20 September 2011

Health Professions Council response to the European Commission Green Paper – Modernising the Professional Qualifications Directive

The Health Professions Council welcomes the opportunity to respond to this consultation.

The Health Professions Council is a statutory UK-wide regulator of health and care professionals governed by the Health Professions Order 2001. We regulate 215,000 members of 15 professions. We maintain a register of professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise. Our main role is to protect the public.

Our comments

Our responses to the questionnaire are set out below under each question.

New approaches to mobility: the European professional card

Question 1: Do you have any comments on the respective roles of the competent authorities in the Member State of departure and the receiving Member State?

We consider that it should always remain the role of the competent authority in the receiving Member State to check the qualifications and fitness to practise of incoming professionals. However, we believe there should be more onus on the competent authorities in the Member State of departure to provide information about a departing professional when it is sought by the competent authority in the receiving Member State.

Question 2: Do you agree that a professional card could have the following effects, depending on the card holder's objectives?

a) The card holder moves on a temporary basis (temporary mobility):

- **Option 1: the card would make any declaration which Member States can currently require under Article 7 of the Directive redundant.**

- **Option 2: the declaration regime is maintained but the card could be presented in place of any accompanying documents.**

b) The card holder seeks automatic recognition of his qualifications: presentation of the card would accelerate the recognition procedure (receiving Member State should take a decision within two weeks instead of three months).

c) The card holder seeks recognition of his qualifications which are not subject to automatic recognition (the general system): presentation of the card would accelerate the recognition procedure (receiving Member State would have to take a decision within one month instead of four months).

The proposed European professional card has the potential to speed up the process of applying for registration in different countries in the EEA area, and would make movement of professionals on a temporary basis much easier. However, we would consider that some type of prior declaration would be necessary to protect the public.

We would support option C above, where the card holder presents their card to accelerate the recognition procedure. The key to the success of a European professional card would be a strengthened and compulsory IMI system, to allow for the ready sharing of relevant information about professionals. This would ensure clear, reliable information would be readily accessible to all competent authorities, allowing applications to be processed more quickly, benefitting health and care professionals and the public.

We consider the introduction of a shared system to improve the sharing of information between professionals, regulators, and the public in the interests of facilitating the free movement of professionals within the EU would be a positive step. For most of the professions on our register we consider that it would be most useful for the home competent authority to issue a professional card on request from a registrant who wishes to move and practise temporarily in another EU member state. The professional could then use the card to apply for registration with the competent authority in the member state they wish to work in. Such a system would be useful to regulators, as it is likely that we would be able to more readily register professionals who were able to provide a universally recognised form of verification providing details of their education, training, skills, and experience.

We consider that along with appropriate identifying information about the card holder, such as photo identification, it would be essential to include the name of the relevant competent authority from the country of issue on the card, so it would be clear when the card was presented to another competent authority, what organisation would be the appropriate contact point. We also consider that it would be important to indicate when the card was issued and how long it is valid for.

Focus on economic activities: the principle of partial access

Question 3: Do you agree that there would be important advantages to inserting the principles of partial access and specific criteria for its application into the Directive? (Please provide specific reasons for any derogation from the principle).

The HPC would be cautious about applying the principles of partial access to the professions we regulate. Under our current system of regulation, we require any professional who applies for registration with us to be able to meet all the standards of proficiency we set for their profession, rather than limited parts of it. We set these standards to protect the public. A person who cannot show that they meet all these standards, or who can only meet some of them would not be able to join our Register or use a protected title. However

applicants who meet all the standards of proficiency and become registered can then choose to limit their scope of practise to a particular area, should they wish to do so.

Our main concern about partial access is whether it would be clear to the public and employers that professionals who gained registration through this route were only able to practise in a limited way. Currently, once a professional is registered with us, they are able to practise autonomously across a potentially very wide scope of practice – the areas in which they have the knowledge, skills, and experience to practise safely and effectively. If we applied the principles of partial access to the professions we regulate, there would be a risk that members of the public would not understand that some professionals would only be able to practise in limited areas. We would also be very concerned if professionals were able to gain partial access to any of the professions we regulate on the basis of meeting only selected parts of the standards of proficiency.

Reshaping common platforms

Question 4: Do you support lowering the current threshold of two-thirds of the Member States to one-third (i.e. nine out of twenty seven Member States) as a condition for the creation of a common platform? Do you agree on the need for an Internal Market test (based on the proportionality principle) to ensure a common platform does not constitute a barrier for service providers from non-participating Member States? (Please give specific arguments for or against this approach.)

The HPC supports lowering the current threshold of two-thirds of the Member States to one-third as a condition for the creation of a common platform. We consider that agreed common platforms could be a useful way of facilitating the recognition of professional qualifications and movement of professionals in the EU area.

However, if we were to waive our right to impose compensatory measures through the recognition of common platforms, we would want to be certain that professionals have genuinely acquired the level of training required for safe and effective practise in the UK. We would also want to be certain that sufficient flexibility will remain in the system to allow for variations in approach by different Member States. The platforms should take into account the different training structures of the Member States participating, and especially all those that regulate the relevant professions. National regulators must also be able to continue to carry out their role of protecting the public effectively. By doing this, we believe that the conditions will remain proportionate and ensure that the common platforms will not be overly detailed or become a barrier to the movement of professionals from non-participating Member States.

Professional qualifications in regulated professions

Question 5: Do you know any regulated professions where EU citizens might effectively face such situations? Please explain the profession, the qualifications and for which reasons these situations would not be justifiable.

EEA applicants who do not meet the standards of proficiency we set for their profession are not required to undertake entire qualifications in order to gain access to our Register. In most cases, an appropriate period of adaptation or an aptitude test is usually designed for an applicant. The adaptation may include a combination of relevant supervised practice and/or training to enable the applicant to update their skills in a specific way so they can meet all the standards of proficiency for their profession.

Building on achievements: access to information and e-government

Question 6: Would you support an obligation for Member States to ensure that information on the competent authorities and the required documents for the recognition of professional qualifications is available through a central on line access point in each Member State? Would you support an obligation to enable online completion of recognition procedures for all professionals? (Please give specific arguments for or against this approach).

The HPC would support the creation of a central online access point for each Member State to set out information about all competent authorities in that state and the relevant requirements to apply for recognition of professional qualifications. We consider that this would be a very useful tool for migrating professionals and competent authorities.

However, we are not sure that a central point through which professionals would apply online for recognition would be appropriate. The information we require to assess whether a professional meets our standards is not always available in an electronic form. We would also be concerned about applications to our Register being made through an external system that is not part of our own processes, and that would be designed to handle applications to a range of different competent authorities with very different requirements and ways of handling and considering information. We would not support an application system where we were not able to easily verify that information we receive is correct, or that applicants are fit to practise their profession. We believe it would be most appropriate to provide a central hub of information for each member state, which would then make it easy for migrating professionals and competent authorities to identify which organisation they need to apply to, and what information is required.

Temporary mobility

Question 7: Do you agree that the requirement of two years' professional experience in the case of a professional coming from a non-regulating Member State should be lifted in case of consumers crossing borders and not choosing a local professional in the host Member State? Should the host Member State still be entitled to require a prior declaration in this case? (Please give specific arguments for or against this approach.)

The HPC would not be concerned about lifting the two years' experience requirement for professionals who accompany service users to another state. We consider that professionals who do this (for example, a physiotherapist who travels to the UK to provide care for a specific sports team while that team is touring) generally do not pose a regulatory risk, as they are not offering services to the general public. We consider that professionals

practising in this way do not require formal regulation, and that a lighter regime would be appropriate to allow for the free movement of these professionals.

However, for professionals who travel from their home state to offer services to the public in another state, we consider that that the requirement of two years' experience is appropriate. In these circumstances, the requirement protects against the risk posed by EEA nationals who have trained in a profession that is not regulated in their home state, but which is regulated in another member state, such as the UK.

Question 8: Do you agree that the notion of "regulated education and training" could encompass all training recognised by a Member State which is relevant to a profession and not only the training which is explicitly geared towards a specific profession? (Please give specific arguments for or against this approach.)

The HPC approves UK-based education programmes that meet our standards of education and training, which are harmonised standards for all the different types of programmes we approve. We consider that regulated education is important so we can be certain that graduates of these programmes meet the standards we set for their professions, and so we know they are safe to practise when they register.

In the wider European context, we consider that 'regulated education' is better for service users because it would facilitate the movement of qualified professionals within the EEA area. In principle, we would not be concerned by a wider definition of 'regulated education', as long as professionals are still suitably qualified and safe to practise, either in their home state, or in other countries. Whenever a professional who trained in the EEA applied to the HPC, we would still consider all their education and training to assess whether they meet our standards of proficiency for their profession.

Opening up the general system

Question 9: Would you support the deletion of the classification outlined in Article 11 (including Annex II)? (Please give specific arguments for or against this approach).

The HPC would not be concerned about the deletion of the classification outlined in Article 11. As mentioned above, any professional who applies for registration with us must show that they meet the standards of proficiency for their profession. We do not set a required level of qualification in the standards of proficiency that EEA applicants must have in order to register. This is because a training course in a profession in another country may be of a similar academic level whilst the subject matter is quite different. We consider applications where applicant has a different type of qualification, but we need to be able to tell whether the applicant meets our standards, regardless of what level of qualification they have. To do this, we require applicants to provide detailed evidence of their education, training, and relevant work experience. We consider all these elements to decide whether an applicant meets the standards we set.

Question 10: If Article 11 of the Directive is deleted, should the four steps outlined above be implemented in a modernised Directive? If you

do not support the implementation of all four steps, would any of them be acceptable to you? (Please give specific arguments for or against all or each of the steps.)

Generally, we would not be concerned about a recalibration of compensation measures as described in this question, with one reservation. We would not be concerned about the removal of Article 14(1), or the proposal for competent authorities to be required to justify their decisions in relation to compensation measures.

We also consider that it would be helpful if the Code of Conduct was made compulsory. However, before making any change to the enforceability of the Code, we would like to see appropriate supporting education made available to the relevant competent authorities. We consider that this should include a comprehensive review of the Code of Conduct that engages with relevant competent authorities and contact points to allow for any necessary changes or updates to the Code. Following that, a targeted education programme could be carried out to update the relevant authorities on what the requirements of the Code are, and how they should be applied.

However, as we said for our answer to question 7, we consider that the two years' experience requirement for professionals who seek permanent establishment in another state is appropriate, because it protects the public against the risk posed by EEA nationals who have trained in a profession that is not regulated in their home state. While we recognise that these requirements may be seen as a barrier, we consider that it is important to ascertain whether the accumulated education, training, and work experience of an individual meet the standards we set for safe and effective practise in the UK.

Question 11: Would you support extending the benefits of the Directive to graduates from academic training who wish to complete a period of remunerated supervised practical experience in the profession abroad? (Please give specific arguments for or against this approach.)

We do not consider the mobility or regulation of graduates who are not fully qualified as a priority. The HPC does not currently register students, so we would need to put in place significant additional regulatory provision to be able to facilitate the movement of students between states for access to paid training or supervised practice.

In a situation such as this, the HPC would need to consider whether it could treat the applicant as a UK graduate, or a graduate from the EEA area. We would also have to change our UK entry route onto the Register as we have no mechanism under the current model to assess stand-alone periods of supervised practical experience. We would need to be certain of the quality of the supervised practice, and would need to consider whether the supervised practice formed part of a qualification that we would approve, had the applicant completed their study in the UK. Our main concern would be that in order to register an individual, we need to be certain that the applicant would meet all the standards of proficiency we set for their profession, regardless of where they completed their training.

Exploiting the potential of IMI

Question 12: Which of the two options for the introduction of an alert mechanism for health professionals within the IMI system do you prefer?

Option 1: Extending the alert mechanism as foreseen under the Services Directive to all professionals, including health professionals? The initiating Member State would decide to which other Member States the alert should be addressed.)

Option 2: Introducing the wider and more rigorous alert obligation for Member States to immediately alert all other Member States if a health professional is no longer allowed to practise due to a disciplinary sanction? The initiating Member State would be obliged to address each alert to all other Member States.)

The HPC would support introducing a wider and more rigorous alert obligation for Member States to immediately alert all other states about those professionals who are no longer fit to practise. We consider it more appropriate for Member States to inform all other Member States, because the competent authority would not know where the professional concerned would be intending to migrate to.

As well as introducing the alert mechanism, making IMI compulsory will also make relevant information more accessible when competent authorities in other countries need to ascertain the background of professionals. Both of these initiatives will help to better protect the public.

Language requirements

Question 13: Which of the two options outlines above do you prefer?

Option 1: Clarifying the existing rules in the Code of Conduct;

Option 2: Amending the Directive itself with regard to health professionals having direct contact with patients and benefiting from automatic recognition.

The HPC has found the current language requirements in the Directive to be workable in practice. Our own standards of proficiency reference language requirements and require most of our registrants to communicate in English to the standard equivalent to level 7 of the International English Language Testing System (IELTS) with no element below 6.5.

For speech and language therapists, we require registrants to communicate in English to a standard equivalent to level 8 of the IELTS, with no element below 7.5. This standard applies to EEA applicants. The requirement is higher for speech and language therapists than for all other professions, as communication in English is a core professional skill.

While the professions regulated by the HPC are not subject to automatic recognition, we would support option 2. We would consider that this requirement, if introduced, should also apply to those professionals under the general system. However, we would want to be clear on how ‘direct contact with patients’ is defined. Some of the professions on our Register—for example, biomedical scientists—would not have direct contact with patients,

but they will have direct contact with other service users with whom they need to communicate clearly in order to benefit patients. We would argue that clear communication in English would be as important for professionals in these types of roles, as well as those who work directly with patients or clients.

Modernising automatic recognition: a three-phase approach to modernisation

Questions 14-23

The provisions outlined in the questions on automatic recognition do not apply to the professions regulated by the HPC.

Question 24: Do you consider it necessary to make adjustments to the treatment of EU citizens holding third country qualifications under the Directive, for example by reducing the three years rule in Article 3(3)? Would you welcome such adjustment also for third country nationals, including those falling under the European Neighbourhood Policy, who benefit from an equal treatment clause under relevant European legislation? (Please give specific arguments for or against this approach).

We would not be concerned if adjustments were made to the treatment of EU citizens who hold third country qualifications under the Directive, provided that those citizens were still required to provide proof that they meet the relevant professional standards for their profession, and that they are safe to practise. We consider that reducing the three years rule would be of benefit to the public.