EXPLANATORY MEMORANDUM TO

THE GENERAL MEDICAL COUNCIL (APPLICATIONS FOR GENERAL PRACTICE AND SPECIALIST REGISTRATION) (AMEMDMENT) REGULATIONS ORDER OF COUNCIL 2011

2011 No. 1248

1. This explanatory memorandum has been prepared by The Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Regulations approved by this Order amend the provisions in The General Medical Council (Applications for General Practice and Specialist Registration) Regulations 2010 ("the principal Regulations") (approved by the Privy Council and scheduled to SI 2010/475) in respect of applications for inclusion in the General Practitioner register and the Specialist register of the General Medical Council ("GMC"). Other minor and consequential amendments are also made to the principal Regulations.

2.2 These Regulations remove regulation 5(2) and (3) from the principal Regulations which will have the effect of removing the detailed statutory evidence requirements affecting EEA migrants and certain other categories of applicants seeking entry to the Specialist or General Practitioner register.

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

3.1 None

4. Legislative Context

4.1 These Regulations are made (and approved by the Privy Council) under provisions in the Medical Act 1983, as amended, in particular, by SI 2010/234. The Regulations amend the provisions concerning evidence required from applicants for inclusion on the General Medical Council's General Practitioner and Specialist registers. Regulation 5(2) and (3) of the principal Regulations sets out the evidence that doctors of certain categories must provide in support of an application. This covers evidence of qualifications, training and experience. The omission of this provision removes the detailed prescriptive requirements for evidence, which the GMC will now set out in non-statutory guidance.

4.2 The categories of applicants concerned are those whose application is based on:

(a) equivalence of their training or qualifications, or both, to a "CCT" (defined in the Medical Act 1983 as a certificate of completion of training, relating to specialists or general practitioners only);
(b) their level of knowledge and skill being consistent with practice as a consultant in the National Health Service in any part of the UK; or
(c) recognition as an EEA-qualified specialist or general practice specialist, where the applicant is subject to the provisions of the European Communities (Recognition of Professional Qualifications) Regulations 2007 (SI 2007/2781). The 2007 Regulations give effect to the key elements of the "general system" of recognition in Directive 2005/35/EC on the recognition of professional qualifications (OJ L255, 30.9.2005, p. 22). The general system is based on competent authorities in a "host" Member State assessing the equivalence of a migrant's qualifications with those accepted in the host territory.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 In February 2010, in preparation for the merger of Postgraduate Medical Education Board (PMETB_with the GMC, the GMC Council adopted rules governing the way in which the GMC would carry out their new function following that merger. The rules adopted by the GMC incorporated as far as possible the provision and procedures that had previously been followed in the PMETB's legislation. Following a complaint made to the European Commission concerning the evidence requirements in the principal Regulations, the provisions about evidence were reviewed in relation to how they applied to applicants seeking admission to the General Practice and Specialist Registers under the "general system" referred to above. The Department agreed on reflection that the requirements, which applied to all applicants in the affected categories, were unduly prescriptive, and after discussion with the GMC, the GMC resolved to consult on amendments to the evidence requirements for all applicants caught by regulation 5(2) and (3) of the principal Regulations, rather than treat other applicants differently from the EEA applicants. Following the consultation, the Council of the GMC approved the Regulations on 7 April last.

7.2 In future, the GMC intend to describe the evidence they would like to see in guidance that will allow them to deal with applications for inclusion transparently, consistently and fairly with all categories of doctor.

Consolidation

7.3 The Regulations approved by the Privy Council and scheduled to this Order amend the General Medical Council (Applications for General Practice and Specialist Registration) Regulations 2010, scheduled to SI 2010/475.

8. Consultation outcome

1. 8.1 The GMC undertook a public consultation on the draft Regulations. It ran from 21st February 2011 to 21st March 2011. One hundred and thirty-one organisations were written to by the GMC posing two questions The consultation posed the following questions:

a. Did respondents agree that the proposed changes to the Regulations should apply to UK and international medical graduates as well as to EEA nationals? If not, why not?

b. Could the proposed changes have an adverse impact on particular groups and, if so, how might this be mitigated?

8.2 Twenty-three responses were received, of which 19 supported the proposed changes to the principal Regulations. Two respondents opposed the changes while two gave no preference.

8.3 The two respondents who opposed the changes were concerned that by setting out the information and evidence required in guidance, rather than as mandatory requirements in regulations, standards would be reduced. But that should not be the case, however, since the GMC in assessing must still be satisfied by the evidence of equivalence which an applicant presents, whether it is provided as a matter of compulsion or not. It will be in the interests of applicants to provide full and persuasive information. In relation to EEA applicants, doing so will avoid their having to undertake unnecessary adjustment training or aptitude testing). The European Commission's own guidance is clear that it is in an applicant's interest to offer as much relevant material to assist the competent authority assess the application as possible[1].

8.4 The GMC Council considered the report of the consultation exercise at its meeting on 7th April and decided to proceed to make the regulations.

9. Guidance

9.1 Guidance for doctors seeking registration with the General Medical Council is currently available on the GMC website and will be updated to take account of this SI shortly.

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[1] See "User Guide: Directive 2005/36/EC - 66 Questions & 66 Answers", answer 37, page 26 published by the Commission (at http://ec.europa.eu/internal_market/qualifications/docs/guide/users_guide_en.pdf).

10. Impact

10.1 The impact on business, charities or voluntary bodies from this Order.

10.2 The impact on the public sector is to remove from legislation some of the requirements for evidence to be supplied to the GMC by EEA migrants and other applicants seeking to register with the GMC.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Council for Healthcare Regulatory Excellence (CHRE). oversees the performance of the healthcare regulators, publishes its annual reviews of each regulator and is required to report its findings to Parliament.

13. Contact

Keith Baggs at the Department of Health Tel: 0113 254 5791 or email: keith.baggs@dh.gsi.gov.uk can answer any queries regarding the instrument.