

Draft Order in Council laid before Parliament under section 62(9) of the Health Act 1999, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

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, and Schedule 3 to, 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); and paragraph 2 of Schedule 8 to the Health and Social Care Act 2008. Section 62(4) was substituted by section 62(4) and (4A) 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 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) In this Order, “the Act” means the Medical Act 1983**(a)**.

PART 1

Registration

Amendment to section 2 of the Act

2.—(1) Section 2 of the Act (registration of medical practitioners)**(b)** is amended in accordance with this article.

(2) After subsection (3) insert—

“(4) Section 35C(2)(da) (the necessary knowledge of English) shall not apply in determining whether a person’s fitness to practise is impaired for the purposes of registration under this Act.”.

PART 2

Licence to Practise

Amendments to section 29B of the Act

3.—(1) Section 29B of the Act (grant, refusal and withdrawal of licence)**(c)** is amended in accordance with this article.

(2) In subsection (1) after ‘shall’ insert ‘subject to subsection (1A),’.

(3) After subsection (1) insert—

“(1A) Regulations under section 29A may include provision for a licensing authority to refuse to grant a licence to practise for a medical practitioner in any case where the person has not demonstrated the necessary knowledge of English to the authority (notwithstanding the medical practitioner’s registration under Part 2 or 3).

(1B) Regulations under section 29A which include provision under subsection (1A) must also include provision requiring the licensing authority, when determining whether a medical practitioner has demonstrated the necessary knowledge of English, to have regard to guidance published under section 29G(2A).”.

(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 medical practitioner provides of his knowledge of English.”.

(a) 1983 c. 54.

(b) Section 2 has been amended by S.I. 2002/3135 (commencement as notified in the London Gazette dated July 1, 2003); S.I. 2006/1914 (commencement as notified in the London Gazette dated July 19, 2006 and July 20, 2007); S.I. 2007/3101 and S.I. 2008/1774.

(c) Section 29B was added by S.I. 2002/3135 (commencement as notified in the London Gazette dated August 21, 2009), and amended by S.I. 2006/1914; and S.I. 2008/3131 (date to be appointed); there are other amending instruments but none are relevant.

Amendments to section 29G of the Act

4.—(1) Section 29G of the Act (guidance)(a) is amended in accordance with this article.

(2) After subsection (2) insert—

“(2A) The General Council must 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.”.

Amendments to section 29J of the Act

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

(2) After subsection (2D) insert—

“(2E) Regulations under section 29A may make provision in connection with determining whether a medical practitioner has demonstrated the necessary knowledge of English; and the regulations may in particular—

- (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 but the regulations may not require, or enable the licensing authority to request, evidence or information demonstrating that the practitioner’s knowledge of English exceeds 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

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

(2) After subsection (2)(d) insert—

“(da) not having the necessary knowledge of English (but see section 2(4));”.

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- (a) Section 29G was added by S.I. 2002/3135 (commencement as notified in the London Gazette on August 21, 2009), and amended by S.I. 2008/3131 and S.I. 2010/234.
 - (b) Section 29J was added by S.I. 2002/3135 (commencement as notified in the London Gazette on August 21, 2009, and December 3, 2012), and amended by S.I. 2008/3131 as commenced by S.I. 2009/2200.
 - (c) Section 35C was added by S.I. 2002/3135 (commencement as notified in the London Gazette dated October 8, 2004), and amended by S.I. 2006/1914 (commencement as notified in the London Gazette on July 20, 2007) and S.I. 2008/3131. Section 35C, 35D, 35E and Schedule 4 were amended by sections 98-110 of, and Schedule 6 and 7 to, the Health and Social Care Act 2008 (c. 14) but these amendments were not commenced and have now been repealed by section 231 of the Health and Social Care Act 2012 (c. 7) as commenced by S.I. 2012/1319. There are other amending instruments but none are relevant.

Amendment to section 35D of the Act

7.—(1) Section 35D (functions of a fitness to practise panel)(a) 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)(a) after “except in a health case” insert “or language case”.

Amendment to section 35E of the Act

8.—(1) Section 35E (provisions supplementary to section 35D)(b) 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) that 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

9.—(1) Schedule 4 to the Act (proceedings before the investigation committee, interim orders panels and fitness to practise panels)(c) 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 and, in particular, whether the person has the necessary knowledge of English.

(11) But an assessment carried out by virtue of this paragraph must not be limited to an assessment of whether a person has the necessary knowledge of English.

(12) Where an assessment is required to be undertaken by virtue of paragraph 5C below, that assessment shall not be carried out by an Assessment Team.”.

(3) After paragraph 5B insert—

“Knowledge of English Assessments

5C.—(1) The General Council may make rules—

(a) authorising the giving of directions by any of—

(i) the Investigation Committee,

(ii) a Fitness to Practise Panel,

(iii) such other persons as may be specified in the rules,

(a) Section 35D was added by S.I. 2002/3135 (commencement as notified in the London Gazette dated October 8, 2004).

(b) Section 35E was added by S.I. 2002/3135 (commencement as notified in the London Gazette dated October 8, 2004), as amended by S.I. 2006/1914 (commencement notified in the London Gazette dated September 8, 2006).

(c) Schedule 4 was substituted by S.I. 2002/3131 (commencement as notified in the London Gazette dated July 2, 2004), subject to savings provisions specified in S.I. 2004/1731 and S.I. 2004/2610; and was amended by Schedule 7 to, the Health and Social Care Act 2008 (c. 14) but these amendments were not commenced and have now been repealed by section 231 of the Health and Social Care Act 2012 (c. 7) as commenced by S.I. 2012/1319.

requiring a registered person to undertake an assessment of that person's knowledge of English;

- (b) specifying circumstances in which such an assessment may be undertaken otherwise than in accordance with a direction.

(2) An assessment required to be undertaken by virtue of this paragraph must be undertaken in accordance with rules made by the General Council under this paragraph; and the rules shall, in particular, provide—

- (a) for the procedures to be followed by such persons when 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 by virtue of paragraph (b) to be disclosed to such persons as may be prescribed under the rules.

(3) 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—

- (a) refer the matter to the Fitness to Practise Panel, and
- (b) if he does so, shall without delay serve on the person a notification of the making of such a referral.

(4) Where a matter is referred to the Fitness to Practise Panel under sub-paragraph (3), they may, if they think 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 think 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 give a direction for suspension or a direction for conditional registration the Registrar must 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 under 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).

(9) Sub-paragraphs (6) to (9) of paragraph 1 above shall apply in relation to rules made under this paragraph as they apply in relation to rules under that paragraph.”.

(4) In paragraph 8(1) (service of notifications of decisions)(a) after “41A(5) of this Act” insert “or paragraph 5C(3) or (5) above.”.

(5) In paragraph 9 (extension of time for appealing)—

- (a) in sub-paragraph (a), after “39(2) of this Act” insert “or paragraph 5C(5) above”;
- (b) after “section 40 of this Act” insert “or paragraph 5C(7) above or under rules made by virtue of paragraph 5A(3) above”.

(6) After paragraph 10A(b) insert—

“**10B.**—(1) A direction for suspension or for conditional registration given by the Fitness to Practise Panel under paragraph 5C(4) above shall take effect—

- (a) where no appeal under paragraph 5C(7) above is brought against the direction within the time specified in paragraph 5C(8) above, on the expiration of that time;
- (b) where such an appeal is so brought but is withdrawn or dismissed for want of prosecution, on the withdrawal or dismissal of the appeal;
- (c) where such an appeal is so brought and is not withdrawn or dismissed for want of prosecution, if and when the appeal is dismissed.

(2) Where the time for appealing against a direction is extended by an authorisation under paragraph 9 above—

- (a) sub-paragraph (1) above shall apply to the direction as if the reference in paragraph (a) to the time specified in paragraph 5C(8) above were a reference to that time as so extended; and
- (b) if the authorisation is given after the expiration of the time specified in paragraph 5C(8) above, the direction shall be deemed not to have taken effect on the expiration of that time,

and any reference in this Act to the time when such a direction takes effect in accordance with this paragraph shall be construed accordingly.”.

(7) In paragraph 11—

- (a) in sub-paragraph (1)—
 - (i) after “section 35D(2) of this Act” insert “or under paragraph 5C(4) above or under rules made by virtue of paragraph 5A(3) above”;
 - (ii) after “paragraph 10” insert “or 10B”;
- (b) in sub-paragraph (3)—
 - (i) after “section 35D(2) of this Act” insert “or under paragraph 5C(4) above or under rules made by virtue of paragraph 5A(3) above”;
 - (ii) after “paragraph 10” insert “or 10B”.

(8) In paragraph 12 (recording of directions for suspension or conditional registration) after “section 35D of this Act” insert “or under paragraph 5C(4) of this Schedule”.

(a) Paragraph 8(1) was amended by S.I. 2007/3101, regulation 35 (commenced December 3, 2007).

(b) Paragraph 10A was inserted by the Health and Social Care Act 2008 but was never commenced and has now been repealed by section 231 of the Health and Social Care Act 2012 as commenced by S.I. 2012/1319.

PART 4

Interpretation

Amendment to section 55 of the Act

- 10.**—(1) Section 55(1) of the Act (interpretation) is amended in accordance with this article.
- (2) For the definition of “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 Provision

11. This Order is not to apply—

- (a) to any application for registration as a medical practitioner, or
- (b) to any application for a licence to practise,

received by the General Medical Council before the day on which this Order comes into force and which has not been determined before that day.

12. Subject to article 11, this Order is to apply in relation to any decision to grant a licence to practise by virtue of Part IIIA of the Act notwithstanding that the medical practitioner to whom the decision relates has been registered under the Act before the day on which 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 (c. 54) (“the Act”).

Article 2 removes the application of section 35C(2)(da) of the Act (knowledge of English impairment) when considering a person’s fitness to practise for the purposes of registration under the Act.

Article 3 of the Order amends section 29B of the Act to require 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. This is notwithstanding the medical practitioner’s registration under Parts 2 and 3 of the Act. The regulations must also provide that the licensing authority have regard to guidance published by the General Council under section 29G(2A) of the Act in determining whether a person has the necessary knowledge of English.

Article 4 of the Order amends section 29G of the Act requiring the General Council to publish guidance under that section in respect of the evidence, information or documents to be provided for the purposes of demonstrating that a person has the necessary knowledge of English.

Article 5 of the Order amends section 29J of the Act to enable provision to be made under regulations under section 29A in connection with determining whether a person has the necessary knowledge of English.

Article 6 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 7 of the Order amends section 35D of the Act to prevent the Fitness to Practise Panel ('the 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 8 of the Order amends section 35E of the Act to provide a definition of 'a language case' referred to in section 35D.

Article 9(2) of the Order includes a provision to make it clear that a reference to the standard of a registered person's professional performance under paragraph 5A of Schedule 4 includes the standard of their knowledge of English, but places limitations on those powers.

Article 9(3) of the Order inserts a new provision into Schedule 4 enabling the General Council to make rules authorising prescribed persons to direct that a medical practitioner undertakes an assessment of that person's knowledge of English. Additional powers are provided to the Panel to direct that a person's registration be suspended or conditional if a person fails to undertake an assessment or provide information relating to that assessment. There are provisions enabling the practitioner to appeal against any such directions made by the Panel.

Articles 9(4) and (5) make consequential amendments to paragraphs 8 and 9 of Schedule 4 respectively in relation to the service of notification of decisions and the extension of time for appealing those decisions.

Article 9(6) inserts a new provision into Schedule 4 expressing when a direction made by the Panel will take effect.

Articles 9(7) and (8) makes consequential amendments to paragraphs 11 and 12 of Schedule 4 respectively in relation to the taking effect of directions under paragraph 5C(4) and the recording of such directions.

Article 10 amends the definition of 'the necessary of knowledge of English' in section 55(1) of the Act so that it applies generally and is not limited to applications for registration.

Article 11 provides transitional provisions so that the Order shall not apply in respect of any application for registration as a medical practitioner, or any application for a licence to practise, which has been received by the General Medical Council before the day on which the Order comes into force and which has not been determined before that day.

Article 12 provides transitional provisions so that, subject to article 11, the Order will apply in respect of any decision to grant a licence to practise irrespective of whether the person to whom the decision relates was registered under the Act on a day before the coming into force of the Order.

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