To consider

Requiring EEA doctors to demonstrate the necessary knowledge of English

Issue

1. In February 2013, the government announced plans to give us powers to assess the language skills of EEA doctors. Following this, we plan to introduce a requirement for EEA doctors applying for registration with a licence to practise to demonstrate that they have the necessary knowledge of English before the grant of a licence.

Recommendations

2. The Strategy & Policy Board is asked to:

   a. Endorse the approach to introducing a requirement for EEA doctors to demonstrate that they have the necessary knowledge of English before the grant of a licence.

   b. Agree that the Section 60 Order, (Annex A), is sufficient for the purposes of introducing this policy.

   c. Agree the changes to the Licence to Practise and Revalidation Regulations 2012 (as set out as Annex B), and the Fitness to Practice Rules 2004 (as set out at Annex C).

3. Endorse the proposed approach to consulting publicly on changes to the Licence to Practise and Revalidation Regulations 2012, and the Fitness to Practice Rules 2004, (as set out at Annex D).
Issue

4. In February 2013, the UK Government announced plans to give the GMC powers to assess the language skills of EEA doctors\(^1\) applying for registration and a licence to practise. The Government also proposes to create a new category of impairment relating to deficient English language skills.

5. To implement these changes, we need to introduce a proportionate but robust approach that complies with UK and EU law. This paper sets out the Government’s proposals on amending the Medical Act and our intention to consult on the subsequent changes to our rules and regulations to bring the policy into effect.

Section 60 Order consultation

6. The proposal requires a change to the Medical Act which will be done by way of a Section 60 Order. The Department of Health intends to consult on the Order from late July 2013 and for the new powers to come into force in April 2014. Under Directive 2005/36/EC, EEA doctors with an EEA qualification (which is Directive compliant) have an automatic right to have their qualifications recognised in the UK, and therefore have an automatic right to registration with the GMC, subject to meeting the criteria set out in the Medical Act.

7. However, the Section 60 Order will enable us to refuse to grant a licence to an EEA applicant who has not demonstrated the necessary knowledge of English. An EEA doctor applying for a licence for the first time can be required to demonstrate that he or she has the necessary knowledge of English if a concern emerges in the course of their registration application. The requirement will also bite on those doctors who hold registration only and apply for a licence for the first time.

8. The Order also sets out a new category of impairment where the doctor does not have the necessary knowledge of English.

9. The draft Section 60 Order and the Department’s draft consultation document can be found at Annex A and Annex E respectively. We have worked closely with the Department of Health (England) officials and lawyers and have commented extensively on previous drafts of the Order.

---

\(^1\) The term EEA doctor is used throughout this paper and annexes to refer to applicants who are nationals of a relevant European State (but not UK nationals) or who are entitled to be treated as such (including UK nationals who benefit by virtue of an enforceable Community Right). Registrations Decisions Guidance 2008 s.45
Proposed amendments to the Licence to Practise and Revalidation regulations

10. At present, all doctors who successfully apply for registration with the GMC are automatically granted registration with a licence to practise. We are now proposing to separate the granting of registration from the granting of a licence to practise for EEA doctors.

11. This means that all EEA doctors will continue to apply for registration with a licence to practise. However if, during the application process, concerns are identified indicating that the doctor does not have the necessary knowledge of English, the doctor will be granted registration but the licence to practise will be withheld. A licence to practise will only be granted once the doctor has provided satisfactory evidence of English language skills.

12. The amended regulations give the Registrar powers to assess the practitioner’s knowledge of English. The Registrar is also given the powers to:

   a. Request that the practitioner provide evidence or information;
   b. Carry out such other investigations the Registrar considers appropriate;
   c. Request that the practitioner undertake, at the practitioner’s own cost, an assessment designed to evaluate the practitioner’s knowledge of English.

13. The proposed amendments to the Licence to Practise and Revalidation Regulations 2012 are set out at Annex B.

Proposed amendments to the Fitness to Practise rules

14. The Fitness to Practise rules also require amendment to reflect a new ground of impairment on the basis that the doctor does not have the necessary knowledge of English.

15. The Registrar and MPTS panels will have the power to direct a doctor to undergo a language assessment either separately where language capability is the only concern or where there are wider concerns, as part of a performance assessment.

16. Doctors will be able to agree undertakings to address concerns about their knowledge of English. If doctors do not take voluntary remedial steps to address concerns about their language capability and referral to a hearing is necessary, indefinite suspension will be the most serious sanction that a panel can impose. We will not have a power to erase any doctor from the register simply on the basis that he or she does not have the necessary knowledge of English as such action on registration would be disproportionate in the circumstances.

2 The General Medical Council (Licence to Practice and Revalidation) Regulations Order of Council 2012 regulation 3(a)
17. The proposed amendments to the Fitness to Practise Rules 2004 are set out at Annex C.

18. The new ground of impairment will apply to all doctors holding registration with the GMC.

19. We derive additional assurance about language skills through the responsibilities of the Responsible Officer in England. From April 2012 responsible officers in England have been required to ensure that medical practitioners ‘have sufficient knowledge of English language necessary for the work to be performed in a safe and competent manner’. ³

20. The responsibility to ensure sufficient knowledge of English is implicit in a range of legislation that applies to Responsible Officers in Scotland and Northern Ireland.⁴

Next steps

21. Subject to the Strategy and Policy Board’s views, our consultation document and the draft rules and regulations will be circulated to members of Council for information in advance of publication.

³ The Medical Profession (Responsible Officers) (Amendment) Regulations 2013, reg 4(2)(a)
⁴ For example, The Medical Profession (Responsible Officers) Regulations 2010 and The Medical Profession (Responsible Officers) Regulations (Northern Ireland) 2010
Supporting information

How this issue relates to the Corporate Strategy and Business Plan

22. Strategic aim 1 of the 2013 Business Plan states that we will continue to register only those doctors that are properly qualified and fit to practise and to increase the utility of the medical register.

23. Strategic aim 2 of the 2013 Business Plan states that we will give all our key interest groups confidence that doctors are fit to practise.

How the action taken supports the principles of better regulation

24. Our proposal presents a proportionate and transparent approach for assessing that EEA doctors have the necessary knowledge of the English language before a licence to practise is granted. Our overriding objective is to enhance patient safety, and these changes will provide a higher level of assurance that the doctors in question will be more likely to interact and communicate appropriately with patients and those caring for them, as well as with other healthcare professionals. We can also be assured that we have sufficient powers to investigate and take appropriate action when a doctor’s English language skills are not sufficient for safe practice.

What engagement approach has been used to inform the actions taken (and what further communication and engagement is needed)

25. We will undertake a three month public consultation on our amendments to the Licence to Practise and Revalidation Regulations and the Fitness to Practise Rules. Following analysis of the consultation responses we will report to Council.

What equality and diversity considerations relate to this issue

26. Introducing a requirement for EEA doctors to provide evidence that they possess the necessary knowledge of English should bring greater parity with their IMG counterparts. We are aware, however, that this proposal could be perceived as treating different groups of doctors differently. We have undertaken preliminary work to inform our Equality Analysis and this will be further developed through the consultation process.

If you have any questions about this paper please contact: Jon Billings, Assistant Director, Registration and Revalidation, JBillings@gmc-uk.org, 020 7189 5434
The Medical Act 1983 (Knowledge of English) (Amendment) Order 2014

1. This draft section 60 Order sets out the amendments to the Medical Act required to give the GMC powers to assess the language skills of EEA doctors.
(Draft Order laid before Parliament under section *** of the *** Act ***, for approval by resolution of each House of Parliament.)

STATUTORY INSTRUMENTS

2014 No.

HEALTH CARE AND ASSOCIATED PROFESSIONS

DOCTORS

The Medical Act 1983 (Amendment) (Knowledge of English) Order 2014

Made - - - - ***

Coming into force in accordance with article 1(1) ***

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen’s Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 60 and 62(4) of the Health Act 1999(a).

The Secretary of State published a draft Order and invited representations as required by paragraph 9(1) of Schedule 3 to that Act.

The period of three months mentioned in paragraph 9(2) of that Schedule expired before a draft of this Order in Council was laid before Parliament.

A draft of this Order in Council has been approved by resolution of each House of Parliament in accordance with section 62(9) of that Act.

(a) 1999 (c. 8); Section 60 was amended by paragraph 16 of Schedule 5 to the Nursing and Midwifery Order (2001) (S.I. 2002/253); section 26(9) of the National Health Service Act 2002 (c.17); paragraph 1 of Schedule 8 to the Health and Social Care Act 2008 (c. 14); sections 209, 210 and 213 of, and paragraphs 60 and 72 to, Schedule 15 of the Health and Social Care Act 2012 (c. 7); paragraph 7 of Schedule 4 to the Pharmacy Order 2010 (S.I. 2010/231); paragraph 43 of schedule 34 to the Human Medicines Regulations 2012 (S.I. 2012/1916). Section 62 was amended by paragraph 1 of Schedule 4 to the National Health Service (Consequential Provisions) Act 2006 (c. 43); paragraph 2 of Schedule 8 to the Health and Social Care Act 2008. Section 62(4) and (4A) substituted section 62(4) by paragraph 11 of Schedule 10 to the Health and Social Care Act 2008. Schedule 3 was amended by section 26(10) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17); paragraph 8(b) of Schedule 4 to the Health and Social Work Professions Order 2002 (S.I. 2002/254); paragraph 67 of Schedule 11, and paragraph 1 of Schedule 14, to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43); paragraphs 4 to 9 of Schedule 8, and paragraph 1 of Schedule 15, to the Health and Social Care Act 2008; section 211 of, and paragraphs 61 and 72 of Schedule 15 to, the Health and Social Care Act 2012.
Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to make the following Order in Council:

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Medical Act 1983 (Amendment) (Knowledge of English) Order 2014 and shall come into force on the day after the day on which this Order is made.
(2) This Order shall extend to England and Wales and shall apply to England only.
(3) In this Order, “the Act” means the Medical Act 1983(a).

PART 1
Registration

Amendment to Part II of the Act

2.—(1) After section 18A of the Act insert—

“Provisions supplementary to Part II

18B. Registration of a person under this Part shall not prevent a licensing authority from refusing to grant a licence to practise to any person under Part IIIA in any case where the person has not demonstrated the necessary knowledge of English.”.

Amendment to Part III of the Act

3. After section 29 of the Act insert—

“Provisions supplementary to Part III

29ZA. Registration of a person under this Part shall not prevent a licensing authority from refusing to grant a licence to practise to any person under Part IIIA in any case where the person has not demonstrated the necessary knowledge of English.”.

PART 2
Licence to Practise

Amendments to section 29B of the Act

4.—(1) Section 29B of the Act (grant, refusal and withdrawal of licence) is amended in accordance with this article.
(2) In subsection (1) before ‘Regulations’ insert ‘Subject to subsection (1A)’.
(3) After subsection (1) insert—

“(1A) Regulations under section 29A may make provision for a licensing authority to refuse to grant a licence to practise to a person in any case where the person has not demonstrated the necessary knowledge of English to the authority.

(a) 1983 c. 54.
(1B) Regulations under section 29A must make provision for the Registrar to take account of guidance published by the General Council under section 29G(3) when determining whether a person has demonstrated the necessary knowledge of English.”.

(4) After subsection (2C) insert—

“(2D) Regulations under section 29A may include provision requiring a licensing authority to take account, in particular, of such evidence as a person provides of his knowledge of English.”.

Amendments to section 29G of the Act

5.—(1) Section 29E of the Act (guidance) is amended in accordance with this article.

(2) After subsection (2) insert—

“(3) The General Council must publish guidance relating to the information and documents to be provided for the purposes of demonstrating that the person has the necessary knowledge of English.”.

Amendments to section 29E of the Act

6.—(1) Section 29E of the Act (evidence) is amended in accordance with this article.

(2) After subsection (1) insert—

“(2ZA) The evidence or information which a licensing authority may request under regulations under subsection (1) includes, in particular, evidence or information about the person’s knowledge of English.”.

Amendments to section 29J of the Act

7.—(1) Section 29J of the Act (miscellaneous) is amended in accordance with this article.

(2) After subsection (2D) insert—

“(2E) Regulations under section 29A may make the following provisions in connection with a person’s knowledge of English—

(a) provide for the licensing authority to require a person to undertake an assessment to demonstrate whether the person has the necessary knowledge of English;

(b) require a person to provide any evidence, information, or document which the licensing authority may reasonably request for the purpose of demonstrating whether the person has the necessary knowledge of English;

(c) provide for the powers of the licensing authority in section 29E(1)(a) and (b) to be exercisable in relation to a person in connection with any refusal or failure by the person to provide the licensing authority with such information;

(d) make provision equivalent to section 29E(5) to (9) as to the disclosure of such information to the licensing authority (with appropriate modifications).”.

PART 3

Fitness to Practise

Amendment to section 35C of the Act

8.—(1) Section 35C of the Act (functions of the investigation committee) is amended in accordance with this article.

(2) After subsection (2)(d) insert—
“(da) not having the necessary knowledge of English.”.

Amendment to section 35D of the Act

9.—(1) Section 35D (functions of a fitness to practise panel) is amended in accordance with this article.
(2) In subsection (2)(a) after “except in a health case” insert “or language case”;
(3) In subsection (5)(b) after “except in a health case” insert “or language case”;
(4) In subsection (6) after “In a health case” insert “or language case”;
(5) In subsection (10)(a) after “except in a health case” insert “or language case”;
(6) In subsection (12) after “except in a health case” insert “or language case”.

Amendment to section 35E

10.—(1) Section 35E (provisions supplementary to section 35D) is amended in accordance with this article.
(2) At the end of paragraph (b) of subsection (4) insert “other than paragraph (da)”.
(3) After subsection (4) insert—
“(5) In section 35D, “language case” means any case in which a Fitness to Practise Panel has determined that—
(a) a person’s fitness to practise is impaired by reason of a matter falling within paragraph (da) of subsection (2) of section 35C, but
(b) the person’s fitness to practise is not impaired by any matter falling within any other paragraph of that subsection other than paragraph (d).

Amendment to Schedule 4 to the Act

11.—(1) Schedule 4 to the Act (proceedings before the investigation committee, interim orders panel and fitness to practise panel) is amended in accordance with this article.
(2) After paragraph 5A(9) (professional performance assessments) insert—
“(10) In this paragraph a reference to the standard of a registered person’s professional performance includes the standard of the person’s knowledge of English, in particular, whether the person has the necessary knowledge of English.

Language Assessments

5AB
(1) The General Council may make rules—
(a) authorising the giving of directions by any of—
   (i) the Investigation Committee,
   (ii) a Fitness to Practice Panel,
   (iii) such other persons as may be specified in the rules,
requiring a registered person to undertake an assessment of that person’s knowledge of English and to provide any information in respect of that assessment;
(b) specifying the circumstances in which such an assessment may be undertaken otherwise than in accordance with a direction.
(2) An assessment undertaken by virtue of this paragraph must be undertaken in accordance with rules made by the General Council under this paragraph; and the rules may, in particular, provide—
(a) for the procedures to be followed by such persons directing a registered person to undertake such an assessment;

(b) for the registered person who is required to undertake such an assessment to provide information in respect of that assessment to such persons as may be prescribed under the Rules;

(c) for the information provided in paragraph (b) to be disclosed to such persons as may be prescribed under the Rules.

(2) If the Registrar is of the opinion that a person who is required to undertake an assessment of that person’s knowledge of English has failed to undertake that assessment or has undertaken the assessment but has failed to provide the information requested in respect of that assessment the Registrar may refer the matter to the Fitness to Practise Panel.

(3) The Registrar shall without delay serve on the person who is required to undertake an assessment a notification of the making of a referral to the Fitness to Practise Panel under sub-paragraph (2).

(4) Where a matter is referred to the Fitness to Practise Panel under sub-paragraph (2), the Fitness to Practise Panel may, if it thinks fit—

(a) direct that the person’s registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding 12 months as may be specified in the direction; or

(b) direct that the person’s registration shall be conditional on the person’s compliance, during such period not exceeding 3 years as may be specified in the direction, with such requirements so specified as the Fitness to Practise Panel thinks fit to impose for the protection of members of the public or in the person’s interests.

(5) Where under sub-paragraph (4), the Fitness to Practise Panel gives a direction for suspension or a direction for conditional registration the Registrar shall without delay serve on the person concerned notification of the direction and of the person’s right to appeal against it under sub-paragraph (7).

(6) While a person’s registration in the register is suspended by virtue of a direction under sub-paragraph (4)—

(a) the person is to be treated as not being registered in the register notwithstanding that the person’s name still appears in it, but

(b) sections 31A, 35C, 35CC, 35D, 35E and 39 are to continue to apply to the person.

(7) An appeal shall lie to the relevant court (within the meaning of section 40(5) of this Act) from any direction of a Fitness to Practise Panel given by virtue of sub-paragraph (4) and on an appeal under this paragraph the relevant court may—

(a) quash the direction,

(b) substitute for the direction any other direction which the Panel could have made, or

(c) remit the case to the Registrar for him to refer it to a Fitness to Practise Panel to be disposed of in accordance with the court’s directions,

and the decision of the court on any appeal under this sub-paragraph shall be final.

(8) Subject to paragraph 9, an appeal under sub-paragraph (7) must be brought before the end of the period of 28 days beginning with the date on which notification of the direction was served under sub-paragraph (5).”.

(3) Paragraph 9 (extension of time for appealing) is amended as follows—

(a) After the reference to “section 35E(1) or 39(2) of this Act” insert “or paragraph 5AB(3)”;

(b) After the reference to “section 40 of this Act” insert “or paragraph 5AB(8)”.

A6
PART 4
Interpretation

Amendment to section 55 of the Act

12.—(1) Section 55(1) of the Act (interpretation) is amended in accordance with this article.
(2) For the definition “the necessary knowledge of English” substitute—
““the necessary knowledge of English”, in relation to a person means the knowledge of
English which, in the interests of himself and his patients, is necessary for the practice
of medicine in the United Kingdom;”.

PART 5
Transitional Provisions

13.—(1) The provisions of this order shall not apply to any application for registration as a
medical practitioner under the Act which has been received by the General Council on any day
before this order comes into force.

Name
Clerk of the Privy Council
EXPLANATORY NOTE
(This note is not part of the Order)

This Order amends the Medical Act 1983 (“the Act”).

Articles 2 and 3 makes it clear that registration of a person under Parts II and III of the Act will not prevent the licensing authority from refusing to grant that person a licence to practise under Part IIIA where that person is unable to demonstrate the necessary knowledge of English.

Article 4 of the Order amends section 29B of the Act to enable provision to be made in regulations made under section 29A for a licence to practise to be refused, if a medical practitioner has not demonstrated to the licensing authority that they have the necessary knowledge of English, and for the licensing authority to take account of any evidence of the practitioner’s knowledge of English for those purposes.

Article 5 of the Order amends section 29E of the Act to enable provision to be made in regulations made under section 29A for a medical practitioner to supply information to the licensing authority to demonstrate they have the necessary knowledge of English.

Article 6 of the Order amends section 29J of the Act to enable provision to be made under regulations under section 29A for the licensing authority to specify the requirements which must be satisfied by the medical practitioner for the purpose of determining whether they have the necessary knowledge of English.

Article 7 of the Order amends section 35C of the Act adding knowledge of English as an impairment for the purposes of triggering an investigation into a medical practitioner’s fitness to practise.

Article 8 of the Order amends section 35D of the Act to prevent the fitness to practise panel from directing that a person’s name be erased from the register where a person’s fitness to practise has been found to be impaired on the grounds of knowledge of English.

Article 9 of the Order amends section 35E of the Act to provide a definition of ‘a language case’ referred to in section 35D.

Article 10 of the Order amends Schedule 4 making provision for the General Council to direct that a person undertakes an assessment of that person’s knowledge of English.

Article 11 amends the definition of ‘the necessary of knowledge of English’ in section 55 of the Act so that it applies generally and is not limited to applications for registration.

Article 12 provides transitional provisions with regard to any applications for registration as a medical practitioner which have been received by the General Council before the Order comes into force.
8 - Requiring EEA doctors to demonstrate the necessary knowledge of English

Annex B

The General Medical Council (Licence to Practise and Revalidation) (Amendment) Regulations Order of Council 2014

1. This document sets out the proposed changes to the Licence to Practise and Revalidation Regulations 2014.
The General Medical Council has made the General Medical Council (Licence to Practise and Revalidation) (Amendment) Regulations 2014 which are set out in the Schedule to this Order, in exercise of the powers conferred by sections 29A(2) to (4), 29B(1)(1A), (2), (2D) and (3), 29E(1) to (2A), 29J(2E), (2F) and (3), and 41(7) of the Medical Act 1983. In accordance with section 29J(5) of that Act, the General Medical Council has consulted with such bodies of persons representing medical practitioners, and such medical practitioners, as appeared to the General Medical Council requisite to be consulted.

By virtue of section 29J(4) of that Act such Regulations shall not have effect until approved by order of the Privy Council.

Citation and commencement

1. This Order may be cited as the General Medical Council (Licence to Practise and Revalidation) (Amendment) Regulations Order of Council 2014 and comes into force on *** 2014.

Privy Council approval

2. Their Lordships, having taken these Rules into consideration, are pleased to and do approve them.
Clerk of the Privy Council

SCHEDULE

The General Medical Council General Medical Council (Licence to Practise and Revalidation) (Amendment) Regulations 2014

These Regulations are made by the General Medical Council in exercise of the powers conferred by sections 29A(2) to (4), 29B(1)(1A), (2), (2D) and (3), 29E(1) to (2A), 29J(2E), (2F) and (3), and 41(7) of the Medical Act 1983.

In accordance with section 29J(5) of that Act, the General Medical Council has consulted with such bodies of persons representing medical practitioners, and such medical practitioners, as appeared to the General Medical Council requisite to be consulted.

Citation, commencement and interpretation

1. —(1) These Regulations may be cited as the General Medical Council (Licence to Practise and Revalidation) (Amendment) Regulations 2014 and come into force on *** 2014.

(2) In these Regulations “the Licence to Practise and Revalidation Regulations” means the General Medical Council (Licence to Practise and Revalidation) Regulations 2012(a).

Amendments to the Licence to Practise and Revalidation Regulations

2. —(1) The Licence to Practise and Revalidation Regulations are amended as follows.

(a) at the beginning of paragraph (1) insert “Subject to paragraph (1A),”;

(b) after paragraph (1), insert—

“(1A) The Registrar may refuse to grant a licence to practise—

(a) under paragraph (1)(a), (c) or (d); or

(b) upon restoration of the practitioner’s name to the register where the practitioner’s name had been erased from the register under the provisions set out in sub-paragraphs (i) or (ii) of paragraph (1)(b) before the coming into force of the General Medical Council (Licence to Practise) Regulations 2009(b),

to a person in any case where the person has not demonstrated the necessary knowledge of English.

(2A) In determining whether a person has demonstrated the necessary knowledge of English under paragraph (1A) the Registrar must take account of the guidance published by the General Council under section 29G(3) of the Act.”;

(c) for paragraph (5) substitute—

“(5) Where in the Registrar’s opinion it is reasonable to do so for the purpose of determining whether to grant a licence to practise, including a determination as to whether a practitioner has the necessary knowledge of English, the Registrar may—

(a) by notice to the practitioner, request that the practitioner—

(i) provide further evidence or information,

(a) Scheduled to S.I. 2012/2685.

(b) Scheduled to S.I. 2009/2739
(ii) undertake, at the practitioner's own cost, an assessment designed to evaluate the practitioner's knowledge of English;

(b) carry out other investigations.”

(d) for paragraph (8), substitute—

“(8) The Registrar may refuse to grant a licence to practise if the Registrar considers that—

(a) without reasonable excuse, the practitioner has—

(i) failed to satisfy the requirements of paragraph (3),

(ii) failed to provide any evidence or information requested by the Registrar under paragraph (5)(a)(i),

(iii) failed to undertake an assessment requested by the Registrar under paragraph (5)(a)(ii), or

(b) in respect of a practitioner applying for a licence under paragraph (2) or falling within paragraph (1A), having taken account of any evidence as to the practitioner's knowledge of English, that the practitioner has failed to demonstrate the necessary knowledge of English.”.

(3) In Regulation 6 (revalidation), after paragraph (8), insert—

“(8A) For the avoidance of doubt, an assessment under paragraph (8) may include an assessment of the practitioner's knowledge of English.”.

Given under the official seal of the General Medical Council this xx day of xx 2014.

[Name]
Chair

[Name]
Chief Executive and Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

The Regulations amended by this Order amend the General Medical Council (Licence to Practise and Revalidation Regulations 2012 (scheduled to SI 2012/2685) (“the xxx).
The General Medical Council (Fitness to Practise) (Amendment) Rules Order of Council 2014

1. This document sets out the proposed changes to the Fitness to Practise Rules 2014.
The General Medical Council has made the General Medical Council (Fitness to Practise) (Amendment) Rules 2014 which are set out in the Schedule to this Order, in exercise of the powers conferred by section 35CC(1) and paragraphs 1(1) and (2A), 5A(1), (2), (3) and (3A), and 5AB(1) of Schedule 4 to the Medical Act 1983(a).

In accordance with paragraph 1(6) and 5A(9) of Schedule 4 to that Act, the General Medical Council has consulted with such bodies of persons representing medical practitioners, and such medical practitioners, as appeared to the General Medical Council requisite to be consulted.

By virtue of paragraph 1(7) and 5A(9) of Schedule 4 to that Act such Rules shall not have effect until approved by order of the Privy Council.

Citation and commencement

1. This Order may be cited as the General Medical Council (Fitness to Practise) (Amendment) Rules Order of Council 2014 and comes into force on *** 2014.

Privy Council approval

2. Their Lordships, having taken these Rules into consideration, are pleased to and do approve them.

[Name]
Clerk of the Privy Council

(a) 1983 c.54. Section 35CC was inserted, and paragraph 1 and 5A of Schedule 4 was substituted, by S.I. 2002/3135. Paragraph 5AB of Schedule 4 was inserted by SI 2014/xxx.
SCHEDULE
The General Medical Council (Fitness to Practise) (Amendment) Rules
2014

These Rules are made by the General Medical Council in exercise of the powers conferred by section 35CC(1) and paragraphs 1(1) and (2A), 5A(1), (2), (3) and (3A), and 5AB(1) of Schedule 4 to, the Medical Act 1983.

In accordance with paragraph 1(6) and 5A(9) of Schedule 4 to that Act, the General Medical Council has consulted with such bodies of persons representing medical practitioners, and such medical practitioners, as appeared to the General Medical Council requisite to be consulted.

Citation, commencement and interpretation

1.——(1) These Rules may be cited as the General Medical Council (Fitness to Practise) (Amendment) Rules 2014 and come into force on *** 2014.
(2) In these Rules, “the Fitness to Practise Rules” means the General Medical Council (Fitness to Practise) Rules 2004(a).

Amendments to the Fitness to Practise Rules

2.—(1) The Fitness to Practise Rules are amended as follows.
(2) In Rule 2 (interpretation), after the definition of “application”, insert—

“assessmnet of knowledge of English” means an assessment which is designed to evaluate whether the practitioner has the necessary knowledge of English;”.

(3) In Rule 7 (investigation of allegations)—

(a) at the end of paragraph (3), insert—

“(3A) The Registrar may direct that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3.

(b) for paragraph (6), substitute—

“(6) Where the Registrar receives information that—

(a) the practitioner has failed to submit to, or comply with, an assessment under Schedule 1 or 2;

(b) having submitted to an assessment under Schedule 1, the practitioner has failed to comply with reasonable requirements imposed by the Assessment Team; or

(c) the practitioner has failed to undertake an assessment of knowledge of English in accordance with Schedule 3 or (as the case may be) provide the information requested in accordance with that Schedule,

the Registrar may—

(i) refer the allegation for determination by a FTP Panel,

(ii) in a case falling within sub-paragraph (b), refer the practitioner to a FTP Panel for the purposes of making a direction under paragraph 5A(3) of Schedule 4 to the Act, or

(iii) in a case falling within sub-paragraph (c), refer the practitioner to a FTP Panel for the purposes of making a direction under paragraph 5AB(4) of Schedule 4 to the Act.”.

(4) In Rule 10 (undertakings), in paragraph (6) after “Schedule 1 or 2” insert “or directing that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3”.

(5) In Rule 13A (investigation following referral), after “Schedule 1 or 2” insert “or directing that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3”.

(6) In Rule 17 (procedure before a FTP Panel)—
   (a) in paragraph (4)—
      (a) in sub-paragraph (a), omit “or”,
      (b) in sub-paragraph (b), at the end, insert “or”, and
      (c) after sub-paragraph (b) insert—
         “(c) that the practitioner undertakes an assessment of knowledge of English in accordance with Schedule 3.”.
   (b) after paragraph (7) insert—
      “(7A) Where a practitioner has been referred under rule 7(6)(iii) for failure to undertake an assessment of knowledge of English, or for failure to provide the information requested in respect of that assessment the FTP Panel may dispose of the case, where it considers it appropriate to do so, by suspending the practitioner’s name from the register or imposing conditions on his registration in accordance with paragraph 5AB(4) of Schedule 4 to the Act.”; and
   (c) for paragraph (8), substitute—
      “(8) Subject to paragraph (7) and (7A), where a practitioner has failed to submit to, or comply with, an assessment under Schedule 1 or 2, or has failed to undertake an assessment under Schedule 3 or has failed to provide the information requested in respect of that assessment, and—
         (a) there is credible evidence before the FTP Panel that the practitioner’s fitness to practise is impaired,
         (b) a reasonable request has been made by the Registrar to the practitioner that he undertake, submit to, or comply with the assessment, or provide information in accordance with Schedule 3 (as the case may be), and
         (c) no reasonable excuse for such failure has been provided by the practitioner,
      the FTP Panel may take such failure into account in determining the question of whether the practitioner’s fitness to practise is impaired.

(7) In Rule 23 (action on receipt of a restoration application), in paragraph (1)—
   (a) in sub-paragraph (a), omit “and”;
   (b) in sub-paragraph (b), at the end, insert “or”; and
   (c) after sub-paragraph (b) insert—
      “(c) direct that the applicant undertake an assessment of knowledge of English in accordance with Schedule 3.”.

(8) In Rule 24 (procedure at a restoration hearing), in paragraph (2), in sub-paragraph (g) after “Schedule 1 or 2” insert “or undertake an assessment of knowledge of English in accordance with Schedule 3”.

(9) In Rule 37A (panel undertakings), in paragraph (1), after “Schedule 1 or 2” insert “or directing that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3.”.

(10) In Schedule 1 (performance assessments)—
   (a) After paragraph 1 insert—
“1A. In this Schedule a reference to the standard of the practitioner’s professional performance includes the standard of the practitioner’s knowledge of English, in particular, whether the practitioner has the necessary knowledge of English.

(b) In paragraph 3—

(i) After sub-paragraph (2) insert—

“(2A). For the purposes of assessing the standard of a practitioner’s professional performance, the Assessment Team may direct, in accordance with the provisions set out in Schedule 3, a practitioner to undertake an assessment of the practitioner’s knowledge of English.”

(c) After sub-paragraph (4) insert—

“(5) Where the practitioner has undertaken an assessment of knowledge of English following a direction under these Rules the results of the assessment must be included in the report referred to under sub-paragraph (4).”.

(11) After Schedule 2 (Health Assessments) insert—

“SCHEDULE 3

KNOWLEDGE OF ENGLISH ASSESSMENTS

1. In this Schedule “assessment of knowledge of English” means an assessment which is designed to evaluate whether a practitioner has the necessary knowledge of English.

2. The Registrar, Assessment Team or FTP Panel (as the case may be) may direct the practitioner to—

(a) undertake, at the practitioner’s own cost, an assessment of knowledge of English and;

(b) to provide information in respect of that assessment as specified in the direction.

3. Where a direction is made under paragraph 2, The Registrar, Assessment Team or FTP Panel (as the case may be), must without delay serve a notice on the practitioner—

(a) requiring the practitioner within [30 days] of the date of the letter to undertake an assessment of the practitioner’s knowledge of English, and

(b) specifying any information which the practitioner is required to provide in respect of that assessment.

4. Where a practitioner has undertaken an assessment under this Schedule and informed the relevant person of the information requested under paragraph 3(b), the Registrar, Assessment Team or FTP Panel (as the case may be) may make a request to the relevant person for disclosure of that information.

5. Where a request is made under paragraph 4 the relevant person shall disclose the information requested to the person making the request.

6. In this Schedule “relevant person” means the Registrar, Assessment Team or FTP Panel (as the case may be).

Given under the official seal of the General Medical Council this xx day of xx 2014

[Name]
Chair

[Name]
Chief Executive and Registrar
EXPLANATORY NOTE
(This note is not part of the Order)

The Rules amended by this Order amend the General Medical Council (Fitness to Practise) Rules 2004 (scheduled to SI 2004/2608) (“the Fitness to Practise Rules”).

XXX
8 - Requiring EEA doctors to demonstrate the necessary knowledge of English

Annex D

GMC Consultation document: Ensuring that doctors have the necessary knowledge of English
SECTION 1

About this consultation

We are consulting on proposals to increase public protection by ensuring that all doctors practising medicine in the UK have the necessary knowledge of English to practise safely.

The first part of this consultation seeks your views on draft regulations that enable us to ask for evidence of a European doctor’s English language capability if we become concerned about their ability to communicate effectively during our registration process. More information is set out in section 3 of this document.

We are also consulting on draft rules and changes to legislation on how we deal with complaints that doctors already on our register do not have the necessary knowledge of English. More information is set out in section 4 of this document.

The consultation runs from Wednesday 31 July 2013 to Thursday 31 October 2013 [DN: dates to be confirmed by DH]. The results will be published early in 2014.

Why should the consultation matter to you?

- All registered doctors – this consultation describes how we will investigate allegations that a doctor does not have the necessary knowledge of English to practise safely. It also explains the action we may take in such cases to protect the public.

- European doctors considering applying for registration to work in the UK – this consultation sets out how we will ensure that all such doctors have the English language capability they need.

- Healthcare organisations – responsible officers, employers and contractors of doctors’ services are responsible ensuring that the doctors they employ or contract with are competent for their role, so they need to understand how we will confirm a European doctor has the necessary English language capability, and how we will investigate any concerns they raise about a doctor’s knowledge of English.

---

1 In this document, the term ‘European doctor’ refers to a doctor who is:
- a national of a relevant European state (this means a national of a member state of the European Economic Area or Switzerland, or
- not a national of a relevant European state, but is entitled to be treated no less favourably for these purposes because he or she benefits under the Citizenship Directive from an enforceable Community right.
Patients and the public – this consultation explains how we will protect patients by ensuring all doctors practising medicine in the UK have the English language skills they need to do so safely.

How to respond

You can respond to the consultation online through our e-consult website. [DN: link to be added later]

If you have any questions about the consultation, or need the information in an alternative format, please email X or call us on 0161 923 6602.

The Department of Health are currently consulting on amendments to the Medical Act 1983 to ensure that we are able to implement these strengthened powers.

You can view and respond to the Department of Health’s consultation on their website. [DN: link to be added later]
SECTION 2

Background

How we currently ensure doctors have the necessary knowledge of English

1. International medical graduates (IMGs)\(^2\) must demonstrate they have the necessary knowledge of English they need to work in the UK when they apply for registration. We only grant registration if they can do so.

2. Most IMGs show this by sitting the academic version of the International English Language Testing System (IELTS) test. Alternatively, we also accept a limited range of recent evidence of English language capability, such as:

   - documentary evidence of a primary medical qualification taught and examined solely in English
   - continuous practice in a country where English is the first and native language.\(^3\)

3. However, the law currently prevents us from seeking evidence about the English language capability of European doctors as a condition of registration. If these doctors have adequate medical qualifications, they receive registration and a licence to practise without providing any evidence of their language skills.

International English Language Testing System (IELTS)

4. IELTS is currently run jointly by the British Council, IDP:IELTS Australia and Cambridge English Language Assessment and is the primary means by which IMGs demonstrate their proficiency in English.

5. We currently require IMGs to achieve a minimum score of 7.0 across all aspects of the academic version of the test. The cost of this assessment is borne by the doctor. The current fee in the UK is £135 and the test takes place in centres all over the world.

The UK Government announcement and Department of Health consultation

[DN: design team can this section be highlighted in some way, such as in a box?]

\(^2\) For the purposes of this document, an International Medical Graduate is a doctor who is not a UK graduate or a European Doctor.

\(^3\) Please refer to Annex A for detail about the type of evidence we require from IMGs, as well as how recent the evidence must be.
6. In February 2013, the UK Government announced plans to give us new powers to ensure that all doctors working in the UK have the necessary knowledge of English to practise safely. The Department of Health is currently consulting on changes to the *Medical Act 1983* to:

- allow us to ask European doctors for evidence of their English language capability when we are concerned about their ability to communicate effectively
- add to the Act an additional reason a doctor’s fitness to practise can be found to be impaired as a result of not having the necessary knowledge of English.

7. You can view and respond to the Department of Health’s consultation on its website. [DN: link to DH consultation]

8. This consultation is about how we will implement these new powers, including the changes required to our rules and regulations.

*What this change means*

9. Under Directive 2005/36/EC, European doctors with a relevant qualification are entitled to have their qualifications recognised in the UK. They therefore have an automatic right to GMC registration if there are otherwise no concerns about their fitness to practise. The effect of registration is that they will also receive a licence to practise.

10. European doctors who qualified outside of Europe, or who have a European qualification that is not listed in the Directive, do not have an automatic entitlement to registration with a licence.

11. However, the law currently prevents us from requesting evidence of the English language capability of any European doctor as a condition of their registration with a licence to practise.

12. It is the licence to practise that enables doctors to undertake functions which by law are restricted to licensed doctors, such as treating patients, prescribing medicines and signing death certificates. Although registration shows that a doctor’s qualification has been recognised by the regulator and that the doctor is in good standing with us, it does not confer any of the powers and privileges associated with the licence to practise.

13. The proposed change to the *Medical Act 1983* will allow us to seek evidence and confirmation of a European doctor’s ability to communicate in English, if concerns about their language capability emerge during the registration process.
14. While we will continue to recognise their qualifications through granting registration, under the proposed arrangements we will be able to refuse the granting of a licence to practise in circumstances where a doctor is unable to demonstrate that they have the necessary knowledge of English. Until this change happens we are not able to refuse the licence.

15. More information about the proposed changes to the Medical Act 1983 is set out in the Department of Health’s consultation online. [DN: link to be added later]

Current responsibilities of healthcare organisations and responsible officers

16. Healthcare organisations have always had responsibilities for ensuring that the doctors they employ or contract with are competent for their role and this includes language capability.

17. Therefore, designated bodies should already have in place processes for pre-employment checks, and these should include ensuring a sufficient knowledge of English. This is also implicit in a range of legislation.4

18. In April 2013 these responsibilities were made explicit for responsible officers based in England.5 Responsible officers in England are now required to ensure that doctors ‘have sufficient knowledge of English language necessary for the work to be performed in a safe and competent manner’.6 Differing local arrangements also apply in Northern Ireland, Scotland and Wales.

19. These responsibilities will continue to exist in future, but will be strengthened by our ability to request evidence of English language capability of European doctors when concerns arise during our registration process.

---

4 For example, The Medical Profession (Responsible Officers) Regulations 2010 (as amended); and The Medical Profession (Responsible Officers) Regulations (Northern Ireland) 2010

5 Responsible officers are senior doctors appointed by hospitals or clinics to oversee the fitness to practise of their doctors.

6 The Medical Profession (Responsible Officers) (Amendment) Regulations 2013, regulation 4(2)(a)
SECTION 3

Demonstrating the necessary knowledge of English language during the grant of the licence to practise

20. We currently check the language capability of IMGs before granting them registration with a licence. If they cannot demonstrate they have the English language capability they need to practise safely, they are not eligible for registration.

21. The proposed amendments to the Licence to Practise and Revalidation Regulations 2012 mean that when we are concerned about any European doctor’s English language skills, we can ask for evidence, investigate or ask an applicant to undergo an assessment to evaluate their English language capability before we grant their licence.

22. The draft amendment regulations are in Annex B. There are a number of key principles underlying these regulations and how we intend to implement them:

• compliance with European Union (EU) law and the EU code of conduct
• identification of concerns based on objective rather than subjective evidence
• evidence requirements that are fair and transparent, and mirror our existing requirements for international medical graduates.

23. In the following paragraphs we describe the main effects of the amendments to the Regulations and how they will be applied, and invite your comments on some specific points.

Who the amendments will affect

The purpose of the amendments is to address the existing disparity in how we ensure doctors coming to work in the UK have the necessary knowledge of English to practise safely. Although the amendments will apply to all doctors they will, in practice, only affect European doctors.

24. These amendments will affect any European doctor making:

• a first-time application for registration with a licence
• any first-time application for a licence where they already hold registration but have never held a licence before\(^7\).

25. This will also affect any European doctor who held registration before to the introduction of the licence to practise in 2009, who was erased from the register\(^8\) and now seeks restoration of their registration with a licence.

26. This will not affect UK graduates or IMG applicants. UK graduates applying for registration with a licence to practise will automatically satisfy the requirement because their primary medical qualification was taught and examined solely in English. IMG applicants are already required to show evidence of English language before we grant them registration.

27. This will not affect applications for restoration of registration or restoration of a licence made by doctors who have previously held a licence.

**Regulation 3 - grant or refusal of a licence**

28. As part of their application for registration with a licence to practise, European doctors currently provide a range of supporting evidence, including

• their qualifications

• details of each medical regulatory authority they have been registered or licensed with in the previous five years

• details of all of their work experience from the previous five years both medical and non-medical.

29. Using this information, we will identify whether we have any concerns about their English language capability.

30. Where no concerns are raised, for example, the doctor has a primary medical qualification awarded by a medical school where students are taught and examined in English, we will grant registration with a licence to practise.

31. Where the information does raise concerns about a doctor’s English language capability, we will ask the doctor to provide us with evidence to demonstrate that they have the necessary knowledge of English language. The type of evidence we request in these circumstances will mirror what we require of IMGs and will broadly include:

• achieving the required scores in the IELTS test

\(^7\) For example, doctors who opted to take registration only in November 2009 and therefore have never held a licence to practise.

\(^8\) For example, a doctor who took voluntary erasure, or was erased or suspended after a fitness to practise investigation.
• documentary evidence of a primary medical qualification taught and examined solely in English

• continuous practice in a country where English is the first and native language.9

32. Where evidence cannot be provided or is insufficient, then we may request the applicant to take the IELTS test at their own cost.

Question 1

Do you think it is fair and proportionate to require the same evidence of English language capability from European doctors as international medical graduates?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

33. If the doctor has not shown they have the necessary knowledge of English, or they have refused to provide any evidence or undertake an assessment, we will grant registration but may not grant the licence.

34. An applicant who is granted registration without a licence will have part of their registration fee refunded. They will be able to make a new application for a licence once they have evidence to demonstrate their knowledge of English.

35. The applicant can appeal any refusal to grant a licence to the Registration Appeals Panel and subsequently to a county court.10

36. This process will be streamlined to ensure that it is as efficient and objective as possible for both the doctor and the GMC. Applicants will be made aware before they make their initial application, of the information that they need to provide to satisfy the registration and the licence requirements.

37. Figure 1 outlines the process we expect applications to follow. [DN: design team – figure 1 needs to be embedded into the document. Please follow this link for final version of figure 1 http://livelink/edrms/lisapi.dll/fetch/2000/2909146/6994795/46246278/51543059/52345519/English_language_capability_flow_chart.pdf?nodeid=52569540&vernum=2 ]

9 Please refer to Annex A for further detail about the type of evidence we require from IMGs, as well as how recent the evidence must be.

10 In Scotland, a subsequent appeal is to the Sheriff.
Question 2

Do you agree that we should not grant a licence to practise to a European doctor when they have been unable or unwilling to show they have the necessary knowledge English to work safely in the UK?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

38. If a concern arises during the course of the application process as a result of oral or written communications, for example relying on an interpreter at one of our identification check meetings, we may require the doctor to take the IELTS test, even where the documentary evidence previously provided had been deemed satisfactory. This will only be required where it is considered necessary and proportionate to do so.

Question 3

Do you agree that we should take into account concerns that arise through oral or written communications throughout the application process?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

Regulation 6 – Revalidation

39. We receive a revalidation recommendation about each doctor from their responsible officer once every five years. This confirms to us that the doctor is participating in the processes that support revalidation and that there are no unaddressed concerns about the doctor’s fitness to practise.

40. This recommendation will already confirm that the responsible officer is not aware of any unaddressed concerns about language, and therefore we do not intend to add any additional language requirements to revalidation.

41. However, the amendment to regulation 6 clarifies that we can require a doctor with no prescribed connection\textsuperscript{11} or suitable person\textsuperscript{12} to undertake an

\textsuperscript{11} Most licensed doctors have a connection with one organisation that will provide them with a regular appraisal and help them with revalidation. This organisation is called their ‘designated body’. It will be the responsible officer of this designated body that will make a

\textsuperscript{12}
assessments of their English language capability. This is because we will not receive additional assurance about their language through a recommendation about their revalidation.

**Question 4**

Do you agree that it is fair and appropriate to be able to ask doctors who have no responsible officer or suitable person to demonstrate they have the necessary knowledge of English where we have a concern, as part of their revalidation?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

---

recommendation to us about their revalidation. A small minority of doctors will not have a responsible officer due to the nature of their practice and where they work.

12 In certain circumstances we will accept revalidation recommendations from other suitable persons if we are satisfied they are performing roles equivalent to those of appointed responsible officers. We can recognise suitable persons under the General Medical Council (Licence to Practise and Revalidation) regulations 2012, regulation 6(6) and (7).
SECTION 4

Complaints about a registered doctor’s knowledge of English

Changes to the Medical Act 1983 and Fitness to Practise Rules 2004

Introduction

42. This section of the consultation deals with how we will investigate concerns or complaints about a registered doctor’s ability to communicate in English.

43. As discussed in sections 1–3, in future doctors may be required to demonstrate they have the necessary knowledge of English to provide safe care to patients before they are granted a licence to practise medicine in the UK.

44. Our core guidance for doctors, Good medical practice (2013), says doctors must provide information to patients in a way they can understand\(^{13}\) and work collaboratively with colleagues\(^{14}\).

45. When we receive a serious complaint about a doctor’s ability to communicate with patients and other health professionals, we undertake an investigation to decide whether it is necessary to take action to protect the public. We are proposing to make some changes to how we do this, where communication problems seem to arise from a doctor’s inadequate knowledge of English.

What changes are we proposing?

46. The three main changes to our fitness to practise process are:

a) Creating a new category by which doctor’s fitness to practise may be found impaired – ‘not having the necessary knowledge of English’.

b) Introducing a new power for the Registrar and panels to direct a doctor to undergo a language assessment where there are serious concerns about their ability to communicate in English.

c) Allowing panels to ‘indefinitely suspend’ doctors who fail over time to develop sufficient English language skills to treat patients safely.

\(^{13}\) General Medical Council (2013) Good medical practice London: GMC, paragraph 32

\(^{14}\) General Medical Council (2013) Good medical practice London: GMC, paragraph 35
47. A detailed discussion about each of these changes, is provided below at paragraphs 50 to 64.

To make these changes, the Department of Health will need to amend the Medical Act 1983. We will need to amend the Fitness to Practise Rules 2004. Our proposed amendments are attached in Annex C.

Who will the changes apply to?

48. The changes apply to all doctors, regardless of nationality, place of qualification, or whether they were required to provide evidence of English skills when they applied for registration or a licence.

49. The changes are most likely to affect doctors whose first language is not English.

Introducing a new category of impaired fitness to practise

50. Doctors on the medical register are expected to follow our guidance, keep their professional skills and knowledge up to date and communicate effectively with patients and other health professionals.

51. Where a doctor fails to do this, their fitness to practise medicine may be found to be impaired for five reasons: deficient performance, misconduct, adverse physical or mental health, a conviction or caution, or a determination by another regulatory body. These categories are set out in legislation, under section 35C(2) of the Medical Act 1983. Historically, serious complaints about a doctor's communication skills, including knowledge of English, have been categorised as potentially deficient performance.

52. In future, we propose that if a doctor's inability to speak, write, read or comprehend English means they are unable to treat patients safely, we should be able to clearly state this as the reason their fitness to practise is impaired. This involves creating a new category of impairment 'by reason of not having the necessary knowledge of English.' We believe this will make it easier for everyone to be clear about the nature of our concerns and the rationale for steps taken to protect public. It would also be fairer for doctors, as it reduces the risk of a perception that their ability to communicate effectively with patients and colleagues in other languages is in doubt, where this is not the case.

Question 5

Do you agree we should create a new category of impaired fitness to practise medicine ‘by reason of not having the necessary knowledge of English’?

Yes/ No/ Not sure
Please provide any additional comments, especially if you have answered no or not sure.

 Asking doctors to undergo a language assessment when we investigate concerns about their communication skills

53. When we receive a complaint about a doctor we gather a range of information to see what evidence exists in support of the concerns raised. This helps us to make fair and properly reasoned decisions about whether it is necessary to take action to protect the public. If a case is referred to a hearing, a fitness to practise panel convened by the Medical Practitioners Tribunal will look at the evidence and decide if the doctor is impaired.

54. As part of the information gathering process, we think the Registrar and panels should have a new power to require doctors to undergo a language assessment if evidence of their language skills is needed for us to make a decision about their fitness to practise medicine in the UK. This is consistent with our approach in performance and health cases where we ask doctors to undergo an assessment of their performance or health, as appropriate.

55. The language assessment will consider a doctor’s ability to speak, read, write and understand English and is likely to be the same test (IELTS) required of doctors when they apply for a licence, where concerns arise. We only envisage doctors being asked to undertake a language assessment as part of our fitness to practise process if there is a specific concern that their ability to provide safe care to patients is impaired due to insufficient knowledge of English. Doctors will be responsible for the cost of a language assessment directed by the Registrar as a result of fitness to practise concerns.

56. To make sure that doctors are treated fairly, we will also issue guidance for decision makers to ensure that a doctor is required to undergo an assessment of their knowledge of English only where additional evidence is reasonably needed. For example, if a doctor has recently undertaken an assessment we may consider it unnecessary to ask them to do so again.

Question 6

Do you agree that if there is a serious concern about a registered doctor’s knowledge of English, we should have the power to require a doctor to undergo a language assessment?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.
Question 7

Do you agree doctors should pay the cost of a language assessment where there is a relevant fitness to practise concern?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

Dealing with doctors who fail to undergo a language assessment during an investigation

57. If a doctor fails to undertake a language assessment when requested to do so where there is a concern about their fitness to practise, we may be unable to gather the information we need to decide if they are safe to treat patients. In such cases, after reasonable steps to encourage the doctor to comply, the matter will be referred to a fitness to practise panel. Where the matter is heard by a panel on non-compliance grounds, they will consider whether it is necessary to take action on the doctor’s registration to mitigate the risk to the public. This approach is consistent with our approach in health and performance cases where doctors fail to undergo an assessment during our investigation.

58. To ensure fairness to doctors we will allow a suitable period of time to comply with a direction to undergo a language assessment. We suggest 90 days is sufficient time for a doctor to prepare and attend a test centre. This is consistent with the time provided for international doctors applying to join the register to provide any additional evidence required. Any doctor who states that they do not intend to comply, or who fails to comply within this period without good reason may be referred to a fitness to practise panel.

Question 8

Do you agree that 90 days is a reasonable time period for doctors to comply with a direction to undertake a language assessment?

Yes/ No/ Not Sure

Please provide any additional comments, especially if you have answered No or Not Sure

Indefinite suspension of doctors who do not have sufficient English language skills to treat patients safely
Where concerns are raised about a registered doctor’s knowledge of English we encourage them to take steps to improve their language skills voluntarily. However, if a doctor’s language does not improve sufficiently or they are unwilling to agree the necessary action, the case may be referred to a fitness to practise panel to consider if action is necessary to protect the public.

The panel will look at all of the relevant evidence, including any language assessments which the doctor has undertaken, to decide if the doctor’s fitness to practise medicine is impaired. If they find the doctor lacks sufficient knowledge of English to treat patients in the UK safely, a range of options are available to them. For example, the panel may agree or impose limits on a doctor’s registration until they have adequately improved their knowledge of English. Alternatively, they may feel it is necessary to suspend the doctor’s right to practise medicine in the UK.

The time it takes people to learn English may vary widely. There may also be some doctors who refuse to take appropriate steps to improve their skills. At present, the maximum period of suspension is 12 months where there are no health issues. However, where a doctor’s language skills do not improve over time, we propose that panels have a power to suspend the doctor’s registration indefinitely. This approach will remove the need for repeated reviews to be carried out where no progress has been made and a doctor will be able to request a review when, and if, they have acquired the necessary knowledge of English.

In such cases, indefinite suspension would be the most serious outcome available to us in dealing with concerns about a doctor which relate solely to their knowledge of English. European doctors are legally entitled to have their qualifications recognised in the UK and it would be disproportionate to remove their name from the medical register due to a lack of proficiency in a particular language. This is also consistent with our approach to ensuring equality in other circumstances; for example doctors cannot be removed from the medical register solely due to health concerns.

Implementing this proposal will involve amending the Indicative Sanctions Guidance for panellists. This guidance explains the options available to panellists when deciding the outcome of a case. A copy of this can be accessed from the Medical Practitioners Tribunal Service website.

Question 9

Do you agree that we should be able to indefinitely suspend doctors who fail over time to acquire the necessary knowledge of English to safely treat patients in the UK?

Yes/ No/ Not sure
Please provide any additional comments, especially if you have answered no or not sure.

Restoration of a doctor’s name to the medical register following fitness to practise concerns in language cases

64. As discussed above, doctors will not be erased from the register solely due to insufficient knowledge of English. However doctors under investigation due to concerns that their fitness to practise is impaired due to insufficient language skills will remain eligible to apply for voluntary erasure to remove their name from the register. Doctors may also be administratively erased for non-payment of fees following the conclusion of a fitness to practise process. In such cases, where a doctor later applies for restoration to the register with a licence they may be asked to undergo a language assessment to ensure they are safe to treat patients.

Question 10

Do you agree that we should be able to ask doctors to undergo a language assessment when they apply to be restored to the register if there is a concern about their language skills?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.
Question 1

Do you think it is fair and proportionate to require the same evidence of English language capability from European doctors as international medical graduates?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

Question 2

Do you agree that we should not grant a licence to practise to a European doctor when they have been unable or unwilling to show they have the necessary knowledge English to work safely in the UK?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

Question 3

Do you agree that we should take into account concerns that arise through oral or written communications throughout the application process?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

Question 4

Do you agree that it is fair and appropriate to be able to ask doctors who have no responsible officer or suitable person to demonstrate they have the necessary knowledge of English where we have a concern, as part of their revalidation?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

Question 5
Do you agree we should create a new category of impaired fitness to practise medicine ‘by reason of not having the necessary knowledge of English’?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

Question 6

Do you agree that if there is a serious concern about a registered doctor’s knowledge of English, we should have the power to require a doctor to undergo a language assessment?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

Question 7

Do you agree doctors should pay the cost of a language assessment where there is a relevant fitness to practise concern?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.

Question 8

Do you agree that 90 days is a reasonable time period for doctors to comply with a direction to undertake a language assessment?

Yes/ No/ Not Sure

Please provide any additional comments, especially if you have answered No or Not Sure

Question 9

Do you agree that we should be able to indefinitely suspend doctors who fail over time to acquire the necessary knowledge of English to safely treat patients in the UK?

Yes/ No/ Not sure
Please provide any additional comments, especially if you have answered no or not sure.

**Question 10**

Do you agree that we should be able to ask doctors to undergo a language assessment when they apply to be restored to the register if there is a concern about their language skills?

Yes/ No/ Not sure

Please provide any additional comments, especially if you have answered no or not sure.
Annex A: current evidence requirements for international medical graduates

1. **Required scores in the academic version of the IELTS exam**
   - Overall band score of 7, including a 7 in all of the elements.
   - The IELTS scores must be valid on the date on which the application is approved

2. **Primary medical qualification taught and examined solely in English**
   - Applicant sat the last exam for their primary medical qualification during the twelve months before applying for registration
   - Applicant holds a primary medical qualification which was taught and examined solely in English.

   Information to be provided
   - A statement that applicant has not taken the IELTS test before.
   - An original letter or certificate from the institution where applicant qualified confirming:
     - a. All of the course, including clinical activities, were taught and examined solely in English.
     - b. At least 75% of any clinical interaction, including personal contact with patients, their families and other healthcare professionals, which took place as part of the course of study, was conducted in English.
     - c. The date applicant passed their final examination.

3. **Passed language test for registration in a country where the first and native language is English and has practised there continuously for the last two years**
   - Applicant sat the last exam for their primary medical qualification more than twelve months before applying for registration.
   - Applicant has been working continuously for the past two years in a country where the first and native language is English.
• Applicant is moving to the UK from an English speaking country where they took an English exam to obtain registration with the medical regulatory authority in that country.

Information to be provided
• A statement that applicant has not taken the IELTS test before
• The original English Language test certificate applicant used to gain registration or a licence in that country (we will contact the medical regulatory authority to find out what they use and their requirements).
• Original references from applicant’s employers for the last two years, outlining their English language capability. (English language reference form to be used)

4. Applicant has practised continuously in a country where English is the first and native language for the past two years

• Applicant sat the last exam for their primary medical qualification more than twelve months before applying for registration
• Applicant has been working continuously for the past two years in a country where the first and native language is English.
• Applicant holds a primary medical qualification which was taught and examined solely in English.

Information to be provided
• A statement that applicant has not taken the IELTS test before
• Original references from all employers for the last two years, outlining the applicants English language capability. English language reference form to be used
• An original letter or certificate from the institution where applicant qualified confirming:
  o a. All of the course, including clinical activities, were taught and examined solely in English
  o b. At least 75% of any clinical interaction, including personal contact with patients, their families and other healthcare professionals, which took place as part of the course of study, was conducted in English
  o c. The date applicant passed their final examination.
Annex B: Draft General Medical Council (Licence to Practice and Revalidation) (Amendment) Regulations 2014

[DN: to be inserted]
Annex C: Draft general Medical Council (Fitness to Practise) (Amendment) Rules 2014

[DN: to be inserted]
How to respond

You can respond to the consultation online through our e-consult website. [DN: link to be added later]

If you have any questions about the consultation, or need the information in an alternative format, please email X or call us on 0161 923 6602.

The Department of Health are currently consulting on amendments to the Medical Act 1983 to ensure that we are able to implement these strengthened powers.

You can view and respond to the Department of Health’s consultation on their website. [DN: link to be added later]
8 - Requiring EEA doctors to demonstrate the necessary knowledge of English

Annex E

Department of Health Consultation document
Language Controls for Doctors - Proposed Changes to the Medical Act 1983
A paper for consultation
A paper for consultation
Contents

Contents..................................................................................................................................... 6
Foreword.................................................................................................................................... 7
Executive summary.................................................................................................................... 8
Introduction ................................................................................................................................ 9
Proposals to strengthen language controls for doctors ............................................................ 13
Costs and benefits and equality analysis ................................................................................. 17
The draft order ......................................................................................................................... 18
Summary of questions ............................................................................................................. 21
Responding to this Consultation .............................................................................................. 22
Annex A ................................................................................................................................... 24
Annex B ................................................................................................................................... 25
Annex C ................................................................................................................................... 26
Foreword

The Department of Health is firmly committed to preventing doctors who do not have sufficient knowledge of English from working in the UK.

We have already made changes in order to strengthen the law around language checks for doctors such as creating an explicit duty on Responsible Officers to ensure that any doctor appointed to a post has the necessary knowledge of English for the job. In addition, from April 2013, the new Performers List Regulations have created one national list of General Practitioners replacing the 53 lists held regionally.

But there is more that can be done to ensure that patients in the UK are not put at risk by doctors that do not have the necessary knowledge of English and that is why we are now publishing this consultation which outlines proposed amendments to the Medical Act 1983 which will give the General Medical Council (GMC) more explicit powers to take action where concerns arise about a doctor's English language capability.
Executive summary

- This consultation is being taken forward in accordance with the requirements of Section 60 of the Health Act 1999. The regulation making power in Section 60 permits modifications to the regulation of healthcare professionals by means of an Order in Council. The Government must consult on draft Orders prior to their introduction into Parliament.

- In May 2010, the Coalition Agreement set out that ‘we will seek to stop foreign healthcare professionals working in the NHS unless they have passed robust language and competence tests’ in order to assure patient safety and quality of care in the UK.

- Implications of European law, and in particular the Directive on the Mutual Recognition of Professional Qualifications (MRPQ), mean that, for European doctors, systematic language checking cannot be applied at the point of registration.

- Subsequently, the Department has worked with stakeholders to achieve a compliant solution that strengthens language controls for doctors wishing to practice in the UK.

- Discussions have concluded in the following proposals:
  - An explicit duty, in legislation, on Responsible Officers to ensure English language ability as part of the recruitment process,
  - To make amendments to the Medical Act 1983 to strengthen the GMC’s powers around language controls.

- The Responsible Officer part of the proposals was delivered on 1st April 2013, when The Medical Profession (Responsible Officers)(Amendment) Regulations 2013 came into force.

- This consultation document is concerned with the second proposal and seeks your views on proposed amendments to the Medical Act through an Order in Council which aim to prevent patients from being put at risk by doctors with inadequate language proficiency.

- The GMC are currently consulting on how they will implement these strengthened powers. They are seeking views on the draft regulations that will enable them to seek evidence and confirmation of a European doctor's ability to communicate in English should concerns emerge about their language capability during the GMC registration process. They are also seeking views on the draft rules and changes to legislation that deal with complaints that doctors already on the GMC register do not have the necessary knowledge of English.

- You can view and respond to the GMC’s consultation online/on their website at -
  [http://www.gmc-uk.org/about/consultations.asp]
Introduction

Background

1. In May 2010, the Coalition Agreement set out the Government’s intention to “seek to stop foreign healthcare professionals working in the NHS unless they have passed robust language and competence tests” in order to ensure patient safety and quality of care in the UK. This is an issue that the Government remains firmly committed to.

2. There is increasing concern that patients may be put at risk of harm through the inadequate English language capability of a minority of doctors. There are currently around 5000 applications each year from European doctors to register with the GMC however the GMC cannot require evidence from these applicants, even where there is cause for concern around their English language capability due to current legislation.

3. We have been working with the General Medical Council (GMC) and other stakeholders to look at ways to ensure that the language capability of doctors working in the UK is sufficient.

4. Following discussions, this consultation document sets out the Government’s intention to amend the Medical Act 1983 to strengthen the GMC’s powers to enable it to require applicants to provide evidence of their English language capability following registration but before issuing a licence to practise. The amendments to the Medical Act 1983 will also provide the GMC with adequate powers to protect the public where there are serious complaints that a registered doctor working in the UK lacks the necessary knowledge of English to provide safe care to patients.

5. There is clear evidence that there is a need to give the GMC additional powers. The GMC has provided the Department with figures which show that in 2012, 10 fitness to practise cases, which were concluded by the GMC, involved concerns about language skills. In addition, a survey of Responsible Officers by the England Revalidation Support Team (RST) in 2011, which covered just over half of all doctors, indicated that there were 66 cases in 2011 where Responsible Officers have dealt with linguistic concerns about a doctor. Further detailed analysis is contained in the accompanying impact assessment which can be found at Annex. [Add annex number]

6. This Government believes that these strengthened powers will enable the GMC to carry out proportionate checks on doctors where there is concern around their English language capability. These new powers will help to prevent patients from being put at risk of harm from doctors who do not have the necessary knowledge of English language.

What are the proposals?

1 In this document, the term ‘European doctor’ refers to a doctor who is:
   - a national of a relevant European state (this means a national of a member state of the European Economic Area or Switzerland), or
   - not a national of a relevant European state, but is entitled to be treated no less favourably for these purposes because he or she benefits under the Citizenship Directive from an enforceable Community right.
7. Currently if a European doctor applies to register and practise medicine in the UK, the GMC are not able to require evidence of their English language capability prior to registration, even if concerns are identified at that point. This is due to the application of European law, in particular the Directive on the MRPQ, which means that for European doctors, language checking cannot be applied at the point of registration.

8. In February 2013 the Department of Health published its response to the December 2012 Health Select Committee Report of the ‘Accountability hearing with the GMC’. In our response, the Department confirmed its intention to strengthen the current arrangements further to ensure that all doctors have sufficient knowledge of English who practise in the UK.

9. Subsequently, the Department has worked with stakeholders to achieve a compliant solution that strengthens language controls for doctors wishing to practise in the UK.

10. Following these discussion it was concluded that the best way to strengthen language controls for doctors who wish to practise in the UK is to make the following amendments to legislation:

   a. An explicit duty, in legislation, on Responsible Officers to check language ability as part of the recruitment process,

   b. Amendments to the Medical Act 1983 to strengthen the GMC’s powers around language controls.

11. The Responsible Officer part of the policy was delivered on 1st April 2013, when the Medical Profession (Responsible Officers) (Amendment) Regulations 2013 came into force.

12. This consultation document is concerned with the second proposal of amending the Medical Act through an Order in Council. The proposed amendments aim to prevent patients in the UK from being put at risk by doctors with inadequate English language capability by giving the GMC the power to require evidence of English language capability as part of the licencing process where concerns about language have been identified during the registration process. This will enable the GMC to apply language controls on applicants following registration, but before issuing of the licence, where there are concerns. The proposed amendments will also create a new category of impairment relating to necessary knowledge of English.

Current system for ensuring the language competency of doctors

13. Currently, there is a disparity between the existing checks in terms of language capability of European doctors and those from the wider world.

European doctors

14. Under the European Directive (2005/36/EC) European doctors who are going to another EEA country to work are entitled to have their medical qualification automatically recognised. In terms of the UK, this means that they are automatically registered with the GMC and granted a licence to practise, if there are otherwise no concerns about their fitness to practise.
15. The Directive implies that automatic recognition of qualifications cannot be subject to language proficiency (unless it belongs to the qualification). In addition, the European Court of Justice has also determined that it is not proportionate to undertake systematic language testing of persons seeking benefit under the Directive.

**International Medical Graduates (IMG)**

16. For IMGs, the GMC requires them to undergo language and competency tests (such as the International English Language Test System (IELTS)) before being registered and able to practise as a doctor in the UK.

**Additional checks and responsible officers**

17. Healthcare organisations have always had responsibilities for ensuring that the doctors they employ or contract with are competent for their role including in terms of language skills.

16. In addition to this, the role of the responsible officer in England has been strengthened through amended legislation\(^2\) so that they have an explicit duty to ensure that any doctor appointed to a post has the necessary language skills for the job.

**Performers list**

18. The new Performers List Regulations (which came into force in April 2013) have created one national list of General Practitioners replacing the 53 lists that were previously held regionally. This will allow NHS England to nationally refuse to include a GP on its list where it is not satisfied that they have sufficient knowledge of the English language necessary to perform their work.

**Gaps in the current system**

19. We believe that the current system of regulation, although strong, leaves some gaps, in terms of ensuring that all doctors who work in the UK have the necessary knowledge of English for their role. In particular, there are gaps in respect of those doctors who don’t have a responsible officer and also around the disparity in the level of assurance between European applicants and IMG applicants. The proposals aim to fill these gaps by ensuring that all doctors who work in the UK have the necessary knowledge of English for their role.

**The Mutual Recognition of Professional Qualifications Directive and Review**

20. The MRPQ sets out a system of recognition of qualifications which means that individuals from within the EEA are able to pursue a profession in any Member State without having to undertake the professional qualifications of the host Member State.

\(^2\) The Medical Profession (Responsible Officers) (Amendment) Regulations 2013, reg 4(2)(a)
21. The aim of the Directive is to ensure that professionals are able to work freely around the European Union without having to undertake further qualifications in the host Member State. For doctors, this is achieved through imposing a system of automatic recognition of qualifications through harmonised training requirements; the effect being that it is not permissible to test European doctors for language proficiency as a pre-condition of registration by the GMC.

22. In December 2011, the European Commission issued proposals for amendments to the Directive and the Department is currently working towards the UK Government priorities which include clarifying the role of the GMC and other competent authorities in applying proportionate checks on language. However, the changes are still subject to negotiation with the European Parliament and even if they are agreed it is unlikely they would be implemented into domestic law until the middle of 2015.
Proposals to strengthen language controls for doctors

23. In order to strengthen further the current system around the English language capability of doctors, the Department of Health is proposing a two pronged approach.

A. Licence to practise - The first part would enable the GMC to refuse a licence to practise to a doctor who was unable to demonstrate the necessary knowledge of English. This would apply on an application for first registration with the GMC or a subsequent application for a licence to practise if the doctor had not previously held a licence.

B. Fitness to practise - The second part would be to strengthen the GMC’s powers in relation to fitness to practise procedures against doctors already working in the UK. The proposals introduce a new category of impairment under section 35C of the Act relating to deficient knowledge of English.

24. The proposals set out in this consultation document, are designed to complement and further strengthen the existing language controls imposed through the responsible officer regulations, performers list regulations and other checks undertaken at a local level.

25. We believe that the proposed powers will improve quality of care and patient safety and will help to prevent patients from being put at risk of harm from doctors who do not have the necessary knowledge of English language.

Q1 Do you agree that strengthening language checks, as proposed above, will improve quality of care and patient safety?

Q2 Do you have additional evidence, other than what is set out in this document that some doctors practising in the UK have a level of language competence that creates a cause for concern?
26. Currently, when a European doctor who benefits from the MRPQ is granted registration by the GMC, upon recognition of their qualification, the effect of the Medical Act is that the doctor will automatically be granted a licence to practise medicine in the UK.

27. The MRPQ Directive limits the extent to which language tests can be applied at the point of registration for European doctors. This is because they are entitled to automatic recognition of their qualifications under the Directive which is granted through registration.

28. However, the Directive does require that the professional benefiting from the automatic recognition must have the necessary knowledge of language for practising the profession in the host Member State. Therefore, it is permissible under European Law to seek clarification from the professional that they have the necessary knowledge of English to practise medicine in the UK; however, this cannot be a reason for refusing registration, and any controls relating to language can only be applied after recognition has taken place.

29. The Department’s proposal, which is supported by the GMC, is to amend the Medical Act so that, where doubts about the applicant’s knowledge of language arise during the registration process, the GMC will be able to make an assessment of the applicant’s English language capability after they have confirmed their registration, but before the licence to practise has been issued.

30. It is the licence to practise that enables doctors to undertake functions which by law are restricted to licensed doctors, such as treating patients, prescribing medicines and signing death certificates. While registration with the GMC demonstrates that a doctor’s qualification has been recognised by the regulator and that the doctor is in ‘good standing’ with the GMC, it confers none of the powers and privileges associated with the licence to practise.

The Medical Act

31. Once a doctor has been registered with the GMC they are automatically granted a licence to practise. Section 29A of the Act places a duty on the GMC to make regulations with regard to licences to practise; and Section 29B requires such regulations to provide for a licence to be granted in the following circumstances:
   (i) upon first registration under the Act as a medical practitioner with full registration,
   (ii) upon being provisionally registered; and
   (iii) in such other cases as may be prescribed.

32. These provisions are incorporated into the General Medical Council (Licence to Practise and Revalidation) Regulations 2012. The effect of the Act is that where a doctor holds the relevant European medical qualification, subject to his fitness to practise being impaired, he is entitled to be registered under the Act as a fully registered practitioner and on first registration is entitled to receive a licence to practise. This is irrespective of whether the doctor has the necessary language skills to perform effectively in a medical setting.

33. The effect of the proposals in this consultation will be to enable the Registrar to refuse a licence to practise to a doctor who is unable to demonstrate the necessary knowledge of English. It is being proposed to impose a duty on the Registrar to have regard to any guidance published by the GMC.
under section 29G of the Act when determining whether a person has demonstrated the necessary knowledge of English. As a consequence, a duty will be imposed on the GMC to publish guidance under section 29G of the Act relating to the information and documents to be provided for the purposes of demonstrating whether a person has the necessary knowledge of English. This will provide a clear indication to applicants what information or evidence will be needed to satisfy the Registrar that they have demonstrated the necessary knowledge of English.

34. The proposals also include amendments to section 29E and 29J of the Act which will enable the Registrar to seek information from the applicant regarding their knowledge of English and, where it is considered necessary, to direct the applicant to undertake an assessment for the purposes of demonstrating whether they have the necessary knowledge of English. The Registrar will be given the power to refuse a licence if an applicant:
   - refuses to undertake an assessment,
   - fails to provide the information requested, or
   - fails to demonstrate he has the necessary knowledge of English.

35. Any person who is refused a licence on the grounds that they have failed to demonstrate they have the necessary knowledge of English will have a right of appeal to the Registration Appeal Panel under the Act and subsequently the national courts.

36. The process for assessing whether a person has the necessary knowledge of language will be set out in the GMC’s Licence to Practise and Revalidation Regulations 2012 (made under section 29A of the Medical Act).

Q3 Do you agree with the proposed changes for European applicants in relation to registration and licence to practise in terms of language proficiency?
Fitness to practise – Explanation

37. A list of impairments which may trigger a fitness to practise investigation are contained in section 35C of the Medical Act [Add ref].

38. The GMC does not have adequate powers to protect the public where there are serious complaints that a registered doctor working in the UK lacks the necessary knowledge of English to provide safe care to patients. We are proposing to create a new category of impairment by reason of a lack of the necessary knowledge of English. This will make it clearer for everyone to understand the nature of concerns and the rationale for steps taken to protect the public in such cases.

39. At present, the GMC cannot require a doctor to undergo an assessment of their knowledge of English during a fitness to practise investigation. This means it can be very difficult to gather sufficient objective evidence to support the need to take action on a doctor’s registration to prevent harm. We are proposing to strengthen the GMC’s ability to protect the public by giving it powers to require registered doctors to undertake a language assessment where concerns arise.

40. The changes will apply to all doctors, regardless of nationality, place of qualification, or whether they were required to provide evidence of English skills when they applied for registration or a licence to practise.

41. The Department believes that it would not be proportionate to allow a doctor to be erased from the register due to a lack of language proficiency as under European law, European doctors are legally entitled to have their qualifications recognised in the UK. Therefore the draft order also makes amendments to ensure that a doctor cannot be erased from the register in relation to language knowledge impairment alone. However, the GMC will be given new powers to suspend a doctor’s registration indefinitely where a doctor’s fitness to practise is impaired due to language concerns and shows no improvement over time.

Q4 Do you agree that changes to the Medical Act, as set out in this consultation document, will strengthen the language competence of doctors in the UK?

Q5 Do you think that changes to legislation are necessary to strengthen the language competence of doctors in the UK or is there an alternative that does not require a change to legislation?
Costs and benefits and equality analysis

Impact assessment

42. During the development of our proposals we have looked at the possible impact they might have. We believe that the changes will have a relatively small monetary impact. The costs are likely to fall to the GMC in terms of additional administration relating to requiring evidence of English language capability for some doctors. The cost of any required language tests will be borne by the individual doctor.

43. A full impact assessment can be found at Annex [DN: add annex number].

Q6 Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes?

Q7 Do you think there are any benefits that are not already discussed in the impact assessment relating to the proposed changes?

Equality

44. The Department of Health and the GMC are covered by the Equality Act 2010, and, specifically, the Public Sector Equality Duty.

45. The Duty covers the following protected characteristics: age; disability; gender reassignment; pregnancy and maternity; race (includes ethnic or national origins, colour or nationality); religion or belief ( Includes lack of belief); sex and sexual orientation.

46. There are three parts to the Duty and public bodies must, in exercising their functions, have due regard to all of them. They are:
   • the need to eliminate unlawful discrimination, harassment and victimisation;
   • advance equality of opportunity between people who share a protected characteristic and people who do not; and
   • promote good relations between people who share a protected characteristic and those who do not.

47. You can find the Equality Analysis at Annex [DN: add annex].

Q8 Do you think there are any additional equalities issues that need to be considered?
The draft order

48. This section deals with each of the provisions of the draft Medical Act 1983 (Amendment) (Knowledge of English) Order at Annex [DN: Add annex number] and aims to set out the effect of each provision and the policy intention behind it.

Citation, commencement and interpretation

[DN: this needs to be finalised]

Article 1 – Citation, commencement, extent and interpretation
Article 1 makes provision for the Order to come into force on the day after it is made.

Registration

Articles 2 and 3 – Registration
Articles 2 and 3 ensure that the licensing provisions in Parts II and III of the Act do not prevent a licensing authority from refusing to grant a licence to practise to any person where the person has not demonstrated the necessary knowledge of English.

Licence to practise

Article 4 – Grant, refusal and withdrawal of licence
Article 4 inserts the following new provisions into section 29B of the Medical Act

- sub-section (1A) which makes provision for a licensing authority to refuse to grant a licence to practise to a person where the person has not demonstrated the necessary knowledge of English;
- sub-section (1B) which requires regulations made under section 29A of the Act to make provision for the Registrar to take account of guidance published by the GMC under section 29G of the Act when determining whether a person has demonstrated the necessary knowledge of English;
- sub-section (2D) enables regulations made under section 29(A) to include a provision which requires a licensing authority to take account of evidence a person provides of his knowledge of English.

Article 5 - Evidence
Article 5 inserts a provision into section 29E of the Act enabling regulations under section 29A to request evidence or information about a person’s knowledge of English.
A paper for consultation

Article 6 – Guidance

Article 6 inserts a provision into section 29G of the Act, which places a duty on the GMC to publish guidance relating to the information and documents to be provided for the purposes of demonstrating that a person has the necessary knowledge of English.

Article 7 – Miscellaneous

Article 7 inserts a new provision into section 29J which enables regulations under section 29A to make the following provisions when determining whether a person has demonstrated the necessary knowledge of English:

- enabling the Registrar to require a person to undertake an assessment to demonstrate whether they have the necessary knowledge of English;
- requiring a person to provide any evidence, information or documents requested by the Registrar for the purposes of demonstrating whether the person has the necessary knowledge of English;
- enabling the Registrar to refuse the licence if the person refuses to provide the information so requested; and
- to make provision the same as section 29E(5) to (9) with regard to disclosure of information.

Article 8 – Functions of the investigation committee

Article 8 inserts a provision into section 35C of the Act which adds ‘not having the necessary knowledge of English’ an impairment for the purposes of triggering an investigation into a practitioner’s fitness to practise.

Articles 9 and 10 – Functions of a fitness to practise panel

Article 9 amends section 35D of the Act to prevent the fitness to practise panel from directing that a person’s name be erased from the register where a person’s fitness to practise has been found to be impaired on the grounds of knowledge of English.

Article 10 amends section 35E of the Act to provide a definition of a ‘language case’ referred to in section 35D. A case will be a language case where the impairment is in accordance with the practitioner’s language skills and no other impairment, other than a health case. If an impairment is based on a language case and/or a health case, erasure from the register would not be possible. A consequential amendment has also been made to the definition of a ‘health case’ in section 35E to give effect to this policy.

Article 11 – Language Assessments

Article 11 inserts a provision into paragraph 5A of Schedule 4 which makes clear that a practitioner’s knowledge of English may be assessed as part of their professional performance assessment under that paragraph.

Article 11 also inserts a further provision after paragraph 5A of Schedule 4, enabling the GMC to make rules authorising the giving of directions for a person to undertake a language assessment. The amendment also makes the following provisions:

(a) the process to be followed in respect of such assessments is to be set out in Rules;
A paper for consultation

(b) for the Registrar to refer the matter to the Fitness to Practise Panel (FTP) for failure by the practitioner to undertake the assessment or provide information in respect of the assessment;

(c) for the FTP to make a direction for suspension or conditional registration;

(d) for the practitioner to appeal the decision by the FTP.

Article 12 – Knowledge of English

Article 12 amends the definition of “the necessary knowledge of English” in section 55 of the Act so that it applies generally and is not limited to applications for registration.


Article 13 provides transitional provisions with regard to any applications for registration as a medical practitioner which have been received by the GMC before the Order comes into force.
Summary of questions

Q1 Do you agree that strengthening language checks, as proposed above, will improve quality of care and patient safety?

Q2 Do you have additional evidence, other than what is set out in this document that some doctors practising in the UK have a level of language competence that creates a cause for concern?

Q3 Do you agree with the proposed changes for European applicants in relation to registration and licence to practise in terms of language proficiency?

Q4 Do you agree that changes to the Medical Act, as set out in this consultation document, will strengthen the language competence of doctors in the UK?

Q5 Do you think that changes to legislation are necessary to strengthen the language competence of doctors in the UK or is there an alternative that does not require a change to legislation?

Q6 Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes?

Q7 Do you think there are any benefits that are not already discussed in the impact assessment relating to the proposed changes?

Q8 Do you think there are any additional equalities issues that need to be considered?
Responding to this Consultation

Consultation Process

This document launches a consultation on amendments to the GMC and GDC constitutions.

The consultation is being run, as far as is practical, in accordance with the Cabinet Office Code of Practice on Consultations (reproduced below). The closing date for the consultation is [ADD DATES HERE]

There is a full list of the questions we are asking in this consultation in Annex B and there is a questionnaire on the Department’s website which can be printed and sent by post to: Language checks consultation, 2N13 Quarry House Quarry Hill Leeds LS2 7UE

Alternatively, comments can be sent by e-mail to: [ADD EMAIL ADDRESS]

It will help us to analyse the responses if respondents fill in the questionnaire but responses that do not follow the structure of the questionnaire will be considered equally. It would also help if responses were sent in Word format, rather than pdf.

Criteria for consultation

This consultation follows the Government Code of Practice, in particular we aim to:

• Formally consult at a stage where there is scope to influence the policy outcome;
• Consult for a sufficient period.
• Be clear about the consultations process in the consultation documents, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
• Ensure the consultation exercise is designed to be accessible to, and clearly targeted at, those people it is intended to reach;
• Keep the burden of consultation to a minimum to ensure consultations are effective and to obtain consultees ‘buy-in’ to the process;
• Analyse responses carefully and give clear feedback to participants following the consultation;
• Ensure officials running consultations are guided in how to run an effective consultation exercise and share what they learn from the experience.

The full text of the code of practice is on the Better Regulation website at: www.bis.gov.uk/policies/better-regulation/consultation-guidance
A paper for consultation

Comments on the consultation process itself

If you have any concerns or comments which you would like to make relating specifically to the consultation process itself please contact

Consultations Coordinator Department of Health 3E48, Quarry House Quarry Hill Leeds LS2 7UE

Please do not send consultation responses to this address.

Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the Department of Health’s Information Charter (www.dh.gov.uk/en/FreedomOfInformation/DH_088010).

Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

Summary of the consultation responses

A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the DH website (www.dh.gov.uk)
Annex A

[DN: Add copy of the draft order]
A paper for consultation

Annex B

[Add Impact Assessment]
A paper for consultation

Annex C

[Add EqIA]