medicine practice. In other words, doctors and dentists do not in fact have to be on the public health specialist registers of the GMC or GDC to be considered for these roles. It is not clear why this approach could not be applied to other regulated healthcare professionals who have completed the necessary specialist training.

We believe a simple amendment of this document could solve many of the issues falling out of the consultation. For example, if applicants were simply required to be "registered with a healthcare professional regulator" as well as having the requisite specialist public health qualification instead of being required to be on the GMC/GDC Specialist Register or UKPHR Specialist Register, there would be no requirement for dual registration as it is the requirement to have UKPHR registration which is being replaced by registration with HCPC.

We feel that a situation where a specimen job description drives legislation is wholly wrong and will result in great time, expense and burden on all parties involved and not increase public protection.

[4] Specimen job description – consultant in public health - http://www.fph.org.uk/job_descriptions

Finally, should dual registration arise for any regulated professional this may lead to confusion for the individual and the public as well as the extra cost of a second registration fee. Both regulators would be exercising their regulatory functions in relation to the individual in respect of the same scope of professional practice, which might duplicate and conflict with one another. Furthermore, in any fitness to practise process both regulators would have the power to investigate and impose sanctions on the individual and remove the individual from their register. This situation is different from that of an individual who chooses to practice two separate professions and who is therefore required to be registered with two different regulators as each would only have jurisdiction over its own professional practice. In this instance, as evidenced by the approach being taken to doctors and dentists, the public health role is a specialism they have chosen rather than an entirely separate profession. Far from meeting the governments' commitment to cutting red tape and reducing the regulatory burdens on the public, this proposal as it stands would achieve the opposite with an associated financial cost.

In summary: we do not object in principle to the proposal that individuals practising as public health specialists should be subject to statutory regulation. We contend that where the individual is already registered with another health professional regulator relevant to this chosen scope of practice (such as with the NMC), this should suffice. Where this is not the case, we would not oppose them being regulated by the HCPC. We strongly urge the Department to revise their proposed approach to reflect this position.

Question 2: Do you think that public health specialists should be regulated by another body? If so, who and why?
Please refer to our answer to question 1.

Question3: Do you agree that outstanding UKPHR fitness to practise cases at the time of transfer should be investigated and determined by the Health and Care Professions Council in accordance with the Health and Social Work Order 2001 (S.I. 2002/254)? If not, why not?
For fitness to practise cases where the individual is not currently regulated by a healthcare professional regulator we agree with this approach. Where the individual is already registered with a healthcare professional regulator, we would expect that the fitness to practise allegation is referred to that regulator to be taken forward in accordance with their statutory remit to do so and in line with the legislative framework which sets out how this should be done. For the NMC, this is set out in Part V of the Nursing and Midwifery Order 2001 (as amended) and the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended)[5].

[5] http://www.nmc-uk.org/About-us/legislation/Our-Orders-and-Rules/

Question 4: Do you agree that the grandparenting period for registration as a public health specialist should be two years?
We have no view on this, except that should our proposed approach as set out in question 1 be adopted, the majority of grandparenting would be avoided.

Question 5: Is the impact of these public health specialists being required to register with the HCPC of significant consequence?
Please refer to our answer to question 1.

Question 6: Do you agree that "public health specialist" should become a protected title?
We would like to understand more about the public protection benefits that this proposal would bring. No clear evidence to demonstrate the benefits of this protected title are included in the consultation document. If it can be demonstrated that this would bring public protection benefits, then the title should be able to be used by any regulated healthcare professional (regardless of which regulator they are registered with) who holds the relevant public health specialist qualification. In these circumstances we would then wish to consider whether eligibility to use this title 'Public Health Specialist' should be recorded on our register as an annotation. We would note that we currently approve all UK qualifications that would enable a nurse or midwife to register with us or record a qualification on our register. We have a statutory duty to do so and ensure their integrity against the standards that we set. The current approach for the specialist public health qualification is for the Faculty of Public Health to seek approval of the qualification from the GMC. If we were to annotate this qualification on our register we may wish the same privilege to be extended to us. This may, however, require a small legislative change to the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 (as amended). Ultimately, that would be a decision our Council would have to take and we would need to engage with the Department and relevant stakeholders to see whether and how this could be done.

Question 7: Which of these options for defined specialists, if either, do you think is appropriate?
Please refer to our answers to questions 1 and 6. We do not have any other comments.

Question 8: Do you agree that the requirement for a Council member to chair Registration Appeal Panels should be removed?
We fully support this proposal and are currently in the process of making the same change to our governing legislation following a public consultation[6]. Our proposal to do this received broad support. We believe removing this requirement would maintain a clear separation of duties between the operational and governance functions of a regulator to ensure impartiality and avoid any suggestion of perceived or actual bias. This change would bring us and HCPC in line with legal principles recently set out by the higher courts[7]. It is also expected that registration appeal panel hearings would be dealt with more swiftly by not having to rely on the availability of a limited number of trained Council members.

Question 9: Do you agree that a HCPC panel should have the power to make a striking-off order in a health or lack of competence case provided the registrant has been the subject of a continuous substantive suspension or conditions of practice order for at least two years?
We fully support this proposal and are currently in the process of securing the same change to our legislation following a public consultation conducted by the Department of Health[8]. This will bring legal surety and enhance public protection and confidence in the regulator by having the option of being able to take decisive action where appropriate. It will also mean bringing closure to those involved in such a case by reducing the number of continuing substantive orders that we are both being forced to use. Making a striking-off order when reviewing an existing suspension or conditions of practice order in a health or lack of competence case can be the most appropriate option in some cases. This may be because the registrant has stopped engaging completely or has retired from practice, or simply does not wish to take any remedial steps following a finding of lack of competence. It can also be in the best interests of, and is sometimes sought by, the affected registrant. This is particularly apparent where they suffer from health issues that require a restriction on their practice and Fitness to Practise proceedings may contribute to further detriment to their health and wellbeing.

[6] http://www.nmc-uk.org/Get-involved/Consultations/Past-consultations/By-year/Consultation-on-changes-to-the-Fitness-to-Practise-and-Registration-Rules/

[7] [2011] EWCA Civ 1168 – The judgment of Rix LJ in *R (on the application of Darsho Kaur) v. (1) Institute of Legal Executives Appeal Tribunal and (2) The Institute of Legal Executives* - paragraph 49

[8] https://www.gov.uk/government/consultations/nursing-and-midwifery-council-changes-to-governing-legislation

Question 10: Is our estimate of the numbers of non-medical public health specialists working in the independent or private sector reasonable?
We have no comment to make on this question.

Completed forms should be sent to:

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