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## 5 – Specialist Register: Scheme for Existing Specialists – Annex A

### Registration Committee meeting held on 24 September 2008: Eligibility for Inclusion on the Specialist Register

#### To consider

*Eligibility for Inclusion on the Specialist Register: Restoration of the Existing Specialist Route*

#### Issue

1. Developing a Scheme to allow doctors who held consultants posts in the NHS and Armed Forces prior to 1 January 1997 to gain entry to the Specialist Register without the need to undergo an assessment by PMETB.

#### Recommendations

2. The Committee is invited to agree:
- a. That in addition to having held an appropriate Consultant post prior to 1 January 1997 the Scheme should be open only those doctors who are fit to practise and up to date (paragraphs 8 to 10).
  - b. Applicants who are currently registered medical practitioners should provide a declaration that they are not aware of any matters that might lead to them being referred to the GMC in order to satisfy the Registrar of their fitness to practise for the purposes of the Scheme (paragraph 12).
  - c. In the case of applicants who are unregistered the procedures currently in place in relation to restoration to the register of medical practitioners are sufficient to satisfy the Registrar of their fitness to practise for the purposes of the Scheme (paragraph 13).
  - d. Applicants who are currently employed at Consultant level in the UK should provide a declaration to this effect in order to satisfy the Registrar that they remain up to date for the purposes of the Scheme (paragraph 15).

e. Applicants who are not currently employed at Consultant level in the UK should provide details of their employment for the last three years in order to satisfy the Registrar that they remain up to date for the purposes of the Scheme (paragraph 17).

f. Applicants who are not currently employed in a medical capacity but have three years' experience of medical practice in the five years prior to making their application should provide evidence of how they have maintained their knowledge and skills in order to satisfy the Registrar that they remain up to date for the purposes of the Scheme (paragraph 18).

g. Applicants who have not practised medicine in any capacity during the previous five years should not be considered to be up to date for the purposes of eligibility under the Scheme (paragraph 19).

h. That the specialty shown in the Specialist Register for successful applicants under the Scheme should be that to which they were appointed prior to 1 January 1997 (paragraph 20).

### **Further information**

3.	Anthony Egerton	0161 923 6312	aegerton@gmc-uk.org
	Ian Renfrew	0207 189 5276	irenfrew@gmc-uk.org

## Background

4. The legislation that provided for the creation of the Specialist Register – the European Specialist Medical Qualifications Order 1995 (the 1995 Order) – made taking up a Consultant post (other than as a locum) in the NHS after 1 January 1997 conditional on the doctor having his or her name included in the Specialist Register. Those who were already Consultants would be entitled to apply for specialist registration by virtue of their status as ‘existing specialists’, under so-called transitional arrangements that required them to apply before 1 December 1998 or later, if they satisfy ‘the Registrar that there was good reason for not applying by then’.

5. On 30 September 2005 the PMETB assumed the roles previously carried out by the STA and the JCPTGP under the provisions of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 (the 2003 Order). The original 1995 Order having been repealed it was now the 2003 Order that specified the categories of doctors eligible for entry to the specialist register. However, existing specialists as defined in the 1995 Order were no longer among them. Any pre-1 January 1997 Consultants seeking entry to the Specialist Register would henceforth need to satisfy PMETB, under Article 14 of the 2003 Order, that their past specialist training and/or qualifications met the present standards required for the award of a Certificate of Completion of Training (CCT).

6. This mechanism quickly proved to be inappropriate for specialists whose training had been undertaken so long ago. Accordingly, and following lobbying by the GMC and others, the Department of Health has agreed to restore the previous arrangements for these doctors by amending the 2003 Order by means of the latest section 60 Order. However, having been a Consultant prior to 1 January 1997 will not of itself entitle a doctor to specialist registration: the GMC is required to publish a ‘scheme’ that will set the criteria to be considered in determining whether to include a person’s name in the Specialist Register.

## Discussion

7. The proposed amendments to the 2003 Order, which we expect to be enacted in early 2009, are as follows:

### Amendment of article 14 (**Specialists eligible for entry in the Specialist Register**)

After article 14(3) (specialists eligible for entry in the Specialist Register) insert—

“(3A) A person is also an eligible specialist for the purposes of article 13(2) (b) if—

(a) the person was a consultant in a medical specialty in the National Health Service or the armed forces immediately before 1 January 1997; and

(b) it would be appropriate, in accordance with the scheme for which article 15A makes provision, for the person's name to be included in the Specialist Register.”.

(3B) In paragraph (3A), “armed forces” means the naval, military or air forces of the Crown and includes the reserve forces within the meaning of section 1(2) of the Reserve Forces Act 1996.”.

#### New article 15A

#### **“Scheme for registration of persons who were consultants before 1997**

**15A.**—(1) This article has effect for the purposes of article 14(3A).

(2) The GMC shall publish a scheme for the inclusion in the Specialist Register of persons who were consultants in a medical specialty in the National Health Service immediately before 1 January 1997.

(3) The scheme shall make provision—

(a) as to the criteria to be considered in determining whether to include a person's name in the register; and

(b) excluding any person whose name has been removed from the Specialist Register under regulations made by virtue of section 29B(2A) of the Medical Act 1983 (grant, refusal and withdrawal of licences to practise).”.

(The reference to section 29B (2A) of the Medical Act, which concerns licences to practise, is not covered in this paper and will be undertaken later as part of the work being done on revalidation).

#### *Scheme eligibility criteria*

8. The proposed amendments to the 2003 Order applies only to those persons who were in substantive or honorary consultant posts in the NHS immediately before 1 January 1997. Inclusion in the Specialist Register generally is voluntary, so doctors must apply if they wish to be included. Central to any application will therefore be the provision of evidence of having been appointed to an appropriate Consultant post – substantive, honorary or fixed-term – prior to 1 January 1997.

9. An application process would also help the GMC to advertise and explain the Scheme (in addition to doing so in a variety of media). It presents a positive engagement with a group of doctors, allows them to confirm their identity to us and would reduce the risk of fraud. It also gives another data capture opportunity to keep the register up to date.

10. The revised 2003 Order also provides the GMC with discretion to determine the criteria to enable the Registrar to consider whether a person's name can be

entered into the specialist register. Although it would be in both the GMC's interests and of those likely to be affected to keep the criteria as simple as possible the key principle of the Scheme must be that for the safety of the public only those who are fit to practise and up to date should be eligible to apply.

**Recommendation:** That in addition to having held an appropriate Consultant post prior to 1 January 1997 the Scheme should be open only to those doctors who are fit to practise and up to date.

#### *Evidence of being fit to practise*

11. Potential applicants under the Scheme are likely to fall into one of five broad categories:

- a. those who are registered medical practitioners and are still in active practice in the UK;
- b. those who are registered medical practitioners and are still in active practice elsewhere in the world;
- c. those who are registered medical practitioners but not currently engaged in practice;
- d. those who are no longer registered medical practitioners but are still in active practice elsewhere in the world; and
- e. those who are no longer registered medical practitioners and are not currently engaged in practice.

12. Any information about a registered medical practitioner that raises a question of impaired fitness to practise is investigated by the GMC as soon as it is received and an appropriate flag added to that doctor's record on the database. Where an application for specialist registration under the Scheme is received from a doctor who is currently registered the absence of such a flag will in most cases be sufficient evidence that the applicant is fit to practise. However, added assurance would be provided if applicants provided a declaration that they were not aware of any matters that might lead them to be referred to the GMC's fitness to practise procedures.

**Recommendation:** Applicants who are currently registered medical practitioners should provide a declaration that they are not aware of any matters that might lead to them being referred to the GMC in order to satisfy the Registrar of their fitness to practise for the purposes of the Scheme.

13. Doctors applying for specialist registration who are no longer registered medical practitioners would first need to apply to restore their names to the register of medical practitioners. There are already procedures in place as part of the restoration process that require doctors to demonstrate that they are fit to practise. These include a statement from their most recent employer confirming the absence, or otherwise, that might lead to the doctor being referred to the GMC; and, if they have been working abroad they would also need to provide a certificate of good

standing from the regulatory body in whose jurisdiction they had been practising. These measures would therefore also satisfy the fitness to practise criteria of the Scheme.

**Recommendation:** In the case of applicants who are unregistered the procedures currently in place in relation to restoration to the register of medical practitioners are sufficient to satisfy the Registrar of their fitness to practise for the purposes of the Scheme.

#### *Evidence of being up to date*

14. Recency of practice is a good indicator that a doctor remains up to date. Many prospective applicants for specialist registration under the Scheme will still be in the same Consultant posts they held prior to 1 January 1997. Others may have since moved abroad and continued to practise at a similar level, while a small number may not have practised for a few years. The Scheme will need to reflect this.

15. Those still employed in their pre-1997 posts will make up the bulk of the applications that are likely to be received. By their nature they will be straightforward: they are still working at Consultant level in the UK and this will indicate that they are still up to date. For such doctors a declaration from them stating that they are still working as a Consultant would be sufficient evidence that they remain up to date.

**Recommendation:** Applicants who are currently employed at Consultant level in the UK should provide a declaration to this effect in order to satisfy the Registrar that they remain up to date for the purposes of the Scheme.

16. Doctors who are not currently employed as Consultants in the UK will require further analysis of their recent experience in relation to meeting the criteria for eligibility under the Scheme. There are a number of examples in current registration policy concerning recency of practice. The EC Directive 2005/36 'recognition of professional qualifications' requires those who seek to prove they have acquired rights to provide a certificate from a competent authority that states that they have been effectively and lawfully engaged in the activities in question for at least three consecutive years during a period of five years. In a similar vein, in exercising his discretion on whether to grant full registration to nationals of relevant European States whose qualifications have been awarded outside the EEA the Registrar, in accordance with Registration Committee guidance, takes into account whether the applicant has been in practice during the twelve months prior to making an application and for an aggregate of three years in the previous five.

17. Based on this model, doctors who are not currently in practice at the level of Consultant in the UK but, whether in the UK or elsewhere, have practised medicine in some capacity for three years immediately prior to making their application for specialist registration could be considered to be up to date for the purpose of the Scheme. All they would need to provide is details of where they have been working for the previous three years (eg. a reference or letter from their employer).

**Recommendation:** Applicants who are not currently employed at Consultant level in the UK should provide details of their employment for the last three

years in order to satisfy the Registrar that they remain up to date for the purposes of the Scheme.

18. For a number of reasons some doctors seeking specialist registration may not currently be in practice but wish to return to work at the level of Consultant. For these, details of their practice as a medical practitioner in some capacity for three years during the five years prior to making their application could be considered sufficient proof of being up to date for the purpose of the Scheme if they were to provide in addition evidence of how they have maintained their knowledge and skills in the interim.

**Recommendation:** Applicants who are not currently employed in a medical capacity but have three years' experience of medical practice in the five years prior to making their application should provide evidence of how they have maintained their knowledge and skills in order to satisfy the Registrar that they remain up to date for the purposes of the Scheme.

19. Although they might have held a Consultant post in the UK prior to 1 January 1997 it would not be appropriate for any doctor who has not practised medicine in any capacity within the previous five years to be considered eligible for specialist registration under the Scheme. The only alternative for such doctors would be an application to PMETB under article 14 of the 2003 Order.

**Recommendation:** Applicants who have not practised medicine in any capacity during the previous five years should not be considered to be up to date for the purposes of eligibility under the Scheme.

#### *Title of Specialty*

20. The specialist register must include the specialty in respect of which each person's name is included in the register. It is anticipated that applicants under the Scheme may have a particular view on their specialty. To keep the Scheme simple, however, successful applicants will be registered in the 'specialty' for which they were appointed as a Consultant prior to 1 January 1997. It is accepted that this may not be a specialty in which PMETB awards a CCT, but this would be no different to the position that existed prior to the abolition of the 'existing specialist' route in 2005.

**Recommendation:** That the specialty shown in the Specialist Register for successful applicants under the Scheme should be that to which they were appointed prior to 1 January 1997.

#### *Consultation*

21. In preparing this paper we have shared draft outline proposals with the PMETB and BMA. We subsequently met with Lesley Hawksworth (Director of Certification at PMETB) and Dr Jonathan Fielden (Chairman of the BMA's Central Consultants and Specialists Committee). Both support the Scheme in principle and the proposals we made. We intend to undertake a formal consultation on the Scheme using the recommendations approved by the Committee. We understand that it is acceptable to consult in advance of the Section 60 order being enacted. The

consultation will be undertaken between October and December and will enable us to have the Scheme ready in time for the reinstatement of the existing specialist route.

### **Resource implications**

22. The restoration of the existing specialist route will require utilisation of existing GMC resources and also some limited additional expenditure. Internal resources will be used to answer queries about the scheme and to produce the required supporting guidance and documentation. These costs will not be explicitly identified and will be accommodated in existing budgets. The additional cost will come from a communication campaign (in concert with others such as the BMA and NHS Trust medical directors) to ensure all those affected are aware of the scheme.

23. It is our intention to encourage the vast majority of potential applicants to apply as early as possible. To cope with this we plan to set up a temporary team to process the applications and we anticipate the costs to be £4,000. The communications required to support the project will cost approximately £3,000.

### **Equality**

24. We will carry out an equality impact assessment as part of our work on the consultation.

### **Communications**

25. Communicating the introduction of the Scheme will be a significant challenge and critical to its success. We understand that between 1000 -1500 doctors may be affected but cannot be sure of the group size, current status or their location. To ensure we communicate effectively we will form a small communications group (including input from PMETB, BMA, NHS Employers and the GMC communications directorate). The group will help us ensure we maximise coverage and communicate the Scheme effectively.