**EXPLANATORY MEMORANDUM TO**

**THE GENERAL MEDICAL COUNCIL (LICENCE TO PRACTISE AND REVALIDATION) (AMENDMENT) REGULATIONS ORDER OF COUNCIL 2014**

**2014 No. 1273**

**THE GENERAL MEDICAL COUNCIL (FITNESS TO PRACTISE) (AMENDMENT) RULES ORDER OF COUNCIL 2014**

**2014 No. 1270**

**THE GENERAL MEDICAL COUNCIL (VOLUNTARY ERASURE AND RESTORATION FOLLOWING VOLUNTARY ERASURE) (AMENDMENT) REGULATIONS ORDER OF COUNCIL 2014**

**2014 No. 1272**

**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

These Orders approve amendments to the following General Medical Council ("GMC") sealed rules and regulations:

- General Medical Council (Licence to Practice and Revalidation) Regulations 2012 ;
- General Medical Council (Fitness to Practise) Rules 2004 ;
- General Medical Council (Voluntary Erasure and Restoration Following Voluntary Erasure) Regulations 2004.

The amendments implement the changes to the Medical Act 1983 ('the Act') made by the Medical Act 1983 (Knowledge of English) Order 2014 ("the 2014 Order") which will enable the General Medical Council to:

- refuse a medical practitioner a licence to practise where that person is not able to demonstrate the necessary knowledge of English to practise in a safe and competent manner;
- investigate a medical practitioner's English language capability in accordance with the fitness to practise procedures under the Act; and
- require a person to undertake an English language assessment before being restored to the register under the Act.

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

None.

## 4. Legislative Context

An Inquiry by the House of Commons Health Committee; the Committee's Report, 'The Use of Overseas Doctors in Providing Out of Hours Services (5th report session 2009-10)[1]' was published on 8th April 2010, which recommended that the Government make the necessary changes to legislation that would allow the GMC to language test applicants applying for registration (see paragraph 23).

This report followed the death of David Gray in 2008 after he received medical treatment by Dr Ubani, a German national, working his first shift as an out of hours doctor for a GP Service Provider. Dr Ubani gave Mr Gray an overdose of diamorphine (10 times the recommended maximum dose) resulting in Mr Gray's death.

Following a change of administration, the Coalition responded to this issue stating in the 2010 Coalition Agreement, "We will seek to stop foreign healthcare professionals working in the NHS unless they have passed robust language and competence tests". In its response to the Health Committee's Report[2], the Government committed to jointly explore options with the GMC for developing a strengthened system of language controls, and supported the recommendation for doctors to be able to communicate effectively (see paragraph 6).

Following the European Commission's Green Paper on proposals to amend the Mutual Recognition of Professional Qualifications Directive 2005/35/EC[3], the House of Lords EU Committee published a report in response to those proposals which addressed the issue of language testing of EEA doctors (see paragraphs 72-91)[4]. The Government's response to the Lords Report stated that it needed further clarification from the Commission as to what level of checks were permitted and at which point during the process they could be undertaken (pages 12 to 15).

The issue of language testing of EEA doctors was raised again during the GMC's annual accountability hearing before the Health Committee (see paragraphs 53-57 of the Report). The Committee reaffirmed that they were looking to "the Government, the GMC and the relevant EU institutions to produce a long-term solution to this problem within a timescale which reflects the potential risks to

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[1] http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhealth/441/441.pdf

[2] Response to the House of Commons Health Committee Report: The use of overseas doctors in providing out–of–hours services: Fifth Report of Session 2009–10.

[3] Brussels 22.06.22 COM(2011) 367 final.

[4] House of Lords European Union Committee / 22nd Report of Session 2010-12: Safety First: Mobility of Healthcare Professionals in the EU (19.11.2011).

patients". Subsequently, the Government presented its response in the form of a Command Paper to Parliament in February 2013[5] confirming its intention to strengthen the arrangements to ensure that all doctors have sufficient knowledge of English before being able to work in the UK by amending the Medical Act to enable (i) language checking to be linked to the licence to practise and (ii) to include language deficiency as an "impairment" for the purposes of the fitness to practise provisions under the Act (see pages 3-5).

The Medical Act 1983 (Knowledge of English) Order 2014 came into force on 29th April 2014. The Order amended Part I (Registration); Part IIIA (Licence to Practise and Revalidation); and Part V and Schedule 4A (Fitness to Practise) of the Act. These three statutory instruments implement these amendments.

*Licence to Practise and Revalidation*

Section 29A of the Medical Act 1983 requires the GMC to make regulations about licences to practise, which must include provisions relating to the grant, refusal and withdrawal of a licence. The General Medical Council (Licence to Practice and Revalidation) Regulations 2012[6] ("the Licence to Practise and Revalidation Regulations") are made under section 29A and make provision for these matters.

The amendments to Part IIIA of the Act enable the GMC to make provision in their section 29A regulations to refuse a licence to practise to a medical practitioner where that person is unable to demonstrate the necessary knowledge of English.

There is a requirement under section 29G(2A) of the Act for the GMC to publish guidance as to the information documents and evidence that a person is required to provide in order to demonstrate they have the necessary knowledge of English. Section 29A regulations must provide that a licensing authority must have regard to that guidance when considering whether a person has demonstrated the necessary knowledge of English.

*Fitness to Practise*

Schedule 4 of the Act enables the GMC to make rules about fitness to practise procedures. The General Medical Council (Fitness to Practise) Rules 2004[7] ("the Fitness to Practise Rules") set out those procedures.

The amendments to Part V of the Act have incorporated insufficient language knowledge as a category of impairment under section 35C of the Act for the purposes of triggering an investigation into a practitioner's fitness to practise. As a consequence, Schedule 4A of the Act was amended to enable the GMC to make

[5] http://www.official-documents.gov.uk/document/cm85/8520/8520.asp

[6] Scheduled to S.I. 2012/2685.

[7] Scheduled to S.I. 2004/2608.

provision in their fitness to practise rules for language knowledge cases, in particular, the ability to require a person to undertake a language assessment.

*Restoration*
Section 31A of the Act enables the GMC to make regulations relating to the restoration of a person to the register following their removal on the grounds of voluntary erasure. The GMC have made the General Medical Council (Voluntary Erasure and Restoration Following Voluntary Erasure) Regulations 2004 ("the Restoration Rules") under these powers.

Section 31 of the Act enables the GMC to make regulations relating to the restoration of a person to the register following their removal on the grounds of administrative erasure. Regulations under section 31 are subject to approval of the Privy Council but are not required to be laid before Parliament.

## 5. Territorial Extent and Application

These instruments apply to all of the United Kingdom.

## 6. European Convention on Human Rights

As these instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

## 7. Policy background

### What is being done and why?

### 7.1 The policy objectives

The GMC is the independent regulator of doctors in the UK. Its purpose is to protect, promote and maintain the health and safety of the public by making sure that doctors meet their standards for good medical practice.

The policy objective is to ensure that the GMC can carry out appropriate checks and investigations where it believes the safety of patients might be at risk because a doctor does not have the necessary knowledge of English.

Licence to practise

All doctors coming to work in the UK from outside of Europe must demonstrate that they have the necessary knowledge of English before they can practise as doctors in the UK. However, the GMC is currently not able to seek evidence about the English language skills of European doctors. These amendments will allow the GMC to seek evidence and confirmation of a

European doctor's ability to communicate in English, following registration but prior to granting the licence to practise.

The GMC will review the information provided by doctors as part of the standard application process, and based on that may in some cases ask for further information in relation to knowledge of English. For example, if a doctor has a recent primary medical qualification (PMQ) that has been taught and examined in English, or the PMQ is from a country where English is the first and native language (e.g. Republic of Ireland) then the GMC will not seek any further evidence.

The GMC will publish guidance setting out the types of evidence they are likely to accept, based on their expertise in assessing language evidence from international medical graduates. However, the Registrar has the power to exercise discretion and consider all types of credible evidence, and the GMC's guidance will set out their criteria for assessing that evidence.

Where a doctor is unable or unwilling to provide evidence of their knowledge of English, where requested, the GMC will continue to grant registration as recognition of the doctor's qualifications. However, they will refuse to grant a licence to practice in the UK until the doctor can demonstrate that they have the necessary knowledge of English.

Fitness to practise

When the GMC receives a serious complaint about a doctor's ability to communicate with patients and/or other health professionals, they undertake an investigation to decide whether it is necessary to take action to protect the public. These amendments will strengthen the GMC's ability to take action in relation to doctors who are already licensed where concerns are raised about their language skills.

The registrar and panel will be able to require doctors to undergo a language assessment if evidence of their language skills is needed to make a decision about their fitness to practise medicine in the UK.

## 7.2 Why legislation is necessary

The regulation of doctors is governed by the provisions of the Medical Act 1983. The Act incorporates powers enabling the GMC to make rules and regulations relating to licences to practise and revalidation, fitness to practice, and restoration to the register. The GMC's regulation making powers have been amended through the Medical Act 1983 (Amendment) (Knowledge of English) Order 2014, to enable the GMC to make provisions relating to a person's knowledge of English.

*Licence to practise*

Section 29A of the Act enables the GMC to make regulations relating to the grant, refusal and withdrawal of a licence to practise. The Licence to Practise and Revalidation Regulations have been made under these powers. The recent amendments to the Act enable the GMC to make provision under section 29A powers for a licensing authority to refuse to grant a licence to practise to any person who is unable to demonstrate the necessary knowledge of English. It is therefore necessary to amend the Licence to Practise and Revalidation Regulations to enable the GMC to implement these changes.

*Fitness to practise*

Schedule 4 of the Act enables the GMC to make rules relating to the GMC's Fitness to Practise procedures. The Fitness to Practise Rules have been made under these powers. The recent amendments to the Act enable the GMC to make provision under Schedule 4 rules to direct a medical practitioner to undertake an a assessment of that person's knowledge of English as part of the Fitness to Practise procedures.

It is therefore necessary to amend the Fitness to Practise Rules to enable a person, specified in the Rules, to direct a medical practitioner to undertake a language assessment, in cases where deficient language is a relevant factor in the medical practitioner's impairment.

*Restoration*

Section 31A of the Act enables the GMC to make regulations providing for the voluntary erasure of a practitioner's name from the register and subsequent restoration following erasure. The Restoration Regulations enable the Registrar to direct a medical practitioner to undertake professional performance or health assessments in fitness to practise cases as part of the restoration application.

The amendments to the Restoration Regulations inserts a new provision in regulation 5 of those Regulations, which applies rule 23(1)(b) and (c) of the Fitness to Practise Rules. This amendment is necessary as it will enable the Registrar to direct a medical practitioner, seeking restoration to the register, to undertake an assessment of his knowledge of English in accordance Schedule 3 of the Fitness to Practise Rules.

### 7.3 The size and nature of the problem it is addressing

The GMC receives roughly 5,000 applications for registration per year from European doctors (not including UK doctors). As a comparison, they receive about 3,000 applications per year from doctors outside of Europe. There are over 26,000 European doctors on the GMC's register.

In 2013, there were 13 fitness to practise cases which involved concerns about the language skills of doctors from Europe. In addition, a survey of

responsible officers (covering just over half of all doctors) by the England Revalidation Support Team in 2011 indicated that there were 66 cases where responsible officers have dealt with linguistic concerns about a doctor.

The GMC received a number of consultation responses from both patients and doctors referring to their own experiences of dealing with doctors who have poor English language skills. A range of doctors commented on the poor language skills they had encountered while working with some European doctors.

## 8. Consultation outcome

The Orders were subject to a twelve-week consultation by the GMC from 17 September to 10 December 2013. The consultation responses demonstrated a high level of support for the GMC's proposals. The consultation report is published online at

http://www.gmcuk.org/Making_sure_all_licensed_doctors_have_the_necessary_knowledge_of_English___Consultation_report.pdf_55135396.pdf

At the GMC Council meeting of 25 February 2014, Council considered the consultation report and the draft regulations and following commencement of The Medical Act 1983 (Knowledge of English) Order 2014 on 29 April 2014, the Council sealed the following instruments: General Medical Council (Licence to Practise Regulations and Revalidation) (Amendment) Regulations 2014; General Medical Council (Fitness to Practise) (Amendment) Rules 2014; and General Medical Council (Voluntary Erasure and Restoration) (Amendment) Rules 2014.

## 9. Guidance

Section 29G(2A) of the Act requires the GMC to publish guidance relating to the evidence, information or documents to be provided for the purposes of demonstrating that a medical practitioner has the necessary knowledge of English. The Licence to Practise and Revalidation Regulations requires the licensing authority to have regard to that guidance when determining whether a person has the necessary knowledge of English. The GMC will publish guidance on this matter before the Regulations come into force.

We therefore do not consider it is necessary for the Department to provide further guidance on this issue.

## 10. Impact

There will be a limited impact on individual doctors (who are likely to be EEA applicants) who may be required to take a language test at a cost of around £130 or, in some cases, stopped from working in the UK if their English language skills are not at the necessary level. The main costs will fall to the

GMC in terms of set up and administration costs, however, the GMC are not classed as a business, charity or voluntary body in terms of their regulatory work.

The impact on the public sector is nil

An Impact Assessment has not been prepared for this instrument.

## 11. Regulating small business

The legislation does not apply to small business.

## 12. Monitoring & review

The policy objective is to ensure that all doctors working in the UK have the necessary knowledge of English to practise in a safe and competent manner. This will be measured by the number of future complaints made to the GMC about concerns of a doctor's language capability. We will ask the GMC to keep the Department updated on this.

## 13. Contact

Elaine Plumb at the Department of Health Tel: 0113 254 5998 or email: Elaine.plumb@dh.gsi.gov.uk can answer any queries regarding these instruments.