EXPLANATORY MEMORANDUM TO

THE HEALTH CARE AND ASSOCIATED PROFESSIONS (MISCELLANEOUS AMENDMENTS AND PRACTITIONER PSYCHOLOGISTS) ORDER 2009

2009 No. 1182

1. This Explanatory Memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty. This Order is also being laid simultaneously before the Scottish Parliament.

2. Description

2.1 This Order makes a number of amendments to the governance arrangements for

- the General Dental Council ("GDC");
- the Health Professions Council ("HPC"); and,
- the Royal Pharmaceutical Society of Great Britain ("RPSGB").

It also introduces, for the first time, statutory regulation of practitioner psychologists throughout the United Kingdom and statutory regulation of pharmacy technicians in Scotland. It also makes amendments, for all types of registered health care professionals, to legislation relating to the protection of vulnerable children and adults, and the opportunity is also taken to make a number of miscellaneous amendments to legislation governing the regulation of health care professionals.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Committee will wish to note the policy explanation for the changes to the procedures for some Orders of the Privy Council, which is given in paragraph 7.2 below.

4. Legislative Background

4.1 The GDC and HPC are statutory bodies whose governance arrangements are set out in the Dentists Act 1984 ("the 1984 Act") and the Health Professions Order 2001 ("the 2001 Order"). The RPSGB was established under Royal Charter and its governance arrangements are set out in that Charter and in the Pharmacists and Pharmacy Technicians Order 2007 ("the 2007 Order"). Each of these Regulators maintains registers of those who are both qualified and fit to practise in the professions for which they are responsible. They set standards which people have to meet in order to be entered onto their registers and run disciplinary procedures for registrants where it is alleged that their fitness to practise is impaired.

4.2 The 1984 Act and the 2001 Order make provision for the constitutions of the Councils of the GDC and the HPC. In both cases, the membership of the Councils is made up of a number of lay members appointed by the Privy Council, and a number of professional members who have to be registered with their respective body and who are elected onto the Councils by the health professionals registered with them. The 1984 Act and the 2001 and 2007 Orders also set out the framework for the constitutional arrangements for the statutory committees of each of the three regulators. They also contain other provisions dealing with other governance issues such as the production of annual reports and accounts.

4.3 The White Paper "*Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century"* ("the White Paper") set out a programme of substantial reform to the system for the regulation of health care professionals. This was based on the results of consultation on two reviews of professional regulation published in July 2006: *Good doctors, Safer Patients* by the Chief Medical Officer for England, and *The Regulation of the Non-Medical Health Care Professions* by the Department of Health. This Order concentrates on implementation of the proposals set out in Chapter One of the White Paper, entitled, *Assuring Independence: the Governance and Accountability of the Professional Regulators.*

4.4 Orders in Council under section 60 of the Health Act 1999 can be used to regulate health care professions, and in particular those that are currently regulated by the Nursing and Midwifery Council, the General Medical Council, the General Osteopathic Council, the General Chiropractic Council, the General Optical Council, the GDC, the HPC and the RPSGB. This Order is part of a series of Orders in Council that have taken forward the first set of White Paper changes to the governance arrangements of these regulators. A number of very similar measures were included in the Nursing and Midwifery Order 2008 (S.I. 2008/1485) and the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 (S.I. 2008/1774). A particular feature of this Order, however, is that fewer changes have been made in respect of the governance arrangements for the RPSGB because of the anticipated establishment of the General Pharmaceutical Council to take over its regulatory functions.

4.5 The 2007 Order included provisions enabling statutory regulation of pharmacy technicians to be commenced in relation to England and Wales, but not Scotland or Northern Ireland, and provision is made in this Order to extend it to Scotland. Statutory regulation of practitioner psychologists is introduced for the whole of the United Kingdom. The British Psychological Society has been operating a system of voluntary regulation of practitioner psychologists, on the basis of which it has conferred on some psychologists the title 'chartered psychologist' – and it will continue, as a membership organisation, to confer that status.

4.6 The opportunity has also been taken in this Order to make a number of other changes to the various Acts and instruments to take account of developments elsewhere – in particular, of the passing of the Safeguarding Vulnerable Groups Act 2006 and the equivalent legislation in Scotland and Northern Ireland – and of emergency planning for dealing with emergencies such as an outbreak of pandemic influenza. The Order also contains some technical amendments and consequential amendments to, and revocations of, other legislation.

5. Territorial Extent and Application

5.1 This Order extends to the United Kingdom, but where it makes amendments to other legislation that only applies to part of the United Kingdom the amendments have the same extent as the legislation being amended.

6. European Convention on Human Rights

6.1 The Minister of State for Health Services, Ben Bradshaw, has made the following statement regarding Human Rights:

"In my view, the provisions of the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 are compatible with the Convention rights."

7. Policy Background

What is being done and why?

7.1 The governance changes in this Order are primarily to meet the following policy objectives:

- Reconstitution of the GDC and the HPC as fully appointed bodies. They are both to be reconstituted as provided for by Orders of the Privy Council ("the Constitution Orders"). The amendments made by this Order mean that the Constitution Orders will provide for fully appointed councils, rather than a mix of elected professional members and appointed lay members, as at present, and the current system of alternate professional members for the HPC is discontinued. Both Councils will be given parity of membership between lay and professional members to ensure that purely professional concerns are not thought to dominate its work – although the exact numbers of each will be in the Constitution Orders. Regulators must be seen to be independent and impartial in their actions. Doubts based on a perceived partiality have threatened to undermine patient, public and professional trust in the health professions regulators more generally. The composition of the regulators is central to these perceptions. The regulators may be seen as partial to their professionals because the professionals form the majority on their councils, or may be seen to be partial because their councils are thought to be elected to represent the particular interests of health professionals. Hence the moves to parity of membership and having independently appointed councils rather than professional members being elected by the profession.

- Extension and harmonisation of the health professions regulators duties of co-operation. The White Paper highlighted the need to ensure closer co-operation and co-ordination between regulators and employers and the need for regulators to consider the needs of stakeholders. In line with this, GDC, HPC and RPSGB, are all given revised duties of co-operation, and in particular as regards bodies concerned with the provision, supervision or management of NHS services.

- Revision of the constitutional arrangements for the statutory committees of the HPC and the GDC. The requirements in the 2001 Order and the 1984 Act are amended, in particular, to give statutory committees new powers to determine their own procedures in standing orders, with less of the detail of the constitutional arrangements for the HPC's statutory committees in the 2001 Order. Both Councils are given greater flexibility as regards the process for appointing statutory committee members. The overarching policy intention is to give the Regulators greater independence in managing how they deliver their statutory functions, within an overall framework set by the relevant framework legislation.

- Revision of the annual reporting requirements so that for the first time the GDC, the HPC and the RPSGB are required to include a description of the arrangements that they have in place to ensure that they adhere to good practice in relation to equality and diversity, and the GDC and HPC are required to produce a strategic plan. The Councils' reports and plans are laid before the United Kingdom Parliament and (for the first time in the case of the HPC and the RPSGB) before the Scottish Parliament. Alongside the moves, more generally, to greater independence of the health professions regulators, it is important to strengthen the accountability of the regulators to the UK Parliament, and in the case of the regulators that regulate new professions (see below), the Scottish Parliament. This will ensure that there will continue to be checks and balances on the regulators' exercise of their functions.

7.2 Alongside these governance changes, this Order amends the procedures for Orders of the Privy Council which approve subordinate legislation of the GDC, HPC and the RPSGB, or which make self-standing measures for the regulation of the professions regulated by these regulators.

- The effect of these changes is that such Orders of Council will be subject to negative resolution procedures in both the United Kingdom and the Scottish Parliaments, if they include measures that relate to the regulation of a health profession that was not subject to statutory regulation at the time the reservation in Head G2 Schedule 5 to the Scotland Act 1998 came into force (referred to in this Memorandum as "new professions") and so include matters that are within the legislative competence of the Scottish Parliament.

- It is already the case that Orders approving regulations under section 36A of the Dentists Act 1984 ("the 1984 Act") that bring new professions complementary to dentistry within statutory regulation are subject to the negative resolution procedure in both Parliaments. However, the new provisions go much further and, for the first time, give the Scottish Parliament a continuing veto over how new professions are regulated, not just a veto over whether or not they will be regulated in GB or UK-wide legislation, once they are subject to statutory regulation by the GDC, the HPC or the RPSGB.

- The effect of the changes is that subordinate legislation approved by Orders of the Privy Council that includes both matters relating to new professions and reserved matters (i.e. matters outside the legislative competence of the Scottish Parliament) will potentially be subject to veto by the Scottish Parliament. If the veto were used, and the regulator (or the Privy Council, if the Order was not an approval Order) wanted to proceed with the proposals, they would need to be re-made in a form that either excluded all measures that related to the regulation of new professions (in which case the statutory instrument would no longer need to be laid before the Scottish Parliament) or addressed the concerns raised by the Scottish Parliament.

- The theoretical possibility exists of the Scottish Parliament vetoing measures because of its dissatisfaction with a matter that did not relate to the regulation of a new profession, but the Department of Health and the Scottish Government Health Directorates consider this theoretical possibility (which would only result in the delay of measures, while they were re-made in a form which meant they no longer needed to be laid before the Scottish Parliament) as preferable to the current position whereby the Scottish Parliament has no say in a matter that remains its continuing responsibility, notwithstanding its decision that the new profession should be regulated on a GB or UK-wide basis.

- They also consider this theoretical possibility preferable to requiring the GDC, the HPC and the RPSGB to have separate rules and regulations for new professions, or which relate exclusively to matters that were within the legislative competence of the Scottish Parliament, as this would lead to unnecessary duplication of legislation. Practitioner psychologists, for example, once they become a new profession, will be subject to exactly the same fitness to practise procedures as other registrants registered with the HPC, and so having a separate set of HPC fitness to practise rules which were either just for practitioner psychologists and operating department practitioners, or just for Scottish practitioner psychologists and Scottish operating department practitioners, simply because those two professions are the two new professions regulated by the HPC out of the 14 it regulates, would also create a distorted impression of how the HPC's fitness to practise procedures operate.

Introduction of Statutory Regulation of Practitioner Psychologists throughout the United Kingdom

7.3 Statutory regulation of practitioner psychologists, as with any group of professions, enables the setting of statutory standards of practice to ensure safe and effective conduct, and provides for the operation of statutory fitness to practise procedures to investigate and deal with cases of alleged impaired fitness to practise. As a consequence, the public can have greater confidence that individuals practising the profession are competent and fit to do so. As is also the case with pharmacy technicians, this is particularly important where the profession concerned is offering services to the public.

7.4 Further detail about why statutory regulation for practitioner psychologists has taken the shape that it has is given in the Consultation Report attached to this Memorandum. In summary:

- it was decided to proceed, as was suggested in the original consultation proposals, by way of regulating the seven professions referred to in the consultation document on this Order – clinical psychologists, counselling psychologists, educational psychologists, forensic psychologists, health psychologists, occupational psychologists and sport and exercise psychologists (referred to, collectively, as "practitioner psychologists"). However, it is hoped this will be the first stage in bringing statutory regulation to the broader range of professions offering psychological services to the public, and consideration will be given to publishing proposals in a future Order to bring others engaged in psychological therapies into statutory regulation, when standards of competence and training appropriate for their safe and effective practice have been agreed.

- The decision has been taken that researchers and teachers working exclusively for the furtherance of psychological knowledge need not be statutorily regulated, as they do not offer psychological services to the public and so they do not need to be statutorily regulated in order to protect the public from the work they do. Instead, it is considered that the standards they need to meet relate to teaching or to ethical research. Generally speaking, therefore, it is not the intention that statutory regulation should apply to these groups of psychologists. There is, however, an expectation that those who are wholly or mainly engaged in teaching at a postgraduate level students who are seeking to acquire expertise in fields of applied psychology will register. This is because their students, and very probably themselves, will necessarily be working in applied settings, and so their work will impact upon the public.

- It has been decided not to try to define 'scope of practice' of practitioner psychologists in the 2001 Order – it is not defined for any other profession regulated by the HPC – and so, in practice, registration will be open to any psychologist who is appropriately qualified, whose fitness to practise is not impaired and who is willing to fulfil the obligations associated with registration (principally, payment of fees and fulfilment of the obligations relating to continuing professional development). Accordingly, any psychologist in this position who wishes to register in order to use one of the protected titles that are restricted to HPC registrants will be able to do so, even if they are not, at the time, offering services as a practitioner psychologist. It is not part of the HPC's role to seek to restrict registration to those registrants who, at any given time, are actively engaged in practising their profession.

- As was originally proposed, practitioner psychologists will be regulated via the HPC. The HPC aims to work collaboratively with professions to ensure that it can offer an

efficient and unified service whilst focusing on individual differences between professions. The HPC has the remit and expertise to approve and maintain high standards of education and continuing good practice, based on the requirements for safe and effective practice, not on professional aspirations.

7.5 The other main changes in this Order will meet the following policy objectives:

Protection of vulnerable children and adults

- The provisions enabling inclusion of a person in a barred list kept by the Independent Barring Board (IBB: which will become the Independent Safeguarding Authority) or the adults or childrens lists kept by the Scottish Ministers, to be considered a reason for finding a registrant's fitness to practise is impaired or for turning down an application for registration, and the rule changes which enable all the health professions regulators to treat such inclusions as conclusive evidence of the facts that led to those inclusions, will make it easier for the health professions regulators to take action where the IBB or the Scottish Ministers have already concluded that action needs to be taken to protect vulnerable children or adults. This will enhance public protection (in particular of vulnerable children and adults), as will the new duties on both the health professions regulators on the one hand, and the Scottish Ministers on the other, to share important barring information.

Introduction of Statutory Regulation of Pharmacy Technicians in Scotland

- This supplements the action taken in the 2007 Order to introduce statutory regulation for pharmacy technicians in England and Wales. Pharmacy technicians are members of a health profession that has contact with the public and perform functions that could put members of the public at risk, hence the desirability that they be properly regulated. Regulation will also have incidental benefits, such as opening up the possibility of new, more flexible arrangements for the provision of pharmacy services. Added professional scrutiny, and the standard-setting for entry into the profession that statutory regulation allows, make it easier to confer additional professional responsibilities. The new measures will also facilitate the cross-border flow of staff and ensure that the public can rely on the same standards wherever they live in Great Britain.

Temporary registration during emergencies involving loss of human life

- This Order contains provisions enabling the RPSGB to register additional pharmacists in Part 1 of their Register of Pharmacists in an emergency, that is, in the practising part of the Register. It also gives the RPSGB powers to make emergency annotations to their Register to give practising pharmacists additional prescribing rights. These powers are essentially reserve powers which are part of a strategy for putting in place legislative arrangements now for dealing with an influenza pandemic or a similar national emergency, for example the emergence of a new virulent strain of viral haemorrhagic fever, so that as little reliance as possible would need to be placed on legislating once a pandemic had been declared.

- the proposals for additional registrations are similar to the proposals for registering additional doctors in an emergency that were included in the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008, and the proposals for extending prescribing rights are similar to the proposals for extending prescribing rights in an emergency that were included in the Nursing and Midwifery (Amendment) Order 2008. In the case of pharmacists, it is thought that it is most likely that any

necessary additional registrations of practising pharmacists will in fact be on the basis of moving pharmacists from the non-practising to the practising part of the register.

- If an emergency strikes particularly quickly, or has a particularly severe impact on a particular location, it may not be possible to identify each and every individual at the outset who needs to be registered as a practising pharmacist. For example, if there is a need to register postgraduate students, all their details will not necessarily be known to the RPSGB, notwithstanding the contacts that it already has with such students that are intended to facilitate future registration. There are therefore arrangements for the registration of an identified group of individuals as well as of identified individuals, and for registration of individuals who do not possess all the qualifications normally required for registration.

- It is emphasised that the existence of these powers is a purely precautionary measure. They do not reflect any change in the level of risk perceived by the Government.

Consolidation

7.6 There are no plans to consolidate the legislation amended by this Order.

8. Consultation

8.1 The Health Care and Associated Professions (Miscellaneous Amendments) No. 2 Order (the previous name for this Order) was published in draft for public consultation on 21 December 2007. Consultation closed on 22 March 2008. 120 responses were received, showing overall support for the amendments set out in the draft Order. A report on the consultation has been laid before Parliament and is attached to this Memorandum.

8.2 The Department consulted more widely on its proposals for responding to an influenza pandemic as part of a separate consultation exercise, *Pandemic flu: a National Framework for Responding to Pandemic Influenza,* which closed on 22nd February 2008. That consultation document described the Government's strategic approach for responding to an influenza pandemic published jointly by the Department of Health and the Cabinet Office. It provided background information and guidance to public and private organisations developing response plans. It updated and expanded upon health advice and information contained in previous plans issued by UK health departments and was intended to replace those documents. There was also a public consultation exercise by the Department on possible changes to medicines and associated legislation for use during a pandemic, which closed on the same day.

8.3 The Department has also collaborated extensively with the statutory health professsions regulators affected by the terms of this Order, and had significant additional discussions with the British Psychological Society and the Association of Educational Psychologists, many of whose members will transfer to the HPC on statutory regulation of practitioner psychologists, in drafting the final text to be presented to the United Kingdom and Scottish Parliaments.

9. Guidance

9.1 The Department of Health has not issued any guidance in relation to this Order.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal in terms of its monetary implications. These and the more general impact issues arising out of the Order that relate

to these sectors are discussed in the attached Impact Assessment. Additional Impact Assessments will be prepared for the proposed new Constitution Orders for the GDC and HPC.

10.2 The impact on the public sector is minimal in terms of its monetary implications. These and the more general impact issues for the public sector that arise out of this Order again are explained in the attached Impact Assessment. Cross reference is also made to the Impact Assessment for the Safeguarding Vulnerable Groups Act 2006 and the partial Regulatory Impact Assessment (November 2007) for the Protecting Vulnerable Groups (Scotland) Act 2006.

10.3 An Impact Assessment is attached to this Memorandum.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This legislation will be subject to internal review by the Department of Health, together with the Devolved Administrations, in 2011.

13. Contact

Stuart Griffiths at the Department of Health Tel: 0113 254 5249 or email: Stuart.Griffiths@dh.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:
Department of Health	**Impact Assessment of Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009**

Stage: Final	Version: 8.0	Date: 9 February 2009

Related Publications: **Health Care and Associated Professions (Miscellaneous Amendments) Order 2008. Trust, Assurance and Safety - Regulation of Health Care Professionals in 21st C**

Available to view or download at:

http://www. dh.gov.uk/

Contact for enquiries: Stuart Griffiths **Telephone:** 0113 254 5249

What is the problem under consideration? Why is government intervention necessary?

Modernisation of the regulation of health care and associated professions:

Purpose of professional regulation is to ensure patient safety, set standards of competence for those registered and maintain a system to investigate and where necessary restrict or prevent practise by those professionals whose fitness to practise is called into question.

Government intervention is necessary to update and reform the system of regulation in order to maintain and improve public confidence

What are the policy objectives and the intended effects?

In order to exercise their functions effectively and command the confidence of patients, the public and the professions, the healthcare professions regulators need to be seen to be independent and impartial in their actions. This Order makes changes to the governing structures of the General Dental Council and the Health Professions Council, including a move to fully appointed councils, and changes to make them more accountable to Parliament. The Order also introduces statutory regulation of Psychologists, and extends regulation of pharmacy technicians to Scotland.

What policy options have been considered? Please justify any preferred option.

The policy options were discussed in two consultation documents published in 2006: "Good doctors, safer patients" and "The Regulation of non-medical health care professions, a review by the Department of Health". The White Paper "Trust, Assurance and Safety - the Regulation of Healthcare Professionals in the 21st Century" set out a series of reforms based on the results of this consultation. Evidence base attached refers to the preferred option identified through that consultation.

Regulation of applied psychologists first considered in 2005 - see consultation document issued in March 2005

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 2011

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Ben Bradshaw.....Date: ***24 February 2009***

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition) **Yr**	
£ 328k to £361k	
Average Annual Cost (excluding one-off)	
£ -485k to £533k	**Total Cost** (PV) **£ -0.5m to £4.6m**

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups'
One-off **Yr**	
£	
Average Annual Benefit (excluding one-off)	
£	**Total Benefit** (PV) **£**

Other **key non-monetised benefits** by 'main affected groups'

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£**

What is the geographic coverage of the policy/option?				UK	
On what date will the policy be implemented?				July 2009	
Which organisation(s) will enforce the policy?				GDC/HPC/RPSGB	
What is the total annual cost of enforcement for these organisations?				£	
Does enforcement comply with Hampton principles?				Yes	
Will implementation go beyond minimum EU requirements?				No	
What is the value of the proposed offsetting measure per year?				£	
What is the value of changes in greenhouse gas emissions?				£	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large	
Are any of these organisations exempt?	N/A	N/A	N/A	N/A	

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ Decrease of £ **Net Impact** **£**

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

The UK Government's programme for reforming the regulation of all health care and associated professions was first set out in *The NHS Plan – A Plan for Investment, a Plan for Reform.* This made clear that regulation should be strengthened and specified that Regulatory bodies must change so that they are:

- generally smaller, with much greater patient and public representation in their membership;
- have faster more transparent procedures;
- develop meaningful accountability to the public and the health service.

Although good progress has been made, the need for further reform was identified in the two reviews of professional regulation published for consultation in July 2006: *Good Doctors, Safer Patients* by the Chief Medical Officer for England, and the Department of Health's *The Regulation of the Non-Medical Health Care Professions.*

The White Paper *Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century* set out a substantial programme of reform to the United Kingdom's system for the regulation of health care professionals, based on consultation on the two reviews mentioned above. It is complemented by *Safeguarding Patients,* the UK Government's response to the recommendations of the Fifth Report of the Shipman Inquiry and to the recommendations of the Ayling, Neale and Kerr/Haslam Inquiries, which set out a range of measures to improve and enhance clinical governance in the NHS.

The draft Order parallels the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 SI 2008 No. 1774 and is part of a series of Orders that will take forward the reforms identified in the White Paper. This Order concentrates on the reforms set out in Chapter One of the White Paper (*Assuring Independence: the Governance and Accountability of the Professional Regulators)* but also includes measures that are required to deliver other legislative requirements and some items that have been identified by the Regulators as needing urgent reform**.** It applies mainly to the General Dental Council, Health Professions Council, and the Royal Pharmaceutical Society of Great Britain, but some provisions (e.g. in relation to safeguarding vulnerable groups) will affect all the health professions Regulators.

This Order also introduces the statutory regulation of practitioner psychologists through the Health Professions Council. This builds on the proposals for statutory regulation of applied psychologists first put forward in March 2005. (See the consultation document "*Applied Psychology: Enhancing Public Protection: Proposals for the Statutory Regulation of Applied Psychologists).*

Statutory Regulation of Practitioner Psychologists

The British Psychological Society current maintains a voluntary register of "chartered psychologists" who are fully qualified and judged fit to practise psychology without supervision. The proposals outlined in this Order places regulation of practitioner psychologists on a statutory footing and transfers responsibility for it to the Health Professions Council (HPC). This will ensure that all practitioner psychologists meet professional standards backed by statutory sanctions in order to practise lawfully using the professional titles normally associated with practitioner psychologists, thus protecting the public against unfit practitioners.

The psychologists it is proposed to regulate under this provision are clinical psychologists, counselling psychologists, educational psychologists, forensic psychologists, health psychologists, sport and exercise psychologists and occupational psychologists. The Order requires the HPC, the BPS, and the Association of Educational Psychologists to enter into arrangements to facilitate the statutory regulation of practising psychologists, including arrangements to ensure that all the names of those eligible for statutory regulation in the BPS and AEP registers are entered into the new part of the register maintained by the HPC.

Number of practitioners affected by these changes

- Number of Psychologists on BPS register = 11,500 (note includes some on AEP register)
- Number of Psychologists only on AEP register = 1,300
- Number of unregistered psychologists (estimate) = 2700
- Estimated number of grandparenting applicants = 1400

Fees and costs

- Registration fee at HPC = £72
- Membership fee at BPS = £105 membership fee + £25 practising fee = £130 (Note all registered psychologists will also have paid a £40 registration fee)
- Membership fee at AEP = £159
- Estimated fee for unregistered psychologists and grandparenting applicants to cover costs of assessing applicants through training and experience rather than qualifications = £400 per head.
- No costs of transferring 12,800 existing registered psychologists:

Costs of registering currently registered psychologists

- Minimum Cost: Assume HPC registration fee is representative of average costs for 11,500 BPS registered psychologists = 11,500 x (£72 - £130) = savings of £667,000 per year, and, 1,300 AEP registered psychologists = 1,300 x (£72-£159) = savings of £113,100. Combined savings for 12,800 registered psychologists = £780,100

- Maximum Cost: Assume BPS registration fee is representative of average costs for 12,800 registered psychologists = 12,800 x £0 = £0 per year

Costs of registering currently unregistered psychologists

- Minimum Cost: Assume HPC registration fee is representative of average costs for 4,100 estimated unregistered psychologists = 4,100 x £72 = £295,200 per year
- Maximum Cost: Assume BPS registration fee is representative of average costs for 4,100 estimated unregistered psychologists = 4,100 x £130 = £533,000 per year plus 4,100 x £40 up front cost (£164,000)

Costs of unregistered and grandparenting applicants

Estimated Cost = (2700 +1400) x £400 = £1,640,000 (one-off cost)

Total Cost

Minimum = (-£780,100 x 5) + (£295,200 x 5) + £1,640,000 = -£0.78m (over 5 years)

Maximum = £0 + (£533,000 x 5) + £164,000 + £1,640,000 = £4.47m (over 5 years)

Duty of Co-operation and Duty to Consider the Interests of Stakeholders

The amendments here are intended to embed the duty of consideration of key stakeholders with an interest in the work of a Regulator, particularly employers, education and training providers, healthcare system providers and managers. The current reforms of the health system are making stronger links between systems Regulators and professions Regulators and it is necessary that this is supported by a corresponding duty on all professions Regulators to cooperate with and consider the interests of all stakeholders in their deliberations

These amendments apply to GDC, HPC and RPSGB. For the GDC and RPSGB these are minor amendments to ensure that the Regulators also co-operate with those concerned with the provision, supervision or management of national health services.

Minimal cost implications are identified in relation to these changes.

Appointments to Committees

This is a facilitative measure to allow Regulatory bodies to make arrangements with another body for that body to assist the Regulator with exercising its appointment functions. It is a facilitative measure giving greater flexibility to a Regulator, especially to the smaller organisations who might not have the expertise or experience available to be able to exercise their appointment functions efficiently.

Costs of such changes assessed as minimal, and subsumed into normal running costs of Regulator.

Annual Reports and Strategic Plans

These amendments update the provisions requiring Regulators to produce annual accounts and strategic plans. All Regulators are currently required to produce annual reports that they send to the Privy Council. The amendments make further provision as to the content of these reports, including a statistical report which indicates the efficiency and effectiveness of its fitness to practise procedures, and information on how its has monitored the effects of its policies and activities on the diverse range of people they affect.

It will be a requirement that the Regulator should lay a copy of its annual report and strategic plan before the UK and Scottish Parliaments. The RPSGB is not being required to produce a strategic plan because of the likelihood that its regulatory functions will transfer in the near future to the proposed new general pharmaceutical council

All Regulators already produce annual reports. The change therefore is to strengthen the accountability of the Regulators to the public through Parliament and to the registrants who provide the bulk of a Regulator's funding.

Minimal cost implications have been identified from these changes, as they strengthen requirements already in place.

Registration of Council Members Private Interests

This amendment will require all Regulators to maintain a register of the private interests of their Council members. It is intended to improve patient safety by ensuring that Council members do not have any conflicts of interest in existence that could potentially compromise the fulfilment of their duties.

Minimal cost implications are identified in relation to these changes.

Safeguarding Vulnerable Groups

There are three changes that relate to safeguarding or protection of vulnerable groups:

1) Barring decisions to protect vulnerable groups

The amendments proposed will add to the reasons that a person's fitness to practise may be considered impaired:

i) the Independent Barring Board including a person in a barred list; and,
ii) Scottish Ministers including a person in the children's list or the adults' list.

These changes apply to the GDC, HPC and RPSGB.

2) Amendments to the Safeguarding Vulnerable Groups Act 2006

These amendments extend the provisions of the 2006 Act, notably the Secretary of State's duty to notify Regulators of barring and monitoring decisions and the Independent Barring Board duties to notify the Regulators of relevant matters, to include all health care workers who are statutorily regulated. Further amendments to the Act makes provision for the healthcare Regulators to be able to apply for information about whether an individual is barred, subject to monitoring, or being considered by the Independent Barring Board.

3) Protection of Vulnerable Groups (Scotland) Act 2007

These amendments require Scottish Ministers to notify any relevant Regulatory body when an individual has been barred from doing regulated work with children or adults.

Taken together these amendments are a set of supplementary notification arrangements designed to bring the health professions Regulators fully within the vetting and barring scheme and so integrate them more fully into an important new set of measures for public protection. This will deliver improvements to patient safety by allowing free exchange of information between Regulators and the vetting and barring scheme.

A detailed impact assessment on the Safeguarding Vulnerable Groups Act 2006 can be found at:

http://www.everychildmatters.gov.uk/socialcare/safeguarding/independentsafeguardingauthority/

Links to the partial Regulatory Impact Assessment (November 2007) for PVG Act implementation and the financial memorandum accompanying the then PVG Bill (September 2006) can be found at: http://www.scotland.gov.uk/pvglegislation .

A full Regulatory Impact Assessment will be published later in 2009.

Composition of Councils

Chapter one of the White Paper *Trust, Assurance and Safety* puts forward a number of proposed changes to the size and structure of Councils. This includes a move to smaller, more board-like Councils with greater consistency of size and role across the professional Regulatory bodies; parity of membership between lay and professional members as a minimum; council members to become independently appointed.

The amendments put forward in this Order will allow the Privy Council to provide by Order for the numbers of lay and registrant members on the General Dental Council and the Health Professions Council, their terms of office, arrangements for appointing a chair, and provisions with respect to the suspension or removal of members.

At present each Council consists of a number of lay members appointed by the Privy Council (who in practise delegate this task to the Appointments Commission) and a number of registrant members who are elected by the registrants themselves. In future all members of the Council will be appointed by the Privy Council.

Details of the membership and constitutional arrangements for each of the Regulatory bodies are set out in the governing legislation. The proposed amendments will remove the constitutional details from the primary legislation and provide for the Privy Council to set out this detail in an order. All organisations need to adapt to changing circumstances over time. These amendments will make it easier for changes to be made to a Regulatory body's overall governing structure in the future, enhancing the ability for Regulators to act independently and autonomously.

These provisions do not apply to the Royal Pharmaceutical Society, which is a Charter body and which in any event is likely to cease to be a statutory regulator on the establishment of the General Pharmaceutical Council.

A detailed impact assessment will be prepared in respect of the GDC and HPC in the context of the development of their new constitutions. Draft constitution orders for these bodies have already been published for consultation.

Procedure of the Health Professions Council and its Committees

A number of amendments are made to the provisions covering the committees of the HPC.

These:

- provide for the HPC's statutory committees to regulate their own procedures through the use of Standing Orders, subject to the requirements of legislation, improving the committees' functioning, and

- remove detailed framework requirements for the membership, quorum and deputising arrangements for the chair from the framework legislation. In future the Council will be able to make more flexible provision for the constitution of its statutory committees through the use of Rules.

Overall, these changes will increase the council's autonomy over its internal affairs, but there will be some additional scrutiny where it is necessary to ensure that practice committee procedures are compatible with convention rights.

Minimal cost implications are identified in relation to these changes.

Temporary Measures pending Introduction of New HPC Council

13 members of the HPC are appointed by the Council on being elected under the terms of its election scheme. Elections are held each year for 1 quarter of the registrant members. The Council is also required to appoint an alternate member for each registrant member. Amendments in this Order will change this system so that all members of the Council are appointed by the Privy Council, thus removing the need for registrant members to be elected.

However, precautionary measures are in place should implementation of the Constitutional reforms to the HPC (and so the introduction of the new HPC Council) be delayed following Parliamentary approval of this Order. Under current provisions the HPC are required to elect members each year and the next election will need to be held before a new Council can be appointed. To ensure continuity and stability during a period of change this Order makes a number of temporary measures pending the introduction of the new Council. These Amendments:

- remove the need for the appointment of an alternate member for a particular registrant member, where this would require the Council to hold a by-election; and,
- extend the terms of office of all members who hold office on 8 July 2008, so that their membership expires on 8 July 2010 or on the coming into force of an Order made by the Privy Council establishing the new Council.

Estimated saving - £200,000

Further precautionary provisions are made in the event that practising psychologists are regulated before the new Council can be introduced. These increase the size of the existing Council to reflect the creation of the psychologists register. It is not anticipated that these measures will prove to be necessary

Cost of election of additional members (if required) - £14,000

Statutory Regulation of Pharmacy Technicians in Scotland

The Pharmacists and Pharmacy Technicians Order introduced in February 2007 introduced statutory regulation of pharmacy technicians for the first time. At present this regulation only extends to England and Wales.

The amendments in this order extend the regulation of pharmacy technicians to Scotland. Pharmacy Technicians in Scotland are already on a voluntary register held by the Royal Pharmaceutical Society of Great Britain. These provisions simply alter that status of this register from a voluntary one to a statutory register.

Minimal cost implications are identified in relation to these changes.

Temporary Registration during Emergencies Involving loss of human life

These amendments enable emergency measures to be taken forward in parallel with measures under the Civil Contingencies Act 2004, which makes provisions for emergency regulations in a situation (such as pandemic illness) where there is substantial loss of life.

The amendments provide for the Registrar at the Royal Pharmaceutical Society of Great Britain to direct that a person or specified group of persons may be registered as registered pharmacists for the duration of the emergency. The registrar may also annotate an entry in the pharmacists register to indicate that he is qualified to order drugs, medicines and appliance for the duration of the emergency.

Costs

Administrative costs associated with temporary registration of recently retired pharmacists, using them as a benchmark group of potential additional registrants.

There are approx 50,000 pharmacists. A valid assumption is that 4% of pharmacists have retired in the last 5 years (based on the fact that 4% of doctors have retired in the last 5 years – 10,000 of 240,000) = 2000 pharmacists in the pool for temporary registration.

A valid assumption is 25-50% of pharmacists that retired in the last 5 years may be willing for temporary registration = 500 to 1000 pharmacists.

Assuming admin costs of registration are similar to those of GMC cost would be £42.71 to £100 per registration.

Minimum Cost = 500 x £42.71 = £21,355 per year (subject to an emergency situation arising triggering this expenditure, and subject to the length of time these emergency requirements are required to be maintained for)

Maximum Cost = 1000 x £100 = £100,000 per year (subject to an emergency situation arising triggering this expenditure, and subject to the length of time these emergency requirements are required to be maintained for)

Changes since publication of Impact Assessment on Consultation for this Order

An initial Impact Assessment dated November 2007 was produced when the Order was being consulted on. Following that Consultation 3 proposals have been removed from the Order.

Amendment of "main objective" provisions of the GDC, HPC, and RPSGB

Reform to makes clear that the main aim of the Council is to protect, promote and maintain the health, safety and well-being of the public, and in particular that of those persons using the services of registrants

Orders of the Privy Council

These amendments were intended to rationalise the process for the making and amending legislation, regulations and rules that apply to each Council. The part of this proposal which was to reduce the number of instruments that have to be laid before parliament has been withdrawn

Education and Continuing Professional Development Committees at RPSGB

These amendments were intended to make some minor amendments to the provisions in the Pharmacy and Pharmacy Technicians Order to allow the Society some greater flexibility in the arrangements it makes continuing professional development. These would allow the society to makes rules on education and continuing professional development that give a role to either committee. These amendments have been withdrawn as iIt has been decided to delay introduction of the proposed rules until the establishment of the General Pharmaceutical Society.

The cost implications of these options were minimal and so no consequential savings have been identified.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Annexes

Competition Assessment

No impact identified

Small Firms Impact Test

No impact identified

Legal Aid

No impact identified

Sustainable Development

No impact identified

Carbon Assessment

No impact identified

Other Environment

No impact identified

Health Impact Assessment

No impact identified

Race Equality , Disability Equality and Gender Equality

In drafting the Order, and this consultation document we have considered the possible impact on equality issues (age, disability, gender, race, religion or belief, and sexual orientation) of each of the policies described in this Impact Assessment. It has been concluded that there is no impact.

Indeed, the requirements introducing production of Annual Reports place a duty on Regulators to adhere to good practice in relation to equality and diversity issues, as defined by the terms “equality” and “diversity” within the Equality Act 2006.

When exercising the powers to appoint to the new Councils, which are delegated to them by the Privy Council, the directions providing the Appointments Commission with such authority oblige them: (i) to apply good practice in relation to equality and diversity issues, and (ii) make appointments which reflect the desirability for the HPC to have persons a range of backgrounds, qualifications, competencies, interests and experience on its Council.

Human Rights

No impact identified

Rural Proofing

No impact identified

Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009

Consultation Report

Contents

Executive summary

1. On 21 December 2007, the Department of Health published a joint consultation paper on behalf of the Secretary of State and the Scottish Ministers, on the draft Health Care and Associated Professions (Miscellaneous Amendments) No 2 Order 2008 (now to be laid before the two Parliaments as the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (referred to in this report as "the HCAP Order"). The HCAP Order was intended, principally, to take forward reforms identified in the White Paper, *Trust, Assurance and Safety – the Regulation of Health Professionals in the 21st Century*.

2. The issues included in the consultation on the HCAP Order were:

- Introduction of statutory regulation for practitioner psychologists.
- Introduction of statutory regulation for pharmacy technicians in Scotland.
- Standardisation of the statutory duties to ensure that regulators consider the interests of stakeholders in their deliberations.
- Improved arrangements for accountability to the United Kingdom and Scottish Parliaments, including new annual reporting arrangements (which include arrangements to ensure that the regulator adheres to good practice in relation to equality and diversity), new obligations to produce strategic plans and new legislation procedures.
- Powers enabling regulators to consider a person's fitness to practise as impaired where a health care professional has been included in a barred list under the Safeguarding Vulnerable Groups Act 2006, the Protection of Vulnerable Groups (Scotland) Act 2007 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007
- New constitutional arrangements for the General Dental Council (the "GDC") and the Health Professions Council (the "HPC"), including a move to a fully appointed council, removal of the requirement for council members to be on certain committees and changing the title of president to chair.
- Registration of Council members' interests, where this was not previously provided for.
- Some standardisation of the arrangements for the constitutions of statutory committees, including introduction of powers for Councils to provide for a body other than the Council to assist it with any function relating to the appointment of members to its committees.

- New provisions enabling the Royal Pharmaceutical Society of Great Britain (the "RPSGB"), in an emergency, to register additional pharmacists in Part 1 of their Register of Pharmacists, that is, in the practising part of the Register; and to make emergency annotations to their Register to give practising pharmacists additional prescribing rights. The relevant emergencies are those involving, or potentially involving, large scale loss of human life or human illness etc.

- Temporary measures to extend the terms of office of members of the HPC in post on 8 July 2008, pending the introduction of the new constitution for the Council under the revised Schedule 1 of the Health Professions Order 2001.

Introduction

3. This report has been prepared in accordance with paragraph 9(4) of Schedule 3 to the Health Act 1999 by the Department of Health in England, on behalf of the Secretary of State for Health and the Scottish Ministers, about the consultation on the draft HCAP Order.

4. Section 60 of the Health Act 1999 permits the enactment and amendment of legislation related to the regulation of health care professions by means of an Order in Council subject to affirmative resolution Parliamentary procedures, including the Scottish Parliament where appropriate. If a health care profession was the subject of statutory regulation before devolution in Scotland, regulation of that profession has remained a reserved area, but systems of statutory regulation for "new" health care professions are within the legislative competence of the Scottish Parliament. Section 60 orders that contain matters within its competence (other than purely consequential amendments) have to be approved by both the Scottish and the UK Parliaments.

Background

5. The UK Government's White Paper *Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century* ("the White Paper") set out a substantial programme of reform to the United Kingdom's system for the regulation of health professionals. It is complemented by *Safeguarding Patients,* the UK Government's response to the recommendations of the Fifth Report of the Shipman Inquiry and to the recommendations of the Ayling, Neale and Kerr/Haslam Inquiries, which set out a range of measures to improve and enhance clinical governance in the NHS.

6. The UK Health Departments are working together with the regulatory bodies to modernise their regulation of the healthcare professions in line with the agenda for reform put forward in the White Paper.

7. The HCAP Order is one of a series of Orders that will take forward the reforms identified in the White Paper. The HCAP Order concentrates on the reforms set out in Chapter One (*Assuring independence: the governance and accountability of the professional regulators)*, but also includes measures that are required to deliver other legislative requirements and some items that have been identified by the regulators as needing urgent reform.

8. It also introduces the statutory regulation of practitioner psychologists by the HPC. This builds on the proposals for statutory regulation of applied psychologists first put forward in March 2005. (See the consultation document "*Applied Psychology: Enhancing public protection: Proposals for the statutory*

regulation of applied psychologists).

9. The HCAP Order also includes provision to extend regulation of pharmacy technicians to Scotland.

10. The reforms set out in the HCAP Order primarily affect professions regulated by the:

- GDC
- HPC
- RPSGB.

11. Parallel Orders, the Nursing and Midwifery (Amendment) Order 2008_ (SI 2008/1485) and the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 (SI 2008 No. 1774) made similar provisions in respect of professions regulated by the

- Nursing and Midwifery Council (the "NMC");
- General Medical Council (the "GMC");
- General Optical Council (the "GOC");
- General Osteopathic Council (the "GOsC");
- General Chiropractic Council (the "GCC");

Consultation process

12. The consultation took place over a three-month period between 21 December 2007 and 22 March 2008.

13. Respondents were requested to fill in a questionnaire response form and return it either electronically or by post to the Department of Health. In total 120 responses were received (but see paragraph 17 below), with 15 responses made in the form of a general letter reply rather than replying to the questionnaire. All responses were reviewed as part of the consultation process.

14. The responses represented a diverse mix of bodies/organisations, individual professionals and members of the public. They included primary stakeholders in the field of psychology and healthcare professional regulation.

15. Annex A shows a breakdown of the number of responses to each of the questions in the consultation document. Below is a summary of consultation responses received in response to the questions and an explanation of the position taken on these. In describing policy positions taken, the shorthand term 'the Administrations' is used. The consultation was a joint consultation by the Secretary of State for Health and the Scottish Ministers and so the responses to it are also joint. If the question relates to a matter that is outside the legislative competence of the Scottish Parliament, the term 'the Administrations' is still

used in the discussion of the response because, in practice, the policy positions taken are consensus positions. Indeed, the consensus that underpins the approach taken in the HCAP Order extends beyond the Department of Health in England and the Scottish Government Health Directorates and also encompasses the Department of Health, Social Services and Public Safety in Northern Ireland and the Department for Health and Social Services in Wales. This has particular significance in the context of Northern Ireland as the regulation of health professionals is within the legislative competence of the Northern Ireland Assembly.

16. Annex B identifies all those who wished to be identified in responding to the consultation. Four people did not wish for their names to be published and therefore their names are withheld.

Statutory Regulation of Psychologists

17. In responding to questions relating to statutory regulation of psychologists, a cohort of these responses included forty-eight individual educational psychologists from Scotland, who had responded with identical answers and comments to each of the questions. In summary of the data responses to the questions below they have been presented as one collective response. However, in Annex A data are presented to show this cohort as both a collective and an individual response.

Q1. Do you agree that practitioner psychologists should be statutorily regulated?

- The majority, 89% of those respondents who expressed a view supported this proposal, with 9% disagreeing and 2% unsure.

- Overall, there is strong support to statutorily regulate practitioner psychologists. It was decided in light of consultation that practitioner psychologists should be statutorily regulated.

Q2. Do you agree that psychologists and teachers working exclusively in the furtherance of psychological knowledge should not be statutorily regulated as practitioner psychologists?

- The majority, 70% of those respondents who expressed a view, supported this proposal, with only 23% who did not agree and 7% unsure.

- One individual expressed a view that all psychologists should be regulated because they teach clinical skills, and that although they do not work in practice, they need to ensure their skills are kept up to date and relevant.

- One of the respondents who agreed with question 2 considered that there is a clear distinction between practising psychologists and academic researchers. One person unsure expressed a view that it could create a two-tier system of psychologists, splitting the profession and undermining public confidence.

- There is overwhelming agreement that psychologists and teachers working exclusively in the furtherance of psychological knowledge should not be statutorily regulated, as they do not offer psychological services to the public and so they do not need to be statutorily regulated in order to protect the public from the work they do. Instead, it is considered that the standards they need to meet relate to teaching or to ethical research. It is not, therefore, the intention that statutory regulation should apply to these groups. There is, however, an expectation that those who are wholly or mainly engaged in teaching at a postgraduate level students who are seeking to acquire expertise in fields of applied psychology will register. This is because their students, and very probably themselves, will necessarily be working in applied settings, and so their work will impact upon the public.

- It has been decided not to try to define 'scope of practice' of practitioner psychologists in the legislation – it is not defined for any other profession that the HPC regulates – and so, in practice, registration will be open to any psychologist who is appropriately qualified, whose fitness to practise is not impaired and who is willing to fulfil the obligations associated with registration (principally, payment of fees and fulfilment of the obligations relating to continuing professional development). Accordingly, any psychologist in this position who wishes to register in order to use one of the protected titles that are restricted to HPC registrants will be able to do so, even if they are not, at the time, offering services as a practitioner psychologist. It is not part of the HPC's role to seek to restrict registration to those registrants who, at any given time, are actively engaged in practising their profession.

Q3. Do you agree that others who deliver psychological therapies should be statutorily regulated in a future Order when standards appropriate to their roles have been agreed?

- 47% of those respondents who expressed a view supported this proposal, with 40% who did not and 13% unsure.

- Amongst those expressing reservations is the British Psychological Society ("BPS") which feels all those who deliver such therapies should be regulated at the same time to close potential loopholes.

- Some of the respondents in agreement expressed a view that the seven domains of practitioner psychologist are a good start, but others should be regulated in future.

- The Administrations note the BPS reservations, but do not wish to delay further the statutory regulation of practitioner psychologists in order to bring in statutory regulation of other groups at the same time, since that would delay the benefits afforded by the bringing of practitioner psychologists within statutory regulation now. The Administrations will consider publishing proposals in a future Order to bring others engaged in psychological therapies into statutory regulation, when standards of competence and training appropriate for their safe and effective practice have been agreed.

Q4. Do you agree that all seven domains should be statutorily regulated by HPC? If not, which domains should not?

- The majority 60% of those respondents who expressed a view supported this proposal, with 31% who did not and 9% unsure.

- Amongst those agreeing there was support for the HPC as regulator from professional bodies and individuals who work in the psychology professions. HPC is already a statutory regulator with a proven track record in regulating a wide range of healthcare professions, many of whom work in non-health settings (for example, schools, prisons and industry).

- The BPS expressed a reservation to this question, and a preference to have all psychologists regulated through a dedicated Psychological Professions Council rather than HPC. It felt that some of the domains do not work in health settings and should not be regulated by a health regulator.

- Some occupational and business psychologists argued that they were mainly concerned with groups and organisations and with their work or business functioning rather than with health or well-being, and should not therefore be included. However, the Department of Work and Pensions made a compelling case for the statutory regulation of occupational psychologists, recognising that their work includes rehabilitation of people who have been unemployed long-term, or who have health problems, and whose vulnerability requires their treatment by properly trained and regulated professionals.

- The Administrations recognise that a small number of business psychologists may not meet the proposed standards of proficiency

for statutory regulation as occupational psychologists. Their choice will be either to undergo additional education or training to meet such standards during the adaptation process known as 'grandparenting', or else to waive any claim to practise as an occupational psychologist. If they do, they will be able to continue to describe themselves as 'business psychologists' as this will not be one of the protected titles.

- The British Association of Sport and Exercise Scientists ("BASES") represents sports psychologists, sports physiologists and bio mechanists. Their preference is for these groups to be regulated together by the HPC in a separate Order since the sport context in which they operate is seen as more of a unifier than the original discipline of each practitioner.

- There was some support for the addition of a further domain, or profession, that of neuropsychologists. At the moment, BPS has a separate domain for neuropsychologists, some of whom have undergone the same pre-registration education and training as other chartered psychologists with practising certificates, but others have a less broad-based background. The latter group have, in the main, qualified overseas, and will not be given an automatic right to transfer onto the HPC register. Instead, it will be left to the HPC to determine the transfer arrangements for those members of this latter group who decide they do want to be admitted to the statutory register (if they decide they do not, they will be able to continue to call themselves 'neuropsychologists', as this will not be one of the protected titles). Transfer will be either on the basis of 'grandparenting' arrangements or recognition of additional qualifications: the legislation provides for both, and it will be left to the HPC to determine the most appropriate route. Those neuropsychologists who do transfer will need to have their entry in the register annotated with a field of competence that relates to one of the seven domains, typically clinical psychology or educational psychology.

- Currently, the route to practising neuropsychology in the UK is not via a separate pre-registration training programme, but as a specialist additional qualification achieved chiefly by clinical and educational psychologists. This group of UK-trained psychologists will be given the automatic right to transfer to the HPC register if they are or have been members of the BPS's clinical psychology or educational psychology domains. Joining one of those domains, or the Association of Educational Psychologists ("AEP"), is the practical route by which the Administrations expect these people to gain automatic access to the HPC register. It will then be open to the HPC to recognise their post registration specialist qualification in neuropsychology by annotating their entry in their register to that effect, and the Administrations' view is that this is how

neuropsychologists' special competence and training should be recognised. If in the future a direct pre-registration neuropsychology training programme is developed in the UK, the Administrations will consider enacting a further Order to allow the HPC to regulate neuropsychology as a separate practitioner psychology profession.

- The Administrations have considered and discussed these views further with key stakeholders and as a result have decided to proceed on the basis that the seven professions referred to in the consultation document – clinical psychologists, counselling psychologists, educational psychologists, forensic psychologists, health psychologists, occupational psychologists and sport and exercise psychologists – will, after all, be the groups brought within professional regulation, but at what is hoped will be a first stage of bringing statutory regulation to the broader range of professions offering psychological services.

- The Administrations also reaffirm their present intention, which is to regulate these professions via the HPC. The HPC aims to work collaboratively with professions to ensure that it can offer an efficient and unified service whilst focusing on individual differences between professions. The HPC has the remit and expertise to approve and maintain high standards of education and continuing good practice, based on the requirements for safe and effective practice, not on professional aspirations.

Q5. Do you agree with the descriptions of the seven domains in Annex A? If not, what alterations would you recommend?

- 39% of those respondents who expressed a view supported the descriptions, with 34% who did not and 27% unsure.

- Amongst those expressing reservations was the BPS, which disagreed with the descriptions. It provided alternative descriptions which reflect the fact that BPS members who are past members of the seven divisions associated with the seven domains are people whose entitlement to use protected titles has been assessed, and so these individuals should also be allowed to transfer automatically onto the HPC register, if they hold practising certificate. The Administrations welcomed the clarification provided.

- The draft Order has since been amended in the light, in particular, of the views expressed by BPS - and by the AEP, whose full members will also transfer automatically onto the HPC register.

Q6. Do you agree that holders of BPS practising certificates who do not meet the full range of competences for one of the seven domains of psychology practice should be eligible for HPC registration and continuing practice only if they demonstrate they meet HPC standards for safe and effective practice, including undergoing additional training if necessary?

- The majority 60% of those respondents who expressed a view supported this, with 28% who did not and 12% unsure.

- Some of those who supported this view voiced concern that the BPS should not be the sole arbitrator of who is a psychologist and who is not, unless the BPS current system is made more transparent.

- There was concern from those who disagreed that eligibility should be based on BPS or BASES standards as these psychologists have already been assessed as being competent and duplication will cost time and money. However, they will not have been assessed as competent in one of the practitioner psychologist domains. The BPS currently issues practising certificates to some academic or research psychologists who are not and do not wish to be trained practitioners. Typically, these are psychologists who have not undertaken the broad-based pre-registration programme that is now required of all entrants into one of the professions, but may have a particular specialism that has led to their acquiring a practising certificate to facilitate, for example, them acting as an expert witness in court proceedings. Neuropsychologists, whose case is discussed in relation to question 4 above, are another group of BPS practising certificate holders affected by this.

- The Administrations take the view that, notwithstanding this expertise, it should be left to the HPC to determine the transfer arrangements for practising certificate holders who do not meet the full range of competencies for the seven domains and it should not be automatic under the legislation. These practitioners will, in any event, need to identify to the HPC the specialist field of practice with which they wish their register entry to be annotated. Some may not wish to transfer at all, in which case they will be able to continue call themselves 'chartered psychologists' but will not be able to use the title 'practitioner psychologist' or 'registered psychologist'. For those who do choose not to transfer, it is already the case that they cannot use the titles associated with the seven domains, such as clinical psychologist, because, for BPS members, those titles are limited to current and former members of those domains.

- The Administrations agree with the majority that any current holders of practising certificates who wish to practise as practitioner psychologists – and so have the right to describe themselves as any one of the seven types of regulated psychologist – must either have the right background for admission to one of BPS's seven relevant divisions or be able to

demonstrate separately to the HPC that they meet the HPC standards for safe and effective practice. The evidence which it chooses to accept for this is entirely a matter for the HPC. In determining the transfer arrangements for the members of this group who do choose to apply for transfer, the HPC will have regard to its main objective, which is to safeguard the health and well-being of persons using or needing the services of its registrants.

Q7. Do you agree that standards to protect the public should cover conduct, competences and education and training?

- The majority 91% of those respondents who expressed a view supported this proposal, with 7% who did not and 2% unsure.

- Amongst those expressing reservations was the British Association for Counselling and Psychotherapy ("BACP") which stated that it was tautological to separate competences from education, training and conduct. The Administrations' view is that there is simply an overlap, and that competences comprise knowledge, skills, behaviour and aptitudes and they are an essential component of safe and effective practice.

- The majority agree that standards to protect the public should cover conduct, competences and education and training. The Administrations agree.

Q8. Do you agree that practitioner psychologists should need to have three years' undergraduate education plus three years or equivalent postgraduate training?

- The majority 70% of those respondents who expressed a view supported this proposal, with 23% who did not and 7% unsure.

- Amongst those expressing reservations were the HPC, which stated that, at the time the relevant part of the register opens, they will approve all those programmes which lead or previously led, to BPS chartered status with membership of a division and a practising certificate. They will approve only those programmes which lead directly to the entitlement to practise.

- One individual expressed concerns that the educational requirements are too demanding for entry and questioned whether the proposals meet EU standards.

- The majority agree that practitioner psychologists should need to have three years' undergraduate education plus three years or equivalent postgraduate training. The Administrations agree that practitioner psychologists need the theoretical education acquired through an

undergraduate degree to underpin postgraduate practitioner psychology training, but proposes that the HPC should determine education and training requirements leading to registration, in the same way that it does for all its other professions. There will be no minimum training periods specified in the legislation. The Administrations recommend that the HPC works with the professional bodies to determine entry routes to the register.

Q9. Do you agree that partnership working between HPC, the profession and the public is the right way to design standards of proficiency for this profession?

- The majority 75% of those respondents who expressed a view supported this proposal, with 16% who did not and 9% unsure.
- Some individuals expressing reservations had concerns about whether the HPC is the right body to regulate.
- The majority agree that partnership working between HPC, the profession and the public is the right way to design standards of proficiency for this profession. The Administrations agree. The HPC already regulates 13 varied professions and has a proven track record of good partnership working in designing standards of proficiency.

Q10. Do you agree that standards of proficiency, education and training should be derived from competences necessary for safe and effective practice?

- The majority 80% of those respondents who expressed a view supported this proposal, with 16% who did not and 4% unsure.
- The majority agree that standards of proficiency, education and training should be derived from competences necessary for safe and effective practice. The Administrations agree**.**

Q11. Do you agree that the regulator should have discretion as to how it obtains professional expertise to carry out professional education accreditation?

- 50% of those respondents who expressed a view supported this proposal, with 32% who did not and 18% unsure.
- Amongst those expressing reservations were the BPS, which accepts that the regulator needs to have independence, and hence must have the

ultimate discretion in making decisions. However, they feel that this does not preclude consultation and partnership working within a clear system of guidance, which they feel should be developed and agreed.

- Some of those in favour suggest that the regulator engages with relevant professional bodies.

- The majority of those who both expressed a view and a preference agree that the regulator should have discretion as to how it obtains professional expertise to carry out professional education accreditation. The Administrations agree.

Q12. Do you agree that some academic and research psychologists should be allowed to use protected titles without committing an offence?

- The majority 68% of those respondents who expressed a view disagreed , with 16% who agreed and 16% unsure.

- Amongst those in favour is an individual who considers that people should only be allowed to use protected titles if they can demonstrate the required competence.

- The majority disagree that some academic and research psychologists should be allowed to use protected titles without committing an offence. Allowing academics and researchers to use titles restricted to practitioner psychologists could cause confusion about whether they are competent to practise in applied fields, which would not be in the public interest. The Administrations have therefore removed this provision from the Order.

Q13. Do you agree with the proposed protected titles? If not, what others would you suggest?

- 42% of those respondents who expressed a view agreed with this question, with 40% who did not agree and 18% unsure.

- Amongst those expressing reservations was the BPS. It would ideally like the title ‘Psychologist’ protected.

- Concerns about whether occupational psychologists should be regulated and if neuropsychologists should be a regulated domain were raised again in this section.

- The Administrations do not consider it appropriate to protect the single title ‘psychologist’ because there will inevitably be some individuals, for

example academic and research psychologists, who may quite legitimately want to describe themselves as 'psychologists' but who will not be subject to statutory regulation.

The Administrations will protect the following titles, associated with particular fields of practice, in law:

- Clinical psychologist
- Counselling psychologist
- Educational psychologist
- Forensic psychologist
- Health psychologist
- Occupational psychologist
- Sport and Exercise psychologist

- In addition, psychologists wishing to use these titles will also be able to use the following additional two protected titles of 'registered psychologist' and 'practitioner psychologist'.

- Since the close of the consultation period, the Administrations have been in discussion with the BPS and the AEP about whether or not to protect the title 'child psychologist'. The Administrations propose not to, for the time being, as this is a title that is now most commonly associated with sub-specialisms within the fields of educational psychology and clinical psychology, rather than being a 'domain' in its own right – and for the time being the intention is only to protect titles associated with specialisms rather than sub-specialisms. However, this matter is being kept under review, and it is possible that in the future the Administrations may move to protect the title 'child psychologist' as well, if there is evidence that the title is being used by psychologists who are not registered with the HPC but who are seeking to pass themselves off as possessing an equivalent level of professional qualification. To protect additional titles will require an Order of the Privy Council, made under the Health Professions Order 2001, which would be subject to negative resolution procedures in the United Kingdom and Scottish Parliaments.

Safeguarding Vulnerable Groups

Q14. Do you agree with adding appearance on a barred list to the grounds for which a health professional's fitness to practise should be considered to be impaired?

- The majority 71% of those respondents who expressed a view agreed with this question, with 16% who did not agree and 13% unsure.

- Amongst those expressing reservations is the GMC. Whilst it fully endorses the aim of protecting vulnerable children and adults who may be at risk of harm, it considers the proposed solution to be misconceived. The Administrations have sought to meet the GMC's concerns by revisions to the GMC's Fitness to Practise Rules.

- The GDC disagreed on the grounds that whether or not their organisation would be content to rely upon an IBB barring decision should be based on proportionality and natural justice considerations in each case.

- The majority agree with this question and this proposal will lead to improved public protection. The Administrations therefore agree.

Q15. Do you agree with the proposed set of changes to the Safeguarding Vulnerable Groups Act 2006?

- The majority 79% of those respondents who expressed a view agreed with this question, with 3% who did not agree and 18% unsure.

- The majority consider that this proposal will lead to improved public protection. The Administrations agree.

Q16. Do you agree with the proposed supplementary measures relating to the Protection of Vulnerable Groups (Scotland) Act 2007?

- The majority 81% of those respondents who expressed a view agreed with this question, with 3% who did not agree and 16% unsure.

- The majority consider that this proposal will lead to improved public protection. The Administrations agree.

Note: In addition, and also following comments made in the consultation on the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008, the revised Order now includes amendments to various Fitness to Practise Rules for each of the health professions regulators, following consultation with each of them. Again, this will further strengthen public protection.

Amendments to the Dentists Act 1984

Q17. Do you support having, as a main objective for the General Dental Council, as with other regulators, a provision giving greater emphasis to the importance of public protection?

- The majority 87% of those respondents who expressed a view agreed with this question, with nobody in disagreement and 13% unsure.

- However, it is clear from the comments received to this consultation and that on the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 that this support was for the principle of giving greater emphasis to the need and importance of public protection, rather than for the wording of the provision itself. In the light of those comments the Administrations have decided to withdraw the provision and will return to it at the next available opportunity.

Q18. Do you agree with the requirement that GDC should have proper regard for the interests of people using or needing the services of dentists and dental care professionals, and proper regard for the differing interests of different categories of their registrants?

- The majority 77% of those respondents who expressed a view agreed with this question, with 5% who did not agree and 18% unsure.

- The Administrations have therefore decided to implement this.

Q19. Do you agree that the GDC should have the option of engaging other bodies to assist it with these appointment functions?

- The majority 80% of those respondents who expressed a view agreed with this question, with nobody in disagreement and 20% unsure.

- The Administrations have therefore decided to implement this.

Q20. Do you agree that the changes to these duties will improve the co-operation and co-ordination between professional regulators and key stakeholders?

- The majority 68% of those respondents who expressed a view agreed with this question, with 5% who did not agree and 26% unsure.

- All regulators will be required to have a proper regard for the interests of persons using or needing the services of registered professionals. However, some respondents commented that these provisions do not go far enough in that the duties to co-operate do not require regulators to co-operate with or consult patient representative or professional organisations. The Administrations have noted these comments and support the view that there needs to be greater patient and public involvement. The Administrations also

recognise the important role that professional bodies have to play. However, the Administrations wish to give further consideration to whether placing a duty on regulators to co-operate with patient representative or professional bodies is the best way forward. The Administrations will maintain their original proposals for the time being, and look at the current requirements on consultation applicable to all the regulators and if appropriate bring forward further legislation at the next opportunity.

Q21. Do you agree that Parliament should play an enhanced role in relation to the monitoring of the General Dental Council, facilitated by the improved arrangements for notification of information relating to its past and future activities?

- The majority 70% of those respondents who expressed a view agreed with this question, with 10% who did not agree and 20% unsure.
- A concern expressed by one respondent was about the need for the GDC and all regulatory bodies to be independent of Government, and open and transparent in their processes. The Administrations agree that the regulators should be more independent of Government, which is the main thrust of the reforms set out in this Order.
- The Administrations have decided to implement this.

Q22. Do you agree that the GDC, in common with all regulators of health care professionals should be under a legal duty to maintain a register of the private interests of its members?

- The majority 90% of those respondents who expressed a view agreed with this question, with nobody in disagreement and 10% unsure.
- The Administrations have decided to implement this.

Q23. Do you agree with the strategy for standardizing the order and rule making powers of the GDC, and with the move towards giving it greater flexibility over internal "process" issues?

- The Administrations have decided to withdraw the aspect of these provisions that would have reduced the overall level of scrutiny for further consideration. However, they have maintained the aspect of these proposals which will enable the Scottish Parliament to have the same

rights of veto as the UK Parliament as regards subordinate legislation in areas that are within the legislative competence of the Scottish Parliament. This aspect of the standardisation process was not the subject of a separate question but has been agreed between the two Administrations as the appropriate way forward to ensure that all legislation in devolved areas has the express or implied consent of the Scottish Parliament.

Q24. Do you agree with the new, more flexible arrangements for establishing the constitution of the GDC?

- The majority 75% of those respondents who expressed a view agreed with this question, with 10% who did not agree and 15% unsure.

- Most respondents supported the move towards setting out the constitution of the GDC in a separate constitution order. However, there was concern about the balance between lay and professional members.

- The Administrations have taken forward legislation through the Health and Social Care Act 2008 that allows future Section 60 Orders to provide for the Councils of all the regulatory bodies, including the GDC, to have a lay majority. However, this is only a facilitative measure intended to provide greater flexibility. Legislation will only be taken forward to create a council with a lay majority, if the regulatory body puts forward proposals itself.

- The Administrations are working with each of the regulatory bodies, including the GDC, to develop proposals for a new constitution to be made under their amended framework legislation.

- The Administrations have decided to implement these provisions.

Amendments to the Health Professions Order 2001

Q25. Do you support having as a main objective for the Health Professions Council a provision giving greater emphasis to the importance of public protection?

- The majority 92% of those respondents who expressed a view agreed with this question, with 4% who did not agree and 4% unsure.

- However, it is clear from the comments received to this consultation, and that on the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008, that this support is for the principle of giving greater emphasis to the need and importance of public protection, rather than for the wording of the provision itself. In the light of those comments the Administrations have decided to withdraw the provision and will return to it at the next available opportunity.

Q26. Do you agree that these duties will improve the co-operation and co-ordination between the HPC and key stakeholders?

- The majority 53% of those respondents who expressed a view agreed with this question, with 20% who did not agree and 27% unsure.

- All regulators, including the HPC, will be required to have a proper regard for the interests of persons using or needing the services of registered professionals. However, some respondents commented that these provisions do not go far enough in that the duties to co-operate do not require regulators to co-operate with or consult patient representative or professional organisations. The Administrations have noted these comments and support the view that there needs to be greater patient and public involvement. The Administrations also recognise the important role that professional bodies have to play. However, the Administrations wish to give further consideration to whether placing a duty on regulators to co-operate with patient representative or professional bodies is the best way forward. The Administrations will maintain their original proposals for the time being and look at the current requirements on consultation applicable to all the regulators and, if appropriate, bring forward further legislation at the next opportunity.

Q27. Do you agree with the strategy for standardizing the order and rule making powers of the HPC, and with the move towards giving it greater flexibility over internal "process" issues?

- The Administrations have decided to withdraw the aspect of these provisions that would have reduced the overall level of scrutiny for further consideration. However, they have maintained the aspect of these proposals which will enable the Scottish Parliament to have the same rights of veto as the UK Parliament as regards subordinate legislation in areas that are within the legislative competence of the Scottish Parliament. This aspect of the standardisation process was not the subject of a separate question but has been agreed between the two Administrations as the appropriate way forward to ensure that all legislation in devolved areas has the express or implied consent of the Scottish Parliament. This decision is also consistent with the responses in relation to Q28.
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Q28. Do you agree that the UK and Scottish Parliaments should play an enhanced role in relation to the monitoring of the Health Professions Council, facilitated by the improved arrangements for notification of information relating to its past and future activities?

- The majority 85% of those respondents who expressed a view agreed with this question, with 4% who did not agree and 11% unsure.

- The Administrations have decided to implement this**.**

Q29. Do you agree with the new, more flexible arrangements for establishing the constitution of the HPC?

- The majority 75% of those respondents who expressed a view agreed with this question, with 11% who did not agree and 14% unsure.

- Most respondents support the move towards setting out the constitution of the HPC in a separate constitution order. However, there is concern about the balance between lay and professional members.

- The Administrations have taken forward legislation through the Health and Social Care Act 2008 that allows future Section 60 Orders to provide for the Councils of all the regulatory bodies, including the HPC, to have a lay majority. However, this is only a facilitative measure intended to provide greater flexibility. Legislation will only be taken forward to create a council with a lay majority, if the regulatory body puts forward proposals itself.

- The Administrations are working with each of the regulatory bodies, including the HPC, to develop proposals for a new constitution order to be made under their framework legislation.

Amendments to the Pharmacists and Pharmacy Technicians Order

Q30. Do you support having, as a main objective of the Society, a provision giving greater emphasis to the importance of public protection and well-being?

- The majority 82% of those respondents who expressed a view agreed, with nobody in disagreement and 18% unsure.

- However, it is clear from the comments received to this consultation, and that on the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008, that this support is for the principle of giving greater emphasis to the need and importance of public protection, rather than for the wording of the provision itself. In the light of those comments the Administrations have decided to withdraw the provision and will return to it in the context of the legislation establishing the General Pharmaceutical Council, which it is proposed will take over the regulatory functions of the RPSGB.

Q31. Do you agree that these duties will improve the co-operation and co-ordination between professional regulators and key stakeholders?

- The majority 61% of those respondents who expressed a view agreed with this question, with 11% who did not agree and 28% unsure.

- All regulators, including the RPSGB will be required to have a proper regard for the interests of persons using or needing the services of registered professionals. However, some respondents commented that these provisions do not go far enough in that the duties to co-operate do not require regulators to co-operate with or consult patient representative or professional organisations. The Administrations have noted these comments and support the view that there needs to be greater patient and public involvement. The Administrations also recognise the important role that professional bodies have to play. However, the Administrations wish to give further consideration to whether placing a duty on regulators to co-operate with patient representative or professional bodies is the best way forward.

- The Administrations will maintain their original proposals for the time being, and look at the current requirements on consultation applicable to all the regulators and if appropriate bring forward further legislation at the next opportunity, potentially in the context of the proposed legislation to establish the General Pharmaceutical Council.

Q32. Do you agree that the UK and Scottish Parliaments should play an enhanced role in relation to the monitoring of the RPSGB, facilitated by the improved arrangements for notification of information relating to its past and future activities?

- The majority 78% of those respondents who expressed a view agreed with this question, with 11% who did not agree and 11% unsure.

- The Administrations have decided to implement this.

Q33. Do you agree that the RPSGB should be given reserve powers to register suitably experienced people, and allow additional pharmacists to act as prescribers, during an emergency?

- The majority 59% of those respondents who expressed a view agreed with this question, with 12% who did not agree and 29% unsure.

- There were reservations from one individual whose view was that pharmacy technicians do not possess the relevant qualifications or skills to act as pharmacists.

- In the interest of public protection in the event of an emergency, the Administrations have decided to implement this proposal – on the understanding that this will be a reserve power that is intended purely as a precautionary measure should an emergency arise.

Q34. Do you agree with the strategy for standardizing the order and rule making powers of the Society, and with the move towards giving it greater flexibility over internal "process" issues?

- The Administrations have decided to withdraw the aspect of these provisions that would have reduced the overall level of scrutiny for further consideration. However, they have maintained the aspect of these proposals which will enable the Scottish Parliament to have the same rights of veto as the UK Parliament as regards subordinate legislation in areas that are within the legislative competence of the Scottish Parliament. This aspect of the standardisation process was not the subject of a separate question but has been agreed between the two administrations as the appropriate way forward to ensure that all legislation in devolved areas has the express or implied consent of the Scottish Parliament. This decision is also consistent with the responses in relation to Q32.

- **Note:** In addition, Community Pharmacy Scotland queried, in their consultation response, whether statutory regulation of pharmacy technicians, for which provision had already been made (but not implemented) in England and Wales should also be extended to Scotland – which is provided for by the Order. Their view was that statutory regulation of pharmacy technicians is not necessary. The Administrations have decided, nevertheless to proceed with this proposal. Pharmacy technicians are members of a health profession that has contact with the public and perform functions that could put members of the public at risk. Regulation will also have incidental benefits, such as opening up the possibility of new, more flexible arrangements for the provision of pharmacy services. Added professional scrutiny, and the standard setting for entry into the profession that statutory regulation allows, make it easier to confer additional professional responsibilities. The Administrations have therefore decided to proceed with this proposal, which will also facilitate

the cross-border flow of staff and ensure that the public can rely on the same standards wherever they live in Great Britain.

Conclusion

We are grateful to everyone who took time to respond to the consultation. Overall, the response was positive. The proposed legislation has been amended in the light of the comments made both in this consultation and on the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008.

On the 'scope of practice' of practitioner psychologists, it has been decided not to try to define this for practitioner psychologists in the legislation as it is not defined for any other profession that the HPC regulates. In practice, registration will be open to any psychologist who is appropriately qualified, whose fitness to practise is not impaired and who is willing to fulfil the obligations associated with registration (principally, payment of fees and fulfilment of the obligations relating to continuing professional development). Accordingly, any psychologist in this position who wishes to register in order to use one of the protected titles that are restricted to HPC registrants will be able to do so, even if they are not, at the time, offering services as a practitioner psychologist. It is not part of the HPC's role to seek to restrict registration to those registrants who, at any given time, are actively engaged in practising their profession.

The British Psychological Society ("BPS") has commented that all those who deliver psychological therapies should be regulated at the same time to close potential loopholes.
The Administrations have noted the BPS reservations, but do not wish to delay further the statutory regulation of practitioner psychologists in order to bring in statutory regulation of other groups at the same time, since that would delay the benefits afforded by the bringing of practitioner psychologists within statutory regulation now. The Administrations will consider publishing proposals in a future Order to bring others engaged in psychological therapies into statutory regulation, when standards of competence and training appropriate for their safe and effective practice have been agreed.

There was some support for the addition of a further domain, or profession, that of neuropsychologists. At the moment, BPS has a separate domain for neuropsychologists, some of whom have undergone the same pre-registration education and training as other chartered psychologists with practising certificates, but others have a less broad-based background. The latter group have, in the main, qualified overseas, and will not be given an automatic right to transfer onto the HPC register. Instead, it will be left to the HPC to determine the transfer arrangements for those members of this latter group who decide they do want to be admitted to the statutory register (if they decide they do not, they will be able to continue to call themselves 'neuropsychologists', as this will not be one of the protected titles). Transfer will be either on the basis of 'grandparenting' arrangements or recognition of additional qualifications: the legislation provides for both, and it will be left to the

HPC to determine the most appropriate route. Those neuropsychologists who do transfer will need to have their entry in the register annotated with a field of competence that relates to one of the seven domains, typically clinical psychology or educational psychology.

Currently, the route to practising neuropsychology in the UK is not via a separate pre-registration training programme, but as a specialist additional qualification achieved chiefly by clinical and educational psychologists. This group of UK-trained psychologists will be given the automatic right to transfer to the HPC register if they are or have been members of the BPS's clinical psychology or educational psychology domains. Joining one of those domains, or the Association of Educational Psychologists ("AEP"), is the practical route by which the Administrations expect these people to gain automatic access to the HPC register. It will then be open to the HPC to recognise their post registration specialist qualification in neuropsychology by annotating their entry in their register to that effect, and the Administrations' view is that this is how neuropsychologists' special competence and training should be recognised. If in the future a direct pre-registration neuropsychology training programme is developed in the UK, the Administrations will consider enacting a further Order to allow the HPC to regulate neuropsychology as a separate practitioner psychology profession.

The Administrations have considered and discussed these views further with key stakeholders and as a result have decided to proceed on the basis that the seven professions referred to in the consultation document – clinical psychologists, counselling psychologists, educational psychologists, forensic psychologists, health psychologists, occupational psychologists and sport and exercise psychologists – will, after all, be the groups brought within professional regulation, but at what is hoped will be a first stage of bringing statutory regulation to the broader range of professions offering psychological services.

There was concern about holders of BPS practising certificates who do not meet the full range of competencies for registration within one of the seven domains. It was suggested that eligibility should be based on BPS or BASES standards as these psychologists have already been assessed as being competent and duplication will cost time and money. However, they will not have been assessed as competent in one of the practitioner psychologist domains. The BPS currently issues practising certificates to some academic or research psychologists who are not and do not wish to be trained practitioners. Typically, these are psychologists who have not undertaken the broad-based pre-registration programme that is now required of all entrants into one of the professions, but may have a particular specialism that has led to their acquiring a practising certificate to facilitate, for example, them acting as an expert witness in court proceedings. Neuropsychologists, whose case is discussed in relation to question 4 above, are another group of BPS practising certificate holders affected by this.

The Administrations take the view that, notwithstanding this expertise, it should be left to the HPC to determine the transfer arrangements for practising certificate holders who do not meet the full range of competencies for the seven domains and it should not be automatic under the legislation. These practitioners will, in any event, need to identify to the HPC the specialist field of practice with which they wish their

register entry to be annotated. Some may not wish to transfer at all, in which case they will be able to continue call themselves 'chartered psychologists' but will not be able to use the title 'practitioner psychologist' or 'registered psychologist'. For those who do choose not to transfer, it is already the case that they cannot use the titles associated with the seven domains, such as clinical psychologist, because, for BPS members, those titles are limited to current and former members of those domains.

The Administrations agree with the majority that any current holders of practising certificates who wish to practise as practitioner psychologists – and so have the right to describe themselves as any one of the seven types of regulated psychologist – must either have the right background for admission to one of BPS's seven relevant divisions or be able to demonstrate separately to the HPC that they meet the HPC standards for safe and effective practice. The evidence which it chooses to accept for this is entirely a matter for the HPC. In determining the transfer arrangements for the members of this group who do choose to apply for transfer, the HPC will have regard to its main objective, which is to safeguard the health and well-being of persons using or needing the services of its registrants.

Community Pharmacy Scotland queried, in their consultation response, whether statutory regulation of pharmacy technicians, for which provision had already been made (but not implemented) in England and Wales should also be extended to Scotland – which is provided for by the Order. Their view was that statutory regulation of pharmacy technicians is not necessary. The Administrations have decided, nevertheless to proceed with this proposal. Pharmacy technicians are members of a health profession that has contact with the public and perform functions that could put members of the public at risk. Regulation will also have incidental benefits, such as opening up the possibility of new, more flexible arrangements for the provision of pharmacy services. Added professional scrutiny, and the standard setting for entry into the profession that statutory regulation allows, make it easier to confer additional professional responsibilities. The Administrations have therefore decided to proceed with this proposal, which will also facilitate the cross-border flow of staff and ensure that the public can rely on the same standards wherever they live in Great Britain.

The draft legislation has now been laid before the Scottish and UK Parliaments for their approval before being submitted to the Privy Council.

Annex A:

Set out below are the questions included in the consultation on the Health Care and Associated Professions (Miscellaneous Amendments) Order 2009, together with a summary of responses.

Analysis

Q1: Do you agree that practitioner psychologists should be statutorily regulated?

Q.1 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response:46			
	Agree	Disagree	Unsure
Number	41	4	1
%	89%	9%	2%

Q.1 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 93			
	Agree	Disagree	Unsure
Number	88	4	1
%	95%	4%	1%

Q2: Do you agree that psychologists and teachers working exclusively in the furtherance of psychological knowledge should not be statutorily regulated as practitioner psychologists?

Q.2 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response: 44			
	Agree	Disagree	Unsure
Number	31	10	3
%	70%	23%	7%

Q.2 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 91			
	Agree	Disagree	Unsure
Number	78	10	3
%	86%	11%	3%

Q3: Do you agree that others who deliver psychological therapies should not be dealt with in this Order but should be statutorily regulated in a future Order when standards appropriate to their roles have been agreed?

Q.3 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response: 45			
	Agree	Disagree	Unsure
Number	21	18	6
%	47%	40 %	13%

Q.3 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 92			
	Agree	Disagree	Unsure
Number	21	65	6
%	23%	71%	6%

Q4: Do you agree that all seven domains should be statutorily regulated by HPC? If not, which domains should not?

Q.4 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response: 45			
	Agree	Disagree	Unsure
Number	27	14	4
%	60%	31%	9%

Q.4 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 92			
	Agree	Disagree	Unsure
Number	27	61	4
%	30%	66%	4%

Q5: Do you agree with the descriptions of the seven domains in Annex A? If not, what alterations would you recommend?

Q.5 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response: 41			
	Agree	Disagree	Unsure
Number	16	14	11
%	39%	34%	27%

Q.5 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 88			
	Agree	Disagree	Unsure
Number	63	14	11
%	72%	16%	12 %

Q6: Do you agree that holders of BPS practising certificates who do not meet the full range of competences for one of the seven domains of psychology practice should be eligible for HPC registration and continuing practice only if they demonstrate they meet HPC standards for safe and effective practice, undergoing additional training if necessary?

Q.6 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response: 43			
	Agree	Disagree	Unsure
Number	26	12	5
%	60%	28%	12%

Q.6 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 90			
	Agree	Disagree	Unsure
Number	26	59	5
%	29%	66%	5%

Q7: Do you agree that standards to protect the public should cover conduct, competences and education and training?

Q.7 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response:44			
	Agree	Disagree	Unsure
Number	40	3	1
%	91%	7%	2%

Q.7 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 91			
	Agree	Disagree	Unsure
Number	87	3	1
%	96%	3%	1 %

Q8: Do you agree that practitioner psychologists should need to have at least three years' undergraduate education in psychology accredited by the BPS for the Graduate Basis for

Registration plus three years or equivalent postgraduate education and training?

Q.8 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response:43			
	Agree	Disagree	Unsure
Number	30	10	3
%	70%	23%	7%

Q.8 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 90			
	Agree	Disagree	Unsure
Number	77	10	3
%	86%	11%	3%

Q9: Do you agree that partnership working between HPC, the profession and the public is the right way to design standards of proficiency for this profession?

Q.9 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response: 44			
	Agree	Disagree	Unsure
Number	33	7	4
%	75%	16%	9%

Q.9 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 91			
	Agree	Disagree	Unsure
Number	33	54	4
%	36%	60%	4%

Q10: Do you agree that standards of proficiency, education and training should be derived from competences necessary for safe and effective practice?

Q.10 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response: 45			
	Agree	Disagree	Unsure
Number	36	7	2
	80%	16%	4%

Q.10 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 92			
	Agree	Disagree	Unsure
Number	83	7	2
	90%	8%	2%

Q11: Do you agree that the regulator should have discretion as to how it obtains professional expertise to carry out professional education accreditation?

Q.11 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response:44			
	Agree	Disagree	Unsure
Number	22	14	8
%	50%	32%	18%

Q.11 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 91			
	Agree	Disagree	Unsure
Number	69	14	8
%	76%	15 %	9%

Q12: Do you agree that some academic and research psychologists should be allowed to use protected titles without committing an offence?

Q.12 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response: 45			
	Agree	Disagree	Unsure
Number	7	31	7
%	16%	68%	16%

Q.12 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 92			
	Agree	Disagree	Unsure
Number	7	78	7
%	8%	84%	8%

Q13: Do you agree with the proposed protected titles? If not, what others would you suggest?

Q.13 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as one collective response: 43			
	Agree	Disagree	Unsure
Number	18	17	8
%	42%	40%	18%

Q.13 Number of responses to question taking into account the cohort of 48 educational psychologists in Scotland responses as individual responses: 90			
	Agree	Disagree	Unsure
Number	18	64	8
%	20%	71%	9%

Q14: Do you agree with adding appearance on a barred list to the grounds for which a health professional's fitness to practise should be considered to be impaired?

Q.14 Number of responses to question: 38			
	Agree	Disagree	Unsure
Number	27	6	5
%	71%	16%	13%

Q15: Do you agree with the proposed set of changes to the Safeguarding Vulnerable Groups Act 2006?

Q.15 Number of responses to question: 34			
	Agree	Disagree	Unsure

Number	27	1	6
%	79%	3%	18%

Q16: Do you agree with the proposed supplementary measures relating to the Protection of Vulnerable Groups (Scotland) Act 2007?

Q.16 Number of responses to question: 32			
	Agree	Disagree	Unsure
Number	26	1	5
%	81%	3%	16%

Q17: Do you support having, as a main objective for the General Dental Council, as with other regulators, a provision giving greater emphasis to the importance of public protection?

Q.17 Number of responses to question: 23			
	Agree	Disagree	Unsure
Number	20	0	3
%	87%	0%	13%

Q18: Do you agree with the requirement that GDC should have proper regard for the interests of people using or needing the services of dentists and dental care professionals, and proper regard for the differing interests of different categories of their registrants?

Q.18 Number of responses to question: 22			
	Agree	Disagree	Unsure
Number	17	1	4
%	77%	5%	18%

Q19: Do you agree that the GDC should have the option of engaging other bodies to assist it with these appointment functions?

Q.19 Number of responses to question: 20			
	Agree	Disagree	Unsure
Number	16	0	4
%	80%	0%	20%

Q20: Do you agree that the changes to these duties will improve the co-operation and co-ordination between professional regulators and key stakeholders?

Q.20 Number of responses to question: 19			
	Agree	Disagree	Unsure
Number	13	1	5
%	68%	5%	26%

Q21: Do you agree that Parliament should play an enhanced role in relation to the monitoring of the General Dental Council, facilitated by the improved arrangements for notification of information relating to its past and future activities?

Q.21 Number of responses to question: 20			
	Agree	Disagree	Unsure
Number	14	2	4
%	70%	10%	20%

Q22: Do you agree that the GDC, in common with all regulators of health care professionals, should be under a legal duty to maintain a register of the private interests of its members?

Q.22 Number of responses to question: 21			
	Agree	Disagree	Unsure
Number	19	0	2
%	90%	0%	10%

Q23: Do you agree with the strategy for standardising the order and rule making powers of the GDC, and with the move towards giving it greater flexibility over internal "process" issues?

Q.23 Number of responses to question: 20			
	Agree	Disagree	Unsure
Number	16	0	4
%	80%	0%	20%

Q24: Do you agree with the new, more flexible arrangements for establishing the constitution of the GDC?

Q.24 Number of responses to question: 20			
	Agree	Disagree	Unsure
Number	15	2	3
%	75%	10%	15%

Q25: Do you support having as a main objective for the Health Professions Council a provision giving greater emphasis to the importance of public protection?

Q.25 Number of responses to question: 30			
	Agree	Disagree	Unsure
Number	28	1	1
%	92%	4%	4%

Q26: Do you agree that these duties will improve the co-operation and co-ordination between the HPC and key stakeholders?

Q.26 Number of responses to question: 30			
	Agree	Disagree	Unsure
Number	16	6	8
%	53%	20%	27%

Q27: Do you agree with the strategy for standardising the order and rule making powers of the HPC, and with the move towards giving it greater flexibility over internal "process" issues?

Q.27 Number of responses to question: 29			
	Agree	Disagree	Unsure
Number	21	2	6
%	72%	7%	21%

Q28: Do you agree that the UK and Scottish Parliaments should play an enhanced role in relation to the monitoring of the Health Professions Council, facilitated by the improved arrangements for notification of information relating to its past and future activities?

Q.28 Number of responses to question: 27			
	Agree	Disagree	Unsure
Number	23	1	3
%	85%	4%	11%

Q29: Do you agree with the new, more flexible arrangements for establishing the constitution of the HPC?

Q.29 Number of responses to question: 28			
	Agree	Disagree	Unsure
Number	21	3	4
%	75%	11%	14%

Q30: Do you support having, as a main objective of the Society, a provision giving greater emphasis to the importance of public protection and well-being?

Q.30 Number of responses to question: 17			
	Agree	Disagree	Unsure
Number	14	0	3
%	82%	0%	18%

Q31: Do you agree that these duties will improve the co-operation and co-ordination between professional regulators and key stakeholders?

Q.31 Number of responses to question: 18			
	Agree	Disagree	Unsure
Number	11	2	5
%	61%	11%	28%

Q32: Do you agree that the UK and Scottish Parliaments should play an enhanced role in relation to the monitoring of the RPSGB, facilitated by the improved arrangements for notification of information relating to its past and future activities?

Q.32 Number of responses to question: 18			
	Agree	Disagree	Unsure
Number	14	2	2
%	78%	11%	11%

Q33: Do you agree that the RPSGB should be given reserve powers to register suitably experienced people, and allow additional pharmacists to act as prescribers, during an emergency?

Q.33 Number of responses to question: 17			
	Agree	Disagree	Unsure
Number	10	2	5
%	59%	12%	29%

Q34: Do you agree with the strategy for standardizing the order and rule making powers of the Society, and with the move towards giving it greater flexibility over internal "process" issues?

Q.34 Number of responses to question: 16			
	Agree	Disagree	Unsure
Number	12	0	4
%	75%	0%	25%

Annex B:

List of Respondents who gave permission to list their names

Charles Ward	Association of Educational Psychologists (AEP)
Professor Andy Adam	The Royal College of Radiologists (RCR)
David Carew	Department for Work and Pensions (DWP)
Francis Butler	The Association of Business Psychologists (ABP)
Dr Frances Mielewczyk	The British Psychological Society (BPS)
Professor Ann Smyth	NHS Education for Scotland
Sally Aldridge	British Association for Counselling & Psychotherapy BACP)
Dr Chris Jarrold	Experimental Psychology Society
Joanne Kinborough Mata	Simplyhealth
Agnieszka Lenton	Polish Psychologist Club
Dr Sally Gosling	Chartered Society of Physiotherapy (CSP)
Sonia Sharp	The Association of Directors of Children's Services (ADCS)
Dr Rodney Burnham	The Royal College of Physicians
Professor Richard Davison	British Association of Sport and Exercise Sciences (BASES)
James Japp	Neuropsychologists UK
Sophie Corlett	Mind on behalf of We Need to Talk group
Neil Balmer	Royal College of Psychiatrists
Bernard Kat	Psynapse (Psychological Services) Ltd
Duncan R Forsyth	British Geriatrics Society
Linda Wallace	British Dental Association (BDA)
Alison Spears	The General Dental Council (GDC)
Dr Roger Matthews	Denplan Ltd
Richard Marchant	General Medical Council (GMC)
Lisa Tickel	Nursing and Midwifery Council (NMC)
Gareth Jones	National Pharmacy Association (NPA)
Elspeth C Weir	Community Pharmacy Scotland
Neil Slater	The Company Chemists' Association Ltd
Jan Parker	Association for Family Therapy and Systemic Practice UK
Michael Gutherie	Health Professions Council (HPC)
Mr Geoffrey H Lester	Federation of Clinical Scientists
Suki Tagger	Association of Pharmacy Technicians UK
Mr A Swetnam	
Alex Molyneux	
Miss Rania al-lawzi	
Malcolm Smith	
Mr Robert Elford	
Monica Hunter	
Julia Skelton	
Carol Fleming	Bradford Teaching Hospitals NHS FT
David Clark	

Frederic R Stansfield	
Sameer P Sarkar	
Prof Dinesh Bhugra	
Tim Hollingbery	
Prof Donald W Watson	
David Wherrett	Cambridgeshire and Peterborough Mental Health Partnership NHS Trust
Monica Ludwig	Solihull Educational Psychology Service
Mary Gallagher	
Tina Hickson	Croydon PCT
Dr Nigel Trevarrow	
Prof Malcom Adams	University of East Anglia
Peter Banister	Association of Heads of Psychology Departments
Arthur Musgrave	
Prof Geoff Lindsay	
Christopher Boocock	
David J Murphy	
Dr Mark Fisher	
Julia Evans	
Molly Corner	Healthcare Commission
Guy Gladstone	
Penny Georgiou	
Richard Klein	
Elizabeth Holford	
Andy Phillips	
Mohammed Sayeed	
Andrew Walton	
Dr Martin Bunnage	
Tim Brown	
Prof Peter Kinderman	
Elizabeth King	
Alison Crawford	
Diana Gooch	
Moira Craig	
John McCoy	
Sarah Axford	
Linda Lennon	
Gillian Cross	
Ashley Cowie	
Mrs Elizabeth Mackay	
Lorna Naismith	
Phyllis Maloney	
Chris Boyle	
Morag Eadie	
Anne Littlefair	
Sabrina Collins	
Donna Carrigan	
Anne-Marie Barclay	
Nick Balchin	
Richard Walsh	

Ted Jefferies
Roslyn Redpath
Shirley Paterson
Jennifer Pritchett
Jane Thomson
Ian Pennicard
Alan Haughey
Mary Mackenzie
James McTaggart
Anne Murphy
Frank Savage
Sarah Williams
Ian McEwan
Jenny Wilson
Annie Smith
Judith Dickenson
Jane Hazelden
Jane McClements
Richard Walsh
Grethe Thomson
Fiona Ewen
Linda Auchterlonie
David Gavine
James Stuart
Barbara Bennett
Julie Smith
Graeme King
Jennifer Pritchett