



# Department of Health & Social Care

## Healthcare Regulation - deciding when statutory regulation is appropriate

The purpose of the regulation of health and social care professions is to protect the public from the risk of harm from the provision of health and social care services. At the heart of any decision to regulate a profession is ensuring that statutory regulation provides the most effective and proportionate means of delivering this public protection function.

There are 9 regulators of healthcare professionals in the UK, regulating 34 professions across the United Kingdom. In addition, Social Work England is the regulator of Social Workers in England. The regulators are overseen by the PSA. There are also regulators of social care professionals in Scotland, Wales and Northern Ireland which are not overseen by the PSA. The full list of Regulatory Bodies and the professions that they regulate is at Annex A of the consultation document.

This consultation seeks views on:

- the criteria used to assess whether a profession requires statutory regulation
- whether there are existing regulated professions that no longer need to be regulated
- whether there are unregulated professions that require statutory regulation

Details about the plans are available on [GOV.UK](https://www.gov.uk)

## Introduction

### Responding to this consultation

In your response to questions in the consultation, please do not include any information that could identify you or somebody else. For example do not include anyone's name, age, job title or email address.

Your response is automatically saved each time you click on 'Next', so you can leave and come back to complete it later by clicking on the link to the survey using the same browser.

Information on how the data gathered as part of this consultation is handled can be found in the [Department of Health and Social Care \(DHSC\) privacy notice](#).

This consultation closes on 31 March 2022.

ask certain questions to help make sure that our policy making is representative and to understand how it may affect certain groups.

Do not identify anyone else in your answers to any questions during this consultation if they have not given permission for you to do so.

## About you

Is it OK for the Department of Health and Social Care to contact you about your response? \*

- Yes
- No

Would you like to receive information about other DHSC consultations? \*

- Yes
- No

What is your email address? \*

[policy@homecareassociation.org.uk](mailto:policy@homecareassociation.org.uk)

Your contact details will not be shared with anyone outside the consultation team

Are you responding as an individual or an organisation?

- An individual
- An organisation

What is the name of your organisation?

Homecare Association

What is your role in the organisation? (maximum 100 words)

Part of the Policy, Practice and Innovation Team. We engage with our members and undertake representative work on their behalf as well as supporting members with policy and practice related queries and promoting best practice and innovation within the sector.

Where is your organisation based? \*

- England
- Scotland
- Wales
- Northern Ireland
- The whole of the UK
- Outside the UK

The following pages set out a series of questions for you to respond to online. If you would prefer to respond by uploading a document, then please indicate this below.

- Upload document
- Continue online

## The criteria for deciding whether to regulate a profession

Do you agree or disagree that a qualitative and quantitative analysis of the risk of harm to patients is the most important factor to consider when deciding whether to regulate a health or care profession?

- Agree
- Disagree
- I don't know

Please provide reasons for your answer

We agree that people's safety should be the primary consideration when deciding what professions to regulate.

We believe that it is in the public interest that care work is regulated. There are significant gaps in the regulation of care provision at the moment which can put people being supported at risk and make it harder to flag concerns about the fitness to practice of specific workers (discussed further below).

We suggest the Government ask the view of PSA for an up-to-date assessment on the level of risk involved in the breadth of social care work in England (including for example, complex care in the community, homecare, supported living services, live-in care, personal assistants, microproviders and others). People who are supported by social care services' views should be taken into account as well as employers and those working in the sector.

Arguably there are also systemic reasons why regulation can mean that people who are supported are safer when a profession is regulated. This should be considered when thinking about the nature of the harm that a person could suffer alongside consideration of harm from any particulars of a situation.

Illustrative of this, at a number of points during the pandemic systemic issues with unregulated and unregistered care have arisen – whether that has been in relation to

the provision of PPE and testing or in relation to Vaccination as a Condition of Deployment. Lack of access to a means to communicate effectively with the care workforce and inability to identify who to provide vaccinations, infection control support and guidance to does put people being supported at risk of harm – but the issue is systemic.

In addition to qualitative and quantitative risk of harm, there may also be other relevant factors that could strengthen a case for regulation. For example, if done well, an agreed code of conduct and standard training (that is portable) should protect workers at work (for example, by ensuring everyone had had relevant lifting and handling training) and make it easier for workers to move jobs (noting that People at the Heart of Care includes portable care certificates and that this is part of “establishing a foundation for registration of staff in the future”).

Do you agree or disagree that proportionality, targeted regulation and consistency should also be considered in deciding whether to regulate a health or care profession?

- Agree
- Disagree
- I don't know

Please provide reasons for your answer

We agree that regulation should be proportionate, targeted and that it should be done in a reasonably consistent way. The point about it being understood by the public is also key and possibly goes beyond the question of a consistent approach

## Removing a profession from statutory regulation

Do you agree or disagree that the currently regulated professions continue to satisfy the criteria for regulation and should remain subject to statutory regulation?

- Agree
- Disagree
- I don't know

Please provide reasons for your answer

We do not wish to comment on the professional registration of healthcare professionals at this time.

## Unregulated Professions

Do you agree or disagree that currently unregulated professions should remain unregulated and not subject to statutory regulation.

- Agree
- Disagree
- I don't know

Please provide reasons for your answer

A registering body issuing a Licence to Practice, has the potential to:

- Give credibility to the care profession
- Promote the status of care workers
- Improve quality of care
- Set standards of ethics, conduct, and competence
- Set standards of training and development
- Provide commitment to continuous professional development
- Increase the skills and qualification levels across the workforce
- Increase confidence of care workers
- Ensure employers are accountable for effective training and developing staff (this is covered by regulation of managed services but not for introductory services or self-sourced PAs)
- Provide important benefits to the members, such as advice and support, ability to share best practice, opportunities to network
- Protect the rights of members, and crucially
- Protects the public from unqualified, incompetent or unfit practitioners, for example, by handling complaints and investigating and deciding on fitness to practice issues

You say in your consultation that most social care professionals are subject to oversight from their employer.

There are a number of 'self-employed' careworkers as well as personal assistants who are employed by individual disabled and older people (or their families). [Skills for Care estimate](#) that there are 100,000 people working as personal assistants on direct payments (about 6% of people working in social care). There are likely to be others who are privately employed/self-funded.

You say that CQC oversight reduces the need for regulation of professionals. However, personal assistants/'microproviders' are usually not CQC registered. There is increasing interest from local authorities in promoting the use of microproviders.

We have come across instances where a member of public or a previous employer wished to raise a fitness of practice complaint about a careworker but had no route to do so. Careworkers who are dismissed due to concerns about their professionalism can sometimes find work elsewhere or on a self-employed basis, and there is no straightforward mechanism for clients to check someone's suitability to practice (though there is some assurance on the standard of employment checks for those employed by a CQC regulated organisation). Without professional registration of some form there is little that an employer can do if they dismiss an employee due to concerns about their behaviour and that employee starts working in the unregulated parts of the sector.

DBS checks are limited in their scope and primarily cover criminal activity and interaction with law enforcement rather than fitness to practice. The bar for action by the criminal justice system is relatively high. A number of behaviours may raise questions about fitness to practice without reaching the level at which the involvement of law enforcement is reasonable.

Careworkers (whether in people's own homes or in residential settings) are often working one-to-one, they are in positions of trust in terms of people's private affairs and intimate care. As such, those working in the sector must be alert to the full range of safeguarding risks (whether from family members or careworkers). Regulation of the careworkers would strengthen our ability to prevent the tiny minority of careworkers whose behaviour is unsuitable from undertaking this kind of role.

There are risks associated with the compliance burden of regulation and its cost. There are currently severe shortages of staff in the sector and it is important that this is not exacerbated by an inappropriately rigorous regime. It is vital that regulation of the sector is properly funded and thought through. In planning this, lessons can be learnt from the regulatory bodies in Scotland, Wales and Northern Ireland. Consideration of options for regulation should also include people being supported by services, employers and the existing workforce.

## Before you submit your response

We have a few questions we would like to ask to help us improve future consultations.

How satisfied are you with the consultation process?

- Very satisfied
- Somewhat satisfied
- Satisfied
- Disappointed

How did you hear about the consultation?

- Social Media
- Word of mouth (family, friend or colleague)
- Newspaper (online or print)
- Trade magazine
- Received an email from Department of Health and Social Care
- Direction communication from third sector organisation or regulatory organisation
- GOV.UK or other government website
- Website (non-government)
- Other