

2007 No. 3101

HEALTH CARE AND ASSOCIATED PROFESSIONS

# The European Qualifications (Health and Social Care Professions) Regulations 2007

*Made - - - - - 1st November 2007*

*Laid before Parliament 9th November 2007*

*Coming into force*

*Regulations 81 to 87, 93(e), (f)*

*(g) and (h) and 94(b)*

*Remainder*

*1st April 2008*

*3rd December 2007*



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The Secretary of State for Health, who is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to access to, the training for, the pursuit of, and the award of qualifications in the professions of dentistry, medicine, midwifery, nursing and pharmacy and their specialties(b), in relation to measures relating to access to, the training for, the pursuit of, and the award of qualifications in the profession of social worker(c), and in relation to the recognition of higher-education diplomas, formal qualifications, or experience in the occupation, required for the pursuit of professions or occupations(d), makes the following Regulations in exercise of his powers conferred under section 2(2) of, as read with paragraph 1A of Schedule 2(e) to, the European Communities Act 1972(f).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State for Health that it is expedient for the references to Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications(g), or to a provision of that Directive, to be construed as references to that Directive, or to that provision of the Directive, as amended from time to time.

## PART 1

### INTRODUCTORY

#### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the European Qualifications (Health and Social Care Professions) Regulations 2007.

(2) These Regulations, except for those regulations specified in paragraph (3), shall come into force on 3rd December 2007.

(3) Regulations 81 to 87, 93(e), (f), (g) and (h) and 94(b) shall come into force on 1st April 2008.

(4) The extent of any amendment made by these Regulations is the same as that of the enactment amended.

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- (a) 1972 c.68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51).
  - (b) S.I. 1995/3207.
  - (c) S.I. 2003/2901.
  - (d) S.I. 2002/248.
  - (e) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).
  - (f) The subject matter of section 21 of the National Health Service (Scotland) Act 1978 (requirement of suitable experience for medical practitioners) is not a reserved matter under the Scotland Act 1998 (c.46). In addition, the regulation of the professions of social worker, operating department practitioner, pharmacy technician, dental nurse, clinical dental technician, dental technician and orthodontic therapist is not a reserved matter under that Act. Therefore, as regards Scotland, see section 57(1) of the Scotland Act 1998 which provides that, despite the transfer to the Scottish Ministers by virtue of section 53 of that Act of functions in relation to observing and implementing Community law, any function of a Minister of the Crown in relation to any matter (including therefore in relation to the subject matter of section 21 of the National Health Service (Scotland) Act 1978 and in relation to the regulation of the professions specified above) shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.
  - (g) OJ No. L255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.

## PART 2

### MEDICAL PRACTITIONERS: MEDICAL ACT 1983

#### Amendment of Medical Act 1983

2. The Medical Act 1983(a) is amended in accordance with this Part.

#### Amendment of section 2

3. In section 2(b) (registration of medical practitioners), for subsection (2)(d) substitute—  
“(d) the list of visiting medical practitioners from relevant European States”.

#### Amendment of section 3

4. In section 3(c) (registration by virtue of primary United Kingdom or primary European qualifications)—
  - (a) in subsection (1)(b), for “any EEA State” substitute “any relevant European State”;
  - (b) in subsection (2)—
    - (i) in paragraph (a), for “an EEA State” substitute “a relevant European State”, and
    - (ii) for paragraph (b) substitute—  
“(b) is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the medical profession, no less favourably than a national of a relevant European State,”; and
  - (c) omit subsection (3).

#### Amendment of section 5

5. In section 5(d) (general functions of the Education Committee in relation to medical education in the United Kingdom)—
  - (a) in subsection (2A), for “article 23 of Directive 93/16/EEC” substitute “article 24 of the Directive (basic medical training)”;
  - (b) omit subsection (2B); and
  - (c) in subsection (4), for the definition of “Directive 93/16/EEC” substitute—  
““the Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications (OJ No. L255, 30.09.2005, p.22)(e), and any reference in this Act to the Directive or to any provision of the Directive is a reference to the Directive, or to that provision of the Directive, as amended from time to time;”.

#### Amendment of section 10A

6. In section 10A(f) (programmes for provisionally registered doctors), in subsection (6)(b), for “article 23 of Directive 93/16/EEC” substitute “article 24 of the Directive (basic medical training)”.

#### Amendment of section 14

7. In section 14(g) (alternative requirements as to experience in certain cases), in subsection (3), for “article 23 of Directive 93/16/EEC” substitute “article 24 of the Directive (basic medical training)”.

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(a) 1983 c.54.

(b) Section 2 was amended by S.I. 1996/1591, 2002/3135 and 2006/1914.

(c) Section 3 was substituted by S.I. 1996/1591 and amended by S.I. 2003/3148, 2004/1947 and 2006/1914.

(d) Section 5 was amended by S.I. 1996/1591, 2003/3148, 2004/1947 and 2006/1914.

(e) The Directive was amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.

(f) Section 10A was inserted by S.I. 2006/1914.

(g) Section 14(3) was inserted by S.I. 1996/1591.

## Insertion of section 14A

### 8. After section 14 insert—

#### “Full registration of EEA nationals etc without certain acquired rights certificates

**14A.**—(1) A person who is a national of a relevant European State—

- (a) whose case falls within regulation 3(9)(a) of the General Systems Regulations,
- (b) to whom regulations 20 to 26 of those Regulations apply by reason of the operation of regulation 3(4) of those Regulations,
- (c) who is permitted to pursue the profession of medical practitioner in the United Kingdom by virtue of Part 3 of those Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations), and
- (d) whose fitness to practise is not impaired,

is entitled to be registered under this section as a fully registered medical practitioner.

(2) Any person who—

- (a) is not a national of a relevant European State; but
- (b) is, by virtue of any enforceable Community right, entitled to be treated, for the purposes of access to the medical profession, no less favourably than a national of such a State,

shall be treated for the purposes of subsection (1) as if he were such a national.”

## Amendment of section 15A

### 9. In section 15A(a) (provisional registration for EEA nationals)—

- (a) in the heading, after “EEA nationals” insert “etc”;
- (b) in subsections (1), (2) and (3)(a), for “an EEA State” substitute “a relevant European State”;
- (c) in subsection (3)(b), for “a right conferred by article 11 of Regulation (EEC) No 1612/68, or any other enforceable Community right” substitute “any enforceable Community right”; and
- (d) in subsection (5), for “Article 23, paragraph 1(a), (b) and (c) of Directive 93/16/EEC” substitute “paragraph 3(a), (b) and (c) of article 24 of the Directive (basic medical training)”.

## Amendment of section 16

### 10. In section 16(b) (registration of qualifications)—

- (a) in subsection (1)—
  - (i) after “3,” insert “14A,” and
  - (ii) for “the primary United Kingdom” substitute “any primary United Kingdom”;
- (b) in subsections (1)(a) and (2), for “Schedule 2 to this Act” substitute “Annex V, point 5.1.1 of the Directive (evidence of formal qualifications in basic medical training)”;
- (c) in subsection (2), for “an EEA State” substitute “a relevant European State”.

## Amendment of section 17

**11.**—(1) Section 17(c) (primary qualifications obtained in other EEA States) is amended as follows.

(2) In the heading, for “EEA States” substitute “relevant European States”.

(3) In subsection (1)—

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(a) Section 15A was inserted by S.I. 2000/3041 and amended by S.I. 2006/1914.

(b) Section 16 was amended by S.I. 1996/1591, 2000/3041 and 2002/3135.

(c) Section 17 was substituted by S.I. 1996/1591 and amended by S.I. 2003/3148 and 2004/1947.

- (a) for “an EEA State” substitute “a relevant European State”;
  - (b) for paragraphs (a) to (c) substitute—
    - “(a) a qualification listed in Annex V, point 5.1.1 of the Directive which was obtained in a relevant European State on or after the reference date and is not evidence of training commenced by the holder before that date, provided that that qualification is accompanied, where appropriate, by the certificate listed in relation to that State in the column of Annex V, point 5.1.1 of the Directive entitled “Certificate accompanying the qualifications”;
    - (b) subject to compliance with subsection (2) below, a qualification listed in Annex V, point 5.1.1 of the Directive, which was obtained before the reference date, or on or after that date where training of which it is evidence was commenced by the holder before that date;
    - (ba) subject to compliance with subsection (2A) below, a qualification not listed in Annex V, point 5.1.1 of the Directive, which was obtained on or after the reference date and is not evidence of training commenced by the holder before that date;
    - (c) subject to compliance with subsection (3) below, a qualification not listed in Annex V, point 5.1.1 of the Directive, which was obtained before the reference date, or on or after that date where training of which it is evidence was commenced by the holder before that date;”;
  - (c) in paragraph (e)(ii), for “the state or former state” substitute “the former state”.
- (4) For subsections (2) and (3) substitute—
- “(2) For compliance with this subsection in the case of any qualification, either—
- (a) evidence of the qualification must be—
    - (i) such that the Registrar is satisfied (by means of a certificate of a competent authority of the relevant European State in which it was obtained or otherwise) that it accords with the standards laid down by article 24 of the Directive (basic medical training), and
    - (ii) accompanied, where appropriate, by the certificate listed in relation to the State in which the qualification was obtained in the column of Annex V, point 5.1.1 of the Directive entitled “Certificate accompanying the qualifications”; or
  - (b) evidence of the qualification must be accompanied by a certificate of a competent authority of any relevant European State that the holder has effectively and lawfully been engaged in medical practice in that State for at least three consecutive years during the five years preceding the date of the certificate.
- (2A) For compliance with this subsection in the case of any qualification, evidence of it must be accompanied by a certificate of a competent authority of the relevant European State in which it was obtained to the effect that—
- (a) it is evidence of training which satisfies the requirements of article 24 of the Directive; and
  - (b) it is treated by that State as if it were a qualification listed in relation to that State in Annex V, point 5.1.1 of the Directive.
- (3) For compliance with this subsection in the case of any qualification, evidence of it must be accompanied by a certificate such as is described in—
- (a) subsection (2)(b); or
  - (b) subsection (2A).”.
- (5) In subsection (4)—
- (a) in paragraph (a), for “Schedule 2 to this Act” substitute “Annex V, point 5.1.1 of the Directive”; and
  - (b) in paragraphs (a) and (b), for “the German medical authorities” substitute “a competent authority of Germany”.
- (6) In subsection (4A)—
- (a) in paragraph (a)—
    - (i) for “the medical authorities of the EEA State” substitute “a competent authority of the relevant European State”, and
    - (ii) for “Schedule 2 to this Act” substitute “Annex V, point 5.1.1 of the Directive”;

- (b) in paragraph (b), for “those authorities” substitute “a competent authority of that State”; and
- (c) in column (b) of the Table, for “Yugoslavia” substitute “Former Yugoslavia”.

(7) Omit subsection (5).

(8) For subsection (6) substitute—

“(6) In this section, “the reference date”, in relation to a relevant European State, means the date specified in relation to that State in the column entitled “Reference date” in Annex V, point 5.1.1 of the Directive.”.

### **Substitution of section 18**

**12.** For section 18(a) (visiting EEC practitioners) substitute—

#### **“Visiting medical practitioners from relevant European States**

**18.** Schedule 2A to this Act (visiting medical practitioners from relevant European States) shall have effect.”.

### **Amendment of section 19**

**13.** In section 19(b) (full registration of EEA nationals etc by virtue of overseas primary qualifications etc)—

(a) in subsection (1), after paragraph (a) insert—

“(aa) that, where—

- (i) that qualification was, or would have been, granted otherwise than in a relevant European State, and
- (ii) that qualification, or the person’s having passed those examinations, has not previously been accepted by a relevant European State as qualifying the person to practise as a medical practitioner in that State,

the qualification is, or would have been, evidence of medical training which satisfies the requirements of article 24(1), (2) and (3)(a), (b) and (c) of the Directive (basic medical training);”;

(b) after subsection (1) insert—

“(1A) Subsection (1) does not apply to persons entitled to be registered under section 14A or 19A.”;

(c) for subsection (2) substitute—

“(2) In this Act “exempt person” means a person who—

- (a) is a national of a relevant European State other than the United Kingdom;
- (b) is a national of the United Kingdom who is seeking access to, or is pursuing, the medical profession by virtue of an enforceable Community right; or
- (c) is not a national of a relevant European State, but is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the medical profession, no less favourably than a national of a relevant European State.”; and

(d) in subsection (3), for paragraph (a) substitute—

“(a) if the applicant holds a medical qualification which was granted otherwise than in a relevant European State, but has been accepted by a relevant European State, other than the United Kingdom, as qualifying him to practise as a medical practitioner in that State, the acceptance of that qualification; and”.

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(a) Section 18 was amended by S.I. 1996/1591.

(b) Section 19 was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914.

## Insertion of section 19A

14. After section 19 insert—

### **“Full registration of EEA nationals etc by virtue of overseas qualifications accepted by a relevant European State other than the United Kingdom**

**19A.** An exempt person—

- (a) whose case falls within regulation 3(9)(e) of the General Systems Regulations,
- (b) to whom regulations 20 to 26 of those Regulations apply by reason of the operation of regulation 3(4) of those Regulations,
- (c) who is permitted to pursue the profession of medical practitioner in the United Kingdom by virtue of Part 3 of those Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations), and
- (d) whose fitness to practise is not impaired,

is entitled to be registered under this section as a fully registered medical practitioner.”.

## Amendment of section 21

15. In section 21(a) (provisional registration of EEA nationals etc. with certain overseas qualifications), in subsection (2), after “paragraphs (a)” insert “, (aa)”.

## Amendment of section 21B

16. In section 21B(b) (full registration of persons with an overseas qualification), in subsection (1)—

- (a) at the end of paragraph (c) omit “and”; and
- (b) at the end of paragraph (d) insert—

“and

(e) that, where—

- (i) the person is an exempt person,
- (ii) his acceptable overseas qualification was, or would have been, granted otherwise than in a relevant European State, and
- (iii) that qualification, or the person’s having passed those examinations, has not previously been accepted by a relevant European State as qualifying the person to practise as a medical practitioner in that State,

that qualification is, or would have been, evidence of medical training which satisfies the requirements of article 24(1), (2) and (3)(a), (b) and (c) of the Directive (basic medical training),”.

## Amendment of section 21C

17. In section 21C(c) (provisional registration of persons with an overseas qualification), in subsection (2), for paragraph (a) substitute—

“(a) of the matters specified in paragraphs (a), (c), (d) and (e) of subsection (1) of section 21B above so far as they are matters of which the Registrar would in the person’s case have to be satisfied in order for the person to be eligible to benefit from a direction under that subsection; and”.

---

(a) Section 21(2) was amended by S.I. 2002/3135, and the heading of section 21 was amended by S.I. 2006/1914.  
(b) Section 21B was inserted by S.I. 2006/1914.  
(c) Section 21C was inserted by S.I. 2006/1914.



### **Amendment of section 26**

18. In section 26(a) (registration of qualifications), in subsection (1), after “19,” insert “19A,”.

### **Amendment of section 30**

19. In section 30(b) (the registers), in subsection (1)—

- (a) in paragraph (a), for “3, 15 or 15A” substitute “3, 14A, 15, 15A or 19A”; and
- (b) for paragraph (d) substitute—

“(d) in the list of visiting medical practitioners from relevant European States, the names of persons entitled to be registered under Schedule 2A.”.

### **Amendment of section 32**

20. In section 32(c) (registration fees), in subsection (5), for “as a visiting EEA practitioner” substitute “in the list of visiting medical practitioners from relevant European States”.

### **Amendment of section 40**

21. In section 40(d) (appeals)—

- (a) in subsection (1), omit paragraph (c) and the word “or” preceding that paragraph;
- (b) in subsection (4), omit “or 45(7)”; and
- (c) in subsection (5)(c), omit “(including one appealing against a decision falling within subsection (1)(c) above)”.

### **Amendment of section 44**

22. In section 44(e) (effect of disqualification in another member State on registration in the United Kingdom)—

- (a) in the heading, for “member State” substitute “relevant European State”;
- (b) in subsection (1)—
  - (i) for “an EEA State” substitute “a relevant European State”, and
  - (ii) after “section 3(1)(b)” insert “, 14A or 19A”;
- (c) in subsection (2)—
  - (i) for “the EEA State” substitute “the relevant European State”,
  - (ii) for “primary United Kingdom qualification or primary European qualification” substitute “medical qualification”, and
  - (iii) in paragraph (b), after “prohibited” insert “(whether on a permanent or temporary basis)”;
- (d) in subsections (3), (5) and (6), after “section 3(1)(b)” insert “, 14A or 19A”; and
- (e) omit subsection (7).

### **Amendment of section 44B**

23. In section 44B(f) (provision of information in respect of fitness to practise matters)—

- 
- (a) Section 26 was amended by S.I. 2002/3135 and 2006/1914.
  - (b) Section 30 was amended by S.I. 1996/1591, 2000/3041, 2002/3135 and 2006/1914.
  - (c) Section 32 was amended by S.I. 1996/1591 and 2006/1914 and by the Medical (Professional Performance) Act 1995 (c.51), paragraph 3 of the Schedule.
  - (d) Section 40 was substituted by S.I. 2002/3135 and amended by S.I. 2006/1914.
  - (e) Section 44 was amended by S.I. 1996/1591 and substituted by S.I. 2002/3135.
  - (f) Section 44B was inserted by S.I. 2006/1914; in that S.I. as originally printed, the inserted section 44B had two subsections (9), but a correction slip was issued confirming that the second of them is in fact subsection (10).



- (a) in subsection (1)—
  - (i) after “provision of this Act” insert “, other than Schedule 2A,”
  - (ii) in paragraph (a), for “because of his involvement in a serious matter or a problem” substitute “as a result of serious, specific circumstances or because of a problem”, and
  - (iii) in paragraph (b), for “that matter or problem” substitute “those circumstances or that problem”;
- (b) in subsection (2)—
  - (i) in paragraph (a), for “section 18 above” substitute “Schedule 2A”, and
  - (ii) in paragraph (b)—
    - (aa) after “fully registered” insert “otherwise than by virtue of Schedule 2A,” and
    - (bb) for “because of his involvement in a serious matter or a problem” substitute “as a result of serious, specific circumstances or because of a problem”;
- (c) for subsection (3) substitute—
 

“(3) In subsections (1) and (2), “serious, specific circumstances” has the same meaning as in article 56(2) of the Directive (exchange between authorities of information about disciplinary action etc.).”;
- (d) omit subsections (5) to (9); and
- (e) after subsection (10) insert—
 

“(11) Any provision made under subsection (2)(a) has effect subject to section 44BA below.”.

#### **Insertion of section 44BA**

**24.** After section 44B insert—

##### **“Fitness to practise of exempt persons: sufficient evidence**

**44BA.**—(1) Subsections (2) to (5) apply in relation to an exempt person (“E”) who applies for registration under section 3(1)(b), 14A or 19A of this Act.

(2) For the purpose of determining whether E’s fitness to practise is impaired, the Registrar shall accept as sufficient evidence of E’s good health a certificate which—

- (a) attests to E’s good physical and mental health; and
- (b) is required of a person who wishes to practise medicine in E’s attesting State.

(3) If no such certificate is required of persons who wish to practise medicine in E’s attesting State, for the purpose of determining whether E’s fitness to practise is impaired, the Registrar shall accept as sufficient evidence of E’s good health a certificate which—

- (a) attests to E’s good physical and mental health; and
- (b) is issued by a competent authority in E’s attesting State.

(4) For the purpose of determining whether E’s fitness to practise is impaired, the Registrar shall accept as sufficient evidence of E’s good character a certificate which—

- (a) attests to E’s good character or good repute; and
- (b) is issued by a competent authority in E’s attesting State.

(5) If no such certificate is issued by a competent authority in E’s attesting State, for the purpose of determining whether E’s fitness to practise is impaired, the Registrar shall accept as sufficient evidence of E’s good character a certificate—

- (a) attesting to the authenticity of a declaration on oath made by E—
  - (i) before a competent judicial or administrative authority, notary or qualified professional body of E’s attesting State, and
  - (ii) attesting to E’s good character; and
- (b) issued by the authority, notary or body referred to in paragraph (a)(i).

In this subsection, “declaration on oath” includes a solemn declaration.

(6) In subsections (2) to (5) the “attesting State”, in relation to E, is—

- (a) the relevant European State in which E obtained his medical qualification; or
- (b) (if different) the relevant European State from which E comes to the United Kingdom.

(7) The Registrar shall not accept any certificate referred to in subsection (2), (3), (4) or (5) if it is presented more than three months after the date on which it was issued.”.

#### **Repeal of section 45**

**25.** Omit section 45(a) (disciplinary provisions affecting practitioners who render services while visiting the United Kingdom).

#### **Amendment of section 46**

**26.** In section 46(b) (recovery of fees)—

- (a) in subsection (1), for “subsection (2) or (2A)” substitute “subsection (2A)”; and
- (b) omit subsection (2).

#### **Amendment of section 49**

**27.** In section 49(c) (penalty for pretending to be registered)—

- (a) in subsection (1), omit “Subject to subsection (2) below,”; and
- (b) omit subsection (2).

#### **Insertion of section 49B**

**28.** In Part VII (miscellaneous and general), before section 50 insert—

##### **“The Directive: designation of competent authority etc.**

**49B.**—(1) The General Council is designated as the competent authority in the United Kingdom for the purposes of the Directive so far as relating to the medical profession.

(2) The designation under subsection (1)—

- (a) does not extend to matters relating to training to be, or qualifications or practice as, a general practitioner or a specialist medical practitioner;
- (b) does not extend to the awarding of primary United Kingdom qualifications.

(3) Accordingly, the General Council shall in the United Kingdom carry out (in particular) the functions specified in Schedule 4A so far as those functions relate to matters other than specialist matters (as respects those functions so far as relating to specialist matters, see article 19 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order (S.I. 2003/1250)); and for this purpose each of the following is a “specialist matter”—

- (a) training to be a general practitioner or specialist medical practitioner;
- (b) qualifications as such a practitioner;
- (c) practice as such a practitioner.

(4) The bodies and combinations of bodies specified in section 4(2) are designated as competent authorities in the United Kingdom for the purposes of awarding primary United Kingdom qualifications.

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(a) Section 45 was amended by S.I. 1996/1591, 2000/1803, 2002/3135 and 2006/1914.

(b) Section 46 was amended by S.I. 1996/1591, 2002/3135 and 2006/1914.

(c) Section 49(2) was amended by S.I. 1996/1591.

(5) Subject to subsection (6), the Secretary of State may give directions to the General Council in connection with their functions specified in Schedule 4A, and it shall be the duty of the General Council to comply with any such directions.

(6) Directions given under subsection (5) may be as to matters of administration only.

(7) In Schedule 4A, “non-UK medical qualification” means a medical qualification that is awarded to a person by a competent authority of a relevant European State other than the United Kingdom.”.

## **Amendment of section 55**

**29.** In section 55(a) (interpretation)—

(a) in subsection (1)—

(i) after the definition of “appointing body” insert—

““competent authority” means any authority or body of a relevant European State designated by that State for the purposes of the Directive as competent to—

(a) receive or issue evidence of qualifications or other information or documents, or

(b) receive applications and take the decisions referred to in the Directive,

in connection with the practice of medicine;

“the Directive” has the meaning given by section 5(4) above;”;

(ii) omit the definition of “Directive 93/16/EEC”;

(iii) omit the definitions of “the EEA Agreement” and “EEA State”,

(iv) in the definition of “fully registered person”, for the words before paragraph (a) substitute—

““fully registered person” means a person for the time being registered under section 3, 14A, 19, 19A, 21B, 27A or 27B above as a fully registered medical practitioner, or under Schedule 2A as a visiting medical practitioner from a relevant European State, and—”;

(v) after the definition of “the General Council” insert—

““the General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781);”;

(vi) in the definition of “national”, for “EEA State” substitute “relevant European State”, and

(vii) after the definition of “the Registrar” insert—

““relevant European State” means an EEA State or Switzerland;”;

(b) in subsection (2), for “that Directive” (in both places) substitute “the Directive”; and

(c) after subsection (2) insert—

“(3) In relation to anything done—

(a) before the adoption by the Council and the European Parliament of the Directive, but

(b) after the adoption by the Council of Directive 93/16/EEC,

references in this Act to the Directive, or to any provision of the Directive, shall be construed as references to, or to any corresponding provision of, Directive 93/16/EEC as for the time being amended.

(4) In this section, “Directive 93/16/EEC” means Council Directive 93/16/EEC**(b)** of 5th April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications (OJ No. L165, 7.7.93, p.1).”.

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(a) Section 55 was amended by S.I. 1996/1591, 2000/3041, 2002/3135 and 2006/1914.

(b) Directive 93/16/EEC was last amended by the Act annexed to the Treaty relating to the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic signed at Athens on 16th April 2003, and was repealed with effect from 20th October 2007 by Directive 2005/36/EC.

### **Amendment of Schedule 1**

30. In Schedule 1 (the General Medical Council and its Committees, and the Branch Councils), in paragraph 10, for “section 18” substitute “Schedule 2A”.

### **Repeal of Schedule 2**

31. Omit Schedule 2(a) (primary European qualifications).

### **Insertion of Schedule 2A**

32. Before Schedule 3 insert—

## **“SCHEDULE 2A**

Section 18

### **VISITING MEDICAL PRACTITIONERS FROM RELEVANT EUROPEAN STATES**

#### **Application and interpretation**

1. This Schedule applies to an exempt person who is lawfully established in medical practice in a relevant European State other than the United Kingdom.

2. In this Schedule—

- (a) a “visiting practitioner” means an exempt person to whom this Schedule applies;
- (b) the “home State”, in relation to a visiting practitioner, means the relevant European State in which the practitioner is lawfully established in medical practice; and
- (c) a reference to the provision of occasional medical services is a reference to the provision of medical services in the United Kingdom on a temporary and occasional basis.

#### **Registration in respect of provision of occasional medical services**

3.—(1) A visiting practitioner is entitled to be registered under this Schedule in the register if the practitioner is entitled under paragraph 4 or 7 to provide occasional medical services; and the Registrar shall give effect to the entitlement.

(2) A visiting practitioner who is entitled under sub-paragraph (1) to be registered in the register, but who is not registered in the register’s list of visiting medical practitioners from relevant European States, shall be treated as registered in that list.

(3) Sub-paragraph (4) applies where a person’s entitlement under sub-paragraph (1) to be registered in the register ceases because, by reason of the operation of paragraph 8(1), (2) or (5), the person ceases to be entitled under this Schedule to provide occasional medical services.

(4) If the person’s name is registered in the register’s list of visiting medical practitioners from relevant European States, the Registrar may erase the person’s name from that list.

(5) Sub-paragraphs (1) to (4) are not to be taken to prejudice the application, in relation to persons registered in the register on the basis of entitlement under sub-paragraph (1), of any other provision of this Act under which a medical practitioner’s name may be erased from the register or under which a medical practitioner’s registration in the register may be suspended.

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(a) Schedule 2 was substituted by S.I. 2003/3148 and amended by S.I. 2004/1947.

#### **Entitlement to provide occasional medical services: first year**

4. A visiting practitioner is entitled to provide occasional medical services if—
- (a) the practitioner has complied with the requirements of paragraph 5, and
  - (b) where the practitioner's case falls within regulation 3(9)(a), (c) or (e) of the General Systems Regulations, the provision by the practitioner of occasional medical services is in accordance with regulations 14 to 16 of those Regulations (the practitioner having, in particular, successfully completed any adaptation period, or passed any aptitude test, that the practitioner may be required to undertake pursuant to Part 2 of those Regulations),

but paragraph 8 contains provision about the duration of entitlement under this paragraph.

#### **First provision of services: required documents**

5.—(1) A visiting practitioner who proposes to provide occasional medical services for the first time must, before providing any such services, send or produce to the Registrar the required documents.

(2) The required documents are—

- (a) a written declaration that—
  - (i) states the practitioner's wish to provide occasional medical services, and
  - (ii) contains details of the insurance cover, or other means of personal or collective protection, that the practitioner has with regard to professional liability;
- (b) if the practitioner is a national of a relevant European State, proof of nationality;
- (c) if the practitioner is not a national of a relevant European State, proof of the Community right by virtue of which the practitioner is an exempt person;
- (d) evidence of medical qualifications (see paragraph 6); and
- (e) a certificate (or certificates) issued by a competent authority in the practitioner's home State confirming—
  - (i) that the practitioner is lawfully established in medical practice in that State, and
  - (ii) that the practitioner is not prohibited (whether on a permanent or temporary basis) from practising as a medical practitioner there.

(3) A declaration under sub-paragraph (2)(a) may be supplied by any means.

6.—(1) Subject to sub-paragraph (4), the evidence referred to in paragraph 5(2)(d) is evidence of the European-recognised qualifications which entitle the visiting practitioner to provide, in the practitioner's home State, the medical services that the practitioner proposes to provide in the United Kingdom on a temporary and occasional basis.

(2) For the purposes of this paragraph and subject to sub-paragraph (4), the evidence of qualifications must, if the visiting practitioner proposes to provide any services as a general practitioner or a specialist medical practitioner in the United Kingdom on a temporary and occasional basis, include evidence of the European-recognised qualifications which entitle the practitioner to provide, in the practitioner's home State, those services as a general practitioner or a specialist medical practitioner.

(3) This sub-paragraph applies to a visiting practitioner whose case falls within regulation 3(9)(a), (c) or (e) of the General Systems Regulations (with the result that the practitioner is not entitled to provide occasional medical services unless their provision by the practitioner is in accordance with regulations 14 to 16 of those Regulations).

(4) If sub-paragraph (3) applies to a visiting practitioner, the evidence referred to in paragraph 5(2)(d) of the practitioner's medical qualifications is evidence of the qualifications which entitle the practitioner to practise as a medical practitioner in his home State.

(5) In this paragraph, "European-recognised qualifications" means qualifications which relevant European States are required by the Directive to recognise.

### **Entitlement to provide occasional medical services after first year: renewals**

7.—(1) Sub-paragraph (2) applies where the Registrar receives the required renewal documents from a visiting practitioner who is entitled under this Schedule to provide occasional medical services.

(2) The visiting practitioner is entitled to continue to provide occasional medical services, but paragraph 8 contains provision about the duration of entitlement continued under this sub-paragraph.

(3) Sub-paragraph (4) applies where the Registrar receives the required renewal documents from a visiting practitioner—

- (a) who is not entitled under this Schedule to provide occasional medical services;
- (b) who has been previously entitled under this Schedule to provide occasional medical services; and
- (c) whose registration in the list of visiting medical practitioners from relevant European States is not suspended.

(4) The visiting practitioner is once again entitled to provide occasional medical services but, in a case where the practitioner's name is not in the list of visiting medical practitioners from relevant European States as a result of erasure otherwise than under paragraph 3(4), only if the Registrar decides, after having regard (in particular) to the fact of that erasure and the reasons for it, that the entitlement should be renewed.

Paragraph 8 contains provision about the duration of entitlement under this sub-paragraph.

(5) In relation to a visiting practitioner “the required renewal documents” are—

- (a) a renewal declaration; and
- (b) each evidence of change document (if any).

(6) In this paragraph “renewal declaration”, in relation to a visiting practitioner, means a written declaration that—

- (a) states the practitioner's wish to provide occasional medical services in a further year; and
- (b) contains details of the insurance cover, or other means of personal or collective protection, that the practitioner has with regard to professional liability.

(7) Where a document—

- (a) is, in relation to a visiting practitioner, one of the required documents for the purposes of paragraph 5,
- (b) is not a declaration under paragraph 5(2)(a), and
- (c) substantiates a matter as respects which there has been a material change since the practitioner last (whether under paragraph 5 or this paragraph) supplied the then-current version of the document to the Registrar,

the version of the document current when under this paragraph the practitioner supplies a renewal declaration to the Registrar is an “evidence of change document” for the purposes of sub-paragraph (5)(b).

(8) A renewal declaration supplied under this paragraph may be supplied by any means.

### **Duration of entitlement to provide occasional medical services**

8.—(1) Unless an entitlement under paragraph 4 or 7(4) is continued (or further continued) by paragraph 7(2), the entitlement ceases at the end of the year that begins with the end of the day on which the Registrar received the documents whose receipt gave rise to the entitlement.

(2) Where an entitlement under paragraph 4 or 7(4) is continued (or further continued) by paragraph 7(2), the entitlement is extended so as to cease at the end of the year that begins with the end of the relevant day.

(3) For the purposes of sub-paragraph (2)—

- (a) if the day on which the Registrar receives the documents whose receipt gives rise to the continuation (or further continuation) is an anniversary of the start day, “the relevant day” means the day on which the Registrar receives those documents;
  - (b) otherwise, “the relevant day” means the anniversary of the start day that is the first such anniversary to occur after the Registrar receives the documents whose receipt gives rise to the continuation (or further continuation).
- (4) In sub-paragraph (3) “the start day”, in relation to an entitlement under paragraph 4 or 7(4), means the day on which the Registrar receives the documents whose receipt gives rise to the entitlement.
- (5) An entitlement under this Schedule to provide occasional medical services ceases if—
- (a) the visiting practitioner concerned becomes established in medical practice in the United Kingdom; or
  - (b) a relevant decision is made against the visiting practitioner concerned.
- (6) In sub-paragraph (5) “relevant decision”, in relation to a visiting practitioner, means a decision made by a competent or judicial authority in the practitioner’s home State that has the effect that the practitioner—
- (a) ceases in that State to be registered or otherwise officially recognised as a medical practitioner; or
  - (b) is prohibited (whether on a permanent or temporary basis) from practising as a medical practitioner in that State.
- (7) If in the case of a visiting practitioner—
- (a) the practitioner’s registration in the list of visiting medical practitioners from relevant European States is suspended or the practitioner’s name is erased from that list, and
  - (b) immediately before the time when the suspension or (as the case may be) erasure takes effect, the practitioner is entitled under this Schedule to provide occasional medical services,
- that entitlement ceases at that time.

### Conditions

9.—(1) Paragraph (2) applies if—

- (a) the establishment of a visiting practitioner in the practitioner’s home State is subject to a condition relating to the practitioner’s medical practice;
- (b) the practitioner’s name is registered in the register; and
- (c) for any of the purposes of this Act it falls to be decided whether the practitioner’s fitness to practise is or may be impaired on the ground of misconduct.

(2) The matters that may be counted as misconduct include (in particular) any act or omission by the visiting practitioner during the course of the provision by the practitioner of occasional medical services that is, or would be if the condition applied in relation to medical practice outside the practitioner’s home State, a breach of the condition.

(3) In paragraphs (1) and (2) “condition” includes limitation.”.

### Amendment of Schedule 3

33.—(1) Schedule 3(a) (registration: supplementary provisions) is amended as follows.

- (2) In paragraph 1(1), for “3, 15 or 15A” substitute “3, 14A, 15, 15A or 19A”.
- (3) In paragraph 2(2)(a), after “section 3(1)(b)” insert “, 14A or 19A”.
- (4) In paragraph 3—
  - (a) in sub-paragraph (1)—

---

(a) Schedule 3 was amended by S.I. 1996/1591, 2000/3041, 2002/3135 and 2006/1914.



- (i) for “3, 15 or 15A” substitute “3, 14A, 15, 15A or 19A”,
  - (ii) for “the primary United Kingdom” substitute “any primary United Kingdom”, and
  - (iii) for “those sections” substitute “section 3, 14A, 15 or 15A of this Act”; and
- (b) after sub-paragraph (1) insert—
- “(1A) An exempt person (“A”) who—
- (a) makes an application for registration under section 3(1)(b) of this Act,
  - (b) holds a qualification listed in Annex V, point 5.1.1 of the Directive (evidence of formal qualifications in basic medical training), and
  - (c) satisfies the requirements of article 24 of the Directive (basic medical training),
- shall produce or send to the Registrar a certificate as mentioned in sub-paragraph (1B).
- (1B) The certificate—
- (a) must be a certificate issued by a competent authority in A’s attesting State (as defined by section 44BA(6)); and
  - (b) must certify that the document conferring or evidencing A’s qualification produced or sent by A under sub-paragraph (1) is evidence of formal qualifications listed in relation to that State in Annex V, point 5.1.1 of the Directive.”.

(5) After paragraph 4 insert—

*“Proof of nationality*

**4A.** An exempt person (“A”) making an application for registration under section 3(1)(b), 14A, 15A or 19A of this Act shall produce or send to the appropriate registrar—

- (a) if A is a national of a relevant European State, proof of A’s nationality;
- (b) if A is not a national of a relevant European State, proof of the Community right by virtue of which A is an exempt person.

*Acknowledgement of applications*

**4B.** Where a person makes an application for registration under section 3, 14A, 15, 15A or 19A of this Act, the appropriate registrar, within the period of one month beginning with the date of receipt of the application, must—

- (a) acknowledge receipt of the application; and
- (b) inform the applicant of any missing document required for the purposes of the application.”.

(6) In paragraph 5—

- (a) in sub-paragraph (1), for “3, 15 or 15A” substitute “3, 14A, 15, 15A or 19A”; and
- (b) for sub-paragraph (1A) substitute—

“(1A) In this paragraph “the requisite period”—

- (a) in the case of an application under section 14A or 19A of this Act, means the period of four months beginning with—
  - (i) the date when the Registrar receives the application, or
  - (ii) if any document required for the purposes of the application is missing when the Registrar receives the application, the date on which the Registrar first has all the documents required for those purposes; and
- (b) in the case of any other application, means the period of three months beginning with the date on which the appropriate registrar receives all the documents enabling him to be satisfied of the applicant’s entitlement to be registered in accordance with the application.”.

(7) For paragraph 7, and the preceding heading, substitute—



*“Visiting medical practitioners from relevant European States*

7.—(1) No application shall be required in respect of registration in the list of visiting medical practitioners from relevant European States.

(2) The Registrar may issue certificates of registration to persons who are registered in the list of visiting medical practitioners from relevant European States.”.

**Amendment of Schedule 3A**

**34.** In Schedule 3A(a) (registration appeals)—

(a) in paragraph 1, in the definition of “person making the decision”, in paragraph (b)—

(i) omit “18,”, and

(ii) after “of this Act,” insert “or under Schedule 2A to this Act,”;

(b) in paragraph 2(1)—

(i) after paragraph (a) insert—

“(aa) a decision on an application made under Schedule 3 to this Act not to register the applicant under section 14A of this Act as a fully registered medical practitioner (full registration of EEA nationals etc without certain acquired rights certificates);

(ab) a decision under Part 3 of the General Systems Regulations to require an exempt person within paragraphs (a) and (b) of section 14A(1) to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to pursue the profession of medical practitioner in the United Kingdom;”,

(ii) omit paragraph (e),

(iii) after paragraph (f) insert—

“(fa) a decision on an application made under Schedule 3 to this Act not to register the applicant under section 19A of this Act as a fully registered medical practitioner (full registration of EEA nationals etc by virtue of overseas qualifications accepted by a relevant European State other than the United Kingdom);

(fb) a decision under Part 3 of the General Systems Regulations to require an exempt person within paragraphs (a) and (b) of section 19A to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to pursue the profession of medical practitioner in the United Kingdom;”,

(iv) in paragraph (n), in sub-paragraph (i) omit “or (7)”, and

(v) after paragraph (p) insert—

“(q) a decision that a person shall not, or shall no longer, be registered under Schedule 2A to this Act in the list of visiting medical practitioners from relevant European States.”; and

(c) in paragraph 3(2), for “3, 15, 15A, 19 or 21” substitute “3, 14A, 15, 15A, 19, 19A or 21”.

**Amendment of Schedule 4**

**35.** In Schedule 4(b) (proceedings before the Investigation Committee, Interim Orders Panels and Fitness to Practise Panels), in paragraph 8, in sub-paragraph (1), for “41(10), 41A(5) or 45(7)” substitute “41(10) or 41A(5)”.

**Insertion of Schedule 4A**

**36.** After Schedule 4 insert—

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(a) Schedule 3A was inserted by S.I. 2002/3135 and amended by S.I. 2006/1914.

(b) There are no relevant amendments to Schedule 4.

DIRECTIVE 2005/36: FUNCTIONS OF THE GENERAL COUNCIL  
UNDER SECTION 49B(3)

<i>Provision of Directive</i>	<i>Function of General Council</i>
Article 7(2)(b)	Issuing certificates containing attestations in relation to persons established, in the United Kingdom, as medical practitioners.
Article 8(1)	Receiving information from, or providing information to, other competent authorities in relation to—
	(a) the legality of a person’s establishment as a medical practitioner;
	(b) the good conduct of such a person;
	(c) the absence of any disciplinary or criminal sanctions of a professional nature against such a person.
Article 8(2)	Receiving information from, or providing information to, other competent authorities in connection with the investigation of complaints made against persons providing medical services.
Article 23(1)	Issuing certificates of effective and lawful practice in the United Kingdom to medical practitioners.
Article 23(6)	Issuing certificates stating that medical qualifications awarded in the United Kingdom, which do not correspond to the titles set out in respect of the United Kingdom at point 5.1.1 of Annex V to the Directive, certify successful completion of basic medical training that is in accordance with article 24 of the Directive.
Article 50(1) and paragraph 1(b) of Annex VII	Providing information to other competent authorities concerning the training in the United Kingdom of a medical practitioner to whom Chapter 1 of Part 3 of the General Systems Regulations applies.
Article 50(1) and paragraph 1(d) of Annex VII	Issuing, in respect of practice as a medical practitioner, the certificates of current professional status referred to in sub-paragraph (d) of paragraph 1 of Annex VII to the Directive within the time limits set by that sub-paragraph.
Article 50(1) and paragraph 1(e) of Annex VII	Issuing, in respect of practice as a medical practitioner, the certificates of good health referred to in sub-paragraph (e) of paragraph 1 of Annex VII to the Directive within the time limits set by that sub-paragraph.
Article 50(1) and paragraph 2 of Annex VII	Issuing certificates stating that primary United Kingdom qualifications are qualifications covered by the Directive.
Article 50(2)	In cases of justified doubts—
	(a) requiring confirmation of the authenticity of non-UK medical qualifications;
	(b) requiring confirmation that holders of non-UK medical qualifications satisfy the minimum training conditions set out in article 24 of the Directive;
	(c) providing confirmation to competent authorities of other relevant European States of the authenticity of any person’s primary United Kingdom qualification;

	(d)	providing confirmation that holders of primary United Kingdom qualifications satisfy the minimum training conditions set out in article 24 of the Directive.
Article 50(3)	In cases of justified doubts—	
	(a)	verifying information provided in connection with non-UK medical qualifications awarded following training in a relevant European State other than the State in which the qualification was awarded;
	(b)	providing information in connection with a person’s primary United Kingdom qualification awarded following training in another relevant European State.
Article 56(1)	Ensuring the confidentiality of information exchanged with other competent authorities.	
Article 56(2)	Receiving information from, or providing information to, other competent authorities regarding disciplinary action, criminal sanctions or other serious circumstances likely to have consequences for practice as a medical practitioner.	
	Where such information is received by the General Council—	
	(a)	examining the veracity of the circumstances;
	(b)	deciding the nature and scope of any investigations that need to be carried out;
	(c)	informing other competent authorities of the General Council’s conclusions.”

### PART 3

#### MEDICAL PRACTITIONERS: THE GENERAL AND SPECIALIST MEDICAL PRACTICE (EDUCATION, TRAINING AND QUALIFICATIONS) ORDER 2003

##### **Amendment of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003**

37. The General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(a) is amended in accordance with this Part.

##### **Amendment of article 5**

38. In article 5 (minimum requirements for general practice training)—

(a) in paragraph (1)—

(i) for sub-paragraph (a) substitute—

“(a) the training meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 28(1), the first sub-paragraph of article 28(2) and article 28(3) of the Directive (specific training in general medical practice); and”;

(ii) omit sub-paragraph (b), and

(iii) in sub-paragraph (c), for “the three year period specified in sub-paragraph (b)” substitute “the period of training specified in the first sub-paragraph of article 28(2) of the Directive”;

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(a) S.I. 2003/1250.

(b) for paragraph (2) substitute—

“(2) Once the minimum periods set out in paragraph (1)(c) have been met, any remaining period of training shall consist of a period of employment in a post (or posts) falling within paragraph (1)(c)(i) or (ii).”;

(c) omit paragraph (3); and

(d) omit paragraph (6).

### **Substitution of article 6**

**39.** For article 6 (minimum requirements for specialist training) substitute—

#### **“Minimum requirements for specialist training**

**6.—(1)** The minimum requirements for specialist training referred to in article 4(2) are that the training—

(a) constitutes an entire course of training in the specialty in question;

(b) meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 25(1), (2) and (3) of the Directive (specialist medical training); and

(c) must be for a period which is at least as long as the relevant period (if any) specified in Schedule 3 (specialties in which the UK awards a CCT).

(2) The Board may impose conditions in relation to any part-time specialist training which it approves.”.

### **Amendment of article 8**

**40.** In article 8(a) (award and withdrawal of a Certificate of Completion of Training)—

(a) in paragraph (3), omit “Subject to paragraph (4),”; and

(b) omit paragraphs (4), (9), (10) and (11).

### **Amendment of article 10**

**41.** In article 10(b) (the General Practitioner Register)—

(a) in paragraph (2)—

(i) for sub-paragraph (b) substitute—

“(b) eligible general practitioners as specified in article 11;

(ba) eligible general systems general practitioners as specified in article 11A;”, and

(ii) after sub-paragraph (c) add—

“and

(d) exempt persons—

(i) who are registered in the list of visiting medical practitioners from relevant European States mentioned in section 30(1)(d) of the Medical Act, and

(ii) who are providing services in the United Kingdom as a general practitioner on a temporary and occasional basis, in exercise of entitlement under Schedule 2A to the Medical Act (visiting medical practitioners from relevant European States).”;

(b) in paragraph (3), for “A person” substitute “Subject to paragraph (3A), a person”; and

(c) after paragraph (3) insert—

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(a) Article 8 was amended by S.I. 2004/1947.

(b) There are no relevant amendments to article 10.

“(3A) No application shall be required, and no fee shall be payable, in respect of inclusion in the General Practitioner Register pursuant to paragraph (2)(d).”.

### **Amendment of article 11**

**42.** In article 11(a) (general practitioners eligible for entry in the General Practitioner Register)—

(a) for paragraph (1) substitute—

“(1) A person is an eligible general practitioner for the purposes of article 10(2)(b) if he is an exempt person and he holds any of the following issued in a relevant European State other than the United Kingdom—

- (a) a qualification in general practice listed in Annex V, point 5.1.4 of the Directive, together with the corresponding professional title;
- (b) a certificate of acquired rights; or
- (c) a qualification in general practice which is not listed in Annex V, point 5.1.4 of the Directive, if that qualification—
  - (i) is accompanied by a certificate of a competent authority of the relevant European State in which the qualification was obtained to the effect that the qualification is evidence of training which satisfies the requirements of article 28 of the Directive (requirements for training in general medical practice), and
  - (ii) is treated by that State as if it were a qualification listed in relation to that State in Annex V, point 5.1.4 of the Directive.

(1A) A person is also an eligible practitioner for the purposes of article 10(2)(b) if he holds—

- (a) a certificate of prescribed experience; or
- (b) a certificate of equivalent experience.”;

(b) in paragraph (3)—

- (i) for “A person” substitute “Subject to paragraph (3A), a person”, and
- (ii) for “paragraph (1) or (2)” substitute “paragraph (1), (1A) or (2)”;

(c) after paragraph (3) insert—

“(3A) If a person falling within paragraph (3) is an exempt person and he holds a qualification in general practice which—

- (a) was granted otherwise than in a relevant European State, and
- (b) has not previously been accepted by a relevant European State as qualifying him to practise as a general practitioner in that State,

he is not an eligible general practitioner pursuant to paragraph (3) unless he satisfies the Board that his qualification in general practice is evidence of training that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 28 of the Directive (specific training in general medical practice).”;

(d) in paragraph (4), for sub-paragraph (a) substitute—

“(a) he is an exempt person who holds a qualification in general practice which—

- (i) was granted otherwise than in a relevant European State, but
- (ii) has been accepted by a relevant European State, other than the United Kingdom, as qualifying him to practise as a general practitioner in that State; or”;

(e) in paragraph (5), for “a person’s training, qualifications, or both when considered together are equivalent to a CCT in general practice” substitute “a person is an eligible practitioner pursuant to paragraph (3)”;

(f) in paragraph (6), for “article 16(4)” substitute “article 16(5)”; and

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(a) Article 11 was amended by S.I. 2004/865, 1016 and 1947.

- (g) in paragraph (7), for “satisfied, pursuant to paragraph (3), that a person’s training, qualifications, or both when considered together are equivalent to a CCT in general practice” substitute “satisfied that a person is an eligible practitioner pursuant to paragraph (3)”.

#### **Insertion of article 11A**

43. After article 11 insert—

#### **“General systems general practitioners eligible for entry in the General Practitioner Register**

**11A.**—(1) An exempt person—

- (a) whose case falls within regulation 3(9)(e) of the General Systems Regulations,
- (b) to whom regulations 20 to 26 of those Regulations apply by reason of the operation of regulation 3(4) of those Regulations, and
- (c) who has a right to practise as a general practitioner in the United Kingdom by virtue of Part 3 of those Regulations (having, in particular, successfully completed any adaptation period that he may be required to complete pursuant to that Part of those Regulations),

is an eligible general systems general practitioner for the purposes of article 10(2)(ba).

(2) The Board shall, in accordance with its duty under article 16(5), notify a person who has made an application to be considered as an eligible general systems general practitioner that—

- (a) he is an eligible general systems general practitioner; or
- (b) he is not an eligible general systems general practitioner, or is required to complete an adaptation period pursuant to Part 3 of the General Systems Regulations, giving reasons for that decision.”.

#### **Amendment of article 12**

44. In article 12(a) (acquired rights of general practitioners), for paragraph (1) substitute—

“(1) For the purposes of article 30(1) of the Directive (requirement for every relevant European State to determine the acquired rights that it recognises for the purpose of pursuing general medical practice in the framework of its national social security system without the evidence of formal qualifications listed in Annex V, point 5.1.4 of the Directive), a person has an acquired right to practise as a general practitioner in the United Kingdom if he falls within one of the categories of persons set out in Schedule 6.”.

#### **Amendment of article 13**

45. In article 13 (the Specialist Register)—

(a) in paragraph (2)—

- (i) after sub-paragraph (a) omit “and”, and
- (ii) for sub-paragraph (b) substitute—

“(b) eligible specialists as specified in article 14;

(c) eligible general systems specialists as specified in article 14A; and

(d) exempt persons—

- (i) who are registered in the list of visiting medical practitioners from relevant European States mentioned in section 30(1)(d) of the Medical Act, and
- (ii) who are providing services in the United Kingdom as a specialist on a temporary and occasional basis, in exercise of entitlement under Schedule 2A to the Medical Act (visiting medical practitioners from relevant European States).”;

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(a) Article 12 was amended by S.I. 2004/865 and 1016.

- (b) in paragraph (3)—
  - (i) for “A person” substitute “Subject to paragraph (3A), a person”, and
  - (ii) in sub-paragraph (b), for “he is also a registered dentist” substitute “he has successfully completed dental training that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 34 of the Directive (basic dental training)”; and
- (c) after paragraph (3) insert—
 

“(3A) No application shall be required, and no fee shall be payable, in respect of inclusion in the Specialist Register pursuant to paragraph (2)(d).”.

#### **Amendment of article 14**

**46.** In article 14 (specialists eligible for entry in the Specialist Register)—

- (a) after paragraph (2) insert—
 

“(2A) A person is an eligible specialist for the purposes of article 13(2)(b) if he holds a CCST.”;
- (b) for paragraph (3) substitute—
 

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

  - (a) he is an exempt person; and
  - (b) he holds a recognised specialist qualification (as specified in article 15).”;
- (c) in paragraphs (4) and (5), for “A person” substitute “Subject to paragraph (5A), a person”;
- (d) after paragraph (5) insert—
 

“(5A) If a person falling within paragraph (4) or (5) is an exempt person and he holds a specialist qualification which—

  - (a) was granted otherwise than in a relevant European State, and
  - (b) has not previously been accepted by a relevant European State as qualifying him to practise as a specialist in that State,

he is not an eligible specialist pursuant to paragraph (4) or (5) unless he satisfies the Board that his specialist qualification is evidence of training that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 25 of the Directive (specialist medical training).”;
- (e) in paragraph (6), for sub-paragraph (a) substitute—
 

“(a) he is an exempt person who holds a specialist qualification which—

  - (i) was granted otherwise than in a relevant European State, but
  - (ii) has been accepted by a relevant European State, other than the United Kingdom, as qualifying him to practise as a specialist in that State; or”;
  - (f) for paragraph (8) substitute—
 

“(8) If the Board is not satisfied, having taken into account the matters specified in paragraph (6) (where applicable), that a person is an eligible specialist pursuant to paragraph (4) or (5), paragraph (9) shall apply.”;
  - (g) in paragraph (10), for “article 16(4)” substitute “article 16(5)”; and
  - (h) for paragraph (11) substitute—
 

“(11) If the Board is satisfied that a person is an eligible specialist pursuant to paragraph (4) or (5), it shall, if the person so requests, issue to that person a written statement attesting to the fact that the person has satisfied the Board that he is eligible for inclusion in the Specialist Register (“statement of eligibility for registration”).”.

#### **Insertion of article 14A**

**47.** After article 14 insert—



**“General systems specialists eligible for entry in the Specialist Register**

**14A.**—(1) An exempt person—

- (a) whose case falls within regulation 3(9)(a), (c) or (e) of the General Systems Regulations,
- (b) to whom regulations 20 to 26 of those Regulations apply by reason of the operation of regulation 3(4) of those Regulations, and
- (c) who has a right to practise as a specialist in the United Kingdom by virtue of Part 3 of those Regulations (having, in particular, successfully completed any adaptation period that he may be required to complete pursuant to that Part of those Regulations),

is an eligible general systems specialist for the purposes of article 13(2)(c).

(2) The Board shall, in accordance with its duty under article 16(5), notify a person who has made an application to be considered as an eligible general systems specialist that—

- (a) he is an eligible general systems specialist; or
- (b) he is not an eligible general systems specialist, or is required to complete an adaptation period pursuant to Part 3 of the General Systems Regulations, giving reasons for that decision.”.

**Amendment of article 15**

**48.**—(1) Article 15(a) (recognised specialist qualifications) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (a).

(3) For paragraph (1)(b) substitute—

“(b) a specialist qualification listed in Annex V, point 5.1.2 of the Directive which was awarded—

- (i) in a relevant European State other than the United Kingdom,
- (ii) on or after the reference date and is not evidence of training commenced by the holder before that date, and
- (iii) in a specialty in which the United Kingdom awards a qualification as set out in Part 1 of Schedule 3;

(ba) a specialist qualification listed in Annex V, point 5.1.2 of the Directive—

- (i) which was awarded in a relevant European State other than the United Kingdom,
- (ii) which was awarded following training commenced by the holder before the reference date,
- (iii) which was awarded in a specialty in which the United Kingdom awards a qualification as set out in Part 1 of Schedule 3, and
- (iv) where the holder of the qualification satisfies the GMC (by means of a certificate of a competent authority of the relevant European State in which it was awarded or otherwise) that it accords with the standards laid down by article 25 of the Directive (specialist medical training);”.

(4) In paragraph (1)(c)—

- (a) in paragraph (i), for “an EEA State” substitute “a relevant European State”;
- (b) in paragraph (iii), after “laid down by” insert “article 25 of”;
- (c) in paragraph (iv), for “begun before the relevant date” substitute “commenced by the holder before the reference date”; and
- (d) for paragraph (v) substitute—

“(v) is accompanied by a certificate of a competent authority of any relevant European State that the holder has effectively and lawfully been engaged in the practice of his specialty in that State for at least three consecutive years during the five years preceding the date of the certificate;”.

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(a) Article 15 was amended by S.I. 2004/1947.



- (5) In paragraph (1)(d)—
- (a) in paragraph (i), for “an EEA State” substitute “a relevant European State”; and
  - (b) for paragraphs (ii) and (iii) substitute—
    - “(ii) does not correspond to the titles listed in Annex V, point 5.1.2 and 5.1.3 of the Directive, and
    - (iii) is accompanied by a certificate of a competent authority of that State to the effect that the qualification is evidence of training which satisfies the requirements of article 25 of the Directive and is treated by that State as if it were a qualification listed in respect of the relevant specialty in relation to that State in Annex V, points 5.1.2 and 5.1.3 of the Directive;”.
- (6) In paragraph (1)(e)—
- (a) for paragraph (i) substitute—
    - “(i) was awarded in Spain to doctors who completed their specialist training before 1st January 1995, even if that training does not satisfy the requirements of article 25 of the Directive;”;
    - and
  - (b) for paragraph (iii) substitute—
    - “(iii) is accompanied by a certificate issued by a competent authority in Spain attesting that the person concerned has passed the examination in specific professional competence held in accordance with article 27(2) of the Directive with a view to ascertaining that the person concerned possesses a level of knowledge and skill comparable to that of doctors who possess a specialist qualification listed in respect of the relevant specialty in relation to Spain in Annex V, points 5.1.2 and 5.1.3 of the Directive;”.
- (7) In paragraph (1)(f)—
- (a) in paragraph (i), for “articles 24 to 26” substitute “article 25”;
  - (b) in paragraph (ii)—
    - (i) for “the competent authorities” substitute “a competent authority”, and
    - (ii) for “Schedule 7 and Annex C” substitute “Annex V, point 5.1.2”; and
  - (c) for paragraph (iii) substitute—
    - “(iii) where evidence of the qualification is accompanied by a certificate of a competent authority in Germany that the holder has effectively and lawfully been engaged in the practice of his specialty in Germany for at least three consecutive years during the five years preceding the date of the certificate; and”.
- (8) In paragraph (1)(g)—
- (a) in paragraph (ii)—
    - (i) for “the competent authorities of the EEA State” substitute “a competent authority of the relevant European State”, and
    - (ii) for “Schedule 7” substitute “Annex V, point 5.1.2 of the Directive”;
  - (b) in paragraph (iii), for “those authorities” substitute “that authority”; and
  - (c) in column (a) of the Table, for “Yugoslavia” substitute “Former Yugoslavia”.
- (9) For paragraph (2) substitute—
- “(2) In paragraph (1) “the reference date”, in relation to a relevant European State, means the date specified in relation to that State in the column entitled “Reference date” in Annex V, point 5.1.2 of the Directive.”.

## **Insertion of article 15A**

49. After article 15 insert—

### **“Additional information to be provided with certain applications for inclusion in the Registers**

**15A.**—(1) An exempt person (“A”) who makes an application for inclusion in the General Practitioner Register or the Specialist Register shall produce or send to the Registrar of the GMC a certificate as mentioned in paragraph (2), if—

- (a) his application is based on the grounds that he is an eligible general practitioner pursuant to article 11(1), or an eligible specialist pursuant to article 14(3);
- (b) he holds a qualification listed in Annex V, point 5.1.2 of the Directive (evidence of formal qualifications of specialised doctors) or point 5.1.4 of the Directive (evidence of formal qualifications of general practitioners); and
- (c) he has successfully completed training that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 25 (specialist medical training) or 28 (specific training in general medical practice) of the Directive (as the case may be).

(2) The certificate—

- (a) must be a certificate issued by a competent authority in the relevant European State in which A obtained his qualification in general practice or his specialist qualification, or (if different) the relevant European State from which A comes to the United Kingdom; and
- (b) must certify that his qualification in general practice or his specialist qualification is a qualification listed in relation to that State in Annex V, point 5.1.2 or 5.1.4 of the Directive (as the case may be).”.

### **Substitution of article 16**

**50.** For article 16 substitute—

### **“Decisions on inclusion in the Registers**

**16.**—(1) Where a person makes an application for inclusion in either of the Registers pursuant to article 10(3) or 13(3), the Registrar of the GMC, within the period of one month beginning with the date of receipt of the application, must—

- (a) acknowledge receipt of the application; and
- (b) inform the applicant of any missing document required for the purposes of the application.

(2) The Registrar of the GMC must, in accordance with paragraph (3), give the applicant notice—

- (a) of the result of the application;
- (b) if he refuses the application, of the reasons for that refusal and of any right of appeal the applicant has under article 23.

(3) The Registrar of the GMC must give the applicant notice of the matters specified in paragraph (2)—

- (a) within the period of three months beginning with the date when the Registrar of the GMC receives the application, or, if any document required for the purposes for the application is missing when the Registrar receives the application, the date on which the Registrar first has all the documents required for those purposes; or
- (b) in a case where the applicant has previously had to make an application to which paragraph (4) applies, within the specified time.

(4) This paragraph applies to an application by a person to the Board in order to satisfy the Board that he is—

- (a) an eligible general practitioner pursuant to article 11(3);
- (b) an eligible specialist pursuant to article 14(4) or (5);
- (c) an eligible general systems general practitioner pursuant to article 11A; or
- (d) an eligible general systems specialist pursuant to article 14A.

- (5) Where a person makes an application to the Board to which paragraph (4) applies—
- (a) the Board, within the period of one month beginning with the date of receipt of the application, must—
    - (i) acknowledge receipt of the application, and
    - (ii) inform the applicant of any missing document required for the purposes of the application; and
  - (b) the Board must co-operate with the GMC, and the GMC must co-operate with the Board, to ensure that the applicant is able to apply to the GMC for inclusion in either of the Registers pursuant to article 10(3) or 13(3) and obtain a decision from the GMC within the specified time.
- (6) In paragraphs (3) and (5), “the specified time” means, subject to paragraph (7)—
- (a) in relation to an application to which paragraph (4)(a) or (b) applies, the period of three months—
    - (i) beginning with the relevant date, and
    - (ii) ending with the date on which the Registrar of the GMC gives the applicant notice of the matters specified in paragraph (2); and
  - (b) in relation to an application to which paragraph (4)(c) or (d) applies, the period of four months—
    - (i) beginning with the relevant date, and
    - (ii) ending with the date on which the Registrar of the GMC gives the applicant notice of the matters specified in paragraph (2).
- (7) In calculating the specified time pursuant to paragraph (6), the period—
- (a) beginning with the date on which the Board gives the applicant notice under article 11(6), 11A(2), 14(10) or 14A(2) (as the case may be), and
  - (b) ending, after the completion of any adaptation period or the determination of any appeal against a decision of the Board, with the date on which the GMC receives all the documents enabling it to determine whether it is satisfied of the applicant’s entitlement to be registered pursuant to article 10(3) or 13(3) (as the case may be),

shall be disregarded.

(8) For the purposes of complying with its duty pursuant to paragraph (5), the Board may, if it sees fit, provide to the GMC information relating to, or copies of, any applications that it has received to which paragraph (4) applies.

- (9) The “relevant date”, in relation to an application, is—
- (a) the date when the Board receives the application; or
  - (b) if any document required for the purposes of the application is missing when the Board receives the application, the date on which the Board first has all the documents required for those purposes.”.

### **Amendment of article 18**

**51.** In article 18 (removal and suspension from the Registers)—

- (a) in paragraph (2), omit “Subject to paragraph (3) and (4),”;
- (b) after paragraph (2) insert—

“(2A) If a person whose name is included in the General Practitioner Register pursuant to article 10(2)(d) ceases to satisfy either of the conditions specified in that provision, the Registrar of the GMC may remove that person’s name from the General Practitioner Register.

(2B) If a person whose name is included in the Specialist Register pursuant to article 13(2)(d) ceases to satisfy either of the conditions specified in that provision, the Registrar of the GMC may remove that person’s name from the Specialist Register.”; and

- (c) omit paragraphs (3) and (4).

### **Substitution of article 19**

**52.** For article 19 substitute—

#### **“The Directive: designation of competent authorities etc.**

**19.—(1)** In accordance with paragraphs (2) to (4), the GMC and the Board are designated as the competent authorities in the United Kingdom for the purposes of the Directive relating to specialists and general practitioners.

(2) The GMC shall in the United Kingdom be responsible for the recognition and registration of specialist qualifications and qualifications in general practice, and shall carry out (in particular) the functions specified in Part 1 of Schedule 7A.

(3) The Board shall in the United Kingdom be responsible for matters relating to training in general medical practice and specialist training, including the assessment of training for the purposes of certain applications for inclusion in the General Practitioner Register or the Specialist Register, and shall carry out (in particular) the functions specified in Part 2 of Schedule 7A.

(4) The Board is designated as the competent authority in the United Kingdom for the purposes of awarding the following qualifications—

- (a) as regards general medical practice, CCTs in general practice and certificates of acquired rights;
- (b) as regards the practice of a medical specialty, CCTs in a specialty listed in Schedule 3.

(5) In Schedule 7A, “non-UK specialist or GP qualifications” means specialist qualifications or qualifications in general practice that are awarded to a person by a competent authority of a relevant European State other than the United Kingdom.”.

### **Revocation of article 20**

**53.** Article 20 (specialist qualifications) is revoked.

### **Amendment of article 21**

**54.** In article 21(a) (appeal to an Appeal Panel against a decision of the Board)—

(a) in paragraph (2)—

(i) in sub-paragraph (f), for “within three months of the date on which the applicant submits his application, together with full supporting documentation” substitute “within the period of three months beginning with the relevant date”,

(ii) after sub-paragraph (f) insert—

“(fa) a person who fails to satisfy the Board that he is an eligible general systems general practitioner pursuant to article 11A;

(fb) a person to whom the Board fails to give a decision under article 11A(2) within the period of four months beginning with the relevant date;”,

(iii) in sub-paragraph (h), for “within three months of the date on which the applicant submits his application, together with full supporting documentation” substitute “within the period of three months beginning with the relevant date”,

(iv) after sub-paragraph (h) insert—

“(ha) a person who fails to satisfy the Board that he is an eligible general systems specialist pursuant to article 14A;

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(a) Article 21 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 11, Part 3, paragraph 5.

- (hb) a person to whom the Board fails to give a decision under article 14A(2) within the period of four months beginning with the relevant date;”, and
- (v) omit sub-paragraphs (i) and (j);
- (b) after paragraph (2) insert—
  - “(2A) In paragraph (2), “the relevant date” has the same meaning as in article 16(9).”;
- (c) in paragraph (3)—
  - (i) for “sub-paragraph (e), (g) and (i)” substitute “sub-paragraph (e) and (g)”, and
  - (ii) for “11(5), 14(9) or 20(3)(a)(ii)” substitute “11(5) or 14(9)”;
- (d) after paragraph (3) insert—
  - “(3A) The right of appeal under sub-paragraph (fa) and (ha) of paragraph (2) shall include a right of appeal against a decision of the Board under Part 3 of the General Systems Regulations requiring a person to complete an adaptation period in connection with becoming entitled by virtue of that Part of those Regulations to practise as a general practitioner or a specialist (as the case may be) in the United Kingdom.”; and
- (e) in paragraph (5), for “(f), (h) or (j)” substitute “(f), (fb), (h) or (hb)”.

### **Amendment of article 23**

**55.** In article 23 (appeals against decisions on inclusion in the Registers)—

- (a) after paragraph (1) insert—
  - “(1A) A decision by the Registrar of the GMC to refuse to register a person—
    - (a) in the General Practitioner Register pursuant to article 10(2)(d), or
    - (b) in the Specialist Register pursuant to article 13(2)(d),
 shall also be treated as an appealable registration decision under Schedule 3A to the Medical Act and the procedure in that Schedule shall accordingly apply.”; and
- (b) in paragraph (2), for “article 16(1) within the time specified in article 16(2) or, where applicable, article 16(4)” substitute “article 16(2) within the time specified in article 16(3)”.

### **Amendment of Schedule 1**

**56.** In Schedule 1(a) (interpretation)—

- (a) in the definition of “certificate of acquired rights”—
  - (i) for “article 36(4)” substitute “article 30(1)”, and
  - (ii) for “a vocational training certificate in general practice” substitute “the evidence of formal qualifications of a general practitioner referred to in Annex V, point 5.1.4 of the Directive”;
- (b) for the definition of “competent authority” substitute—
  - ““competent authority” means any authority or body of a relevant European State designated by that State for the purposes of the Directive as competent to—
    - (a) receive or issue evidence of qualifications or other information or documents, or
    - (b) receive applications and take the decisions referred to in the Directive, in connection with practice as a general practitioner or a specialist;”;
- (c) in the definition of “CCT”, omit “, including any such certificate” to the end;
- (d) for the definition of “the Directive” substitute—
  - ““the Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications(b), and references in this Order to

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(a) Relevant amendments to Schedule 1 were made by S.I. 2004/1947.

(b) OJ No. L255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.

the Directive or to any provision of the Directive are references to the Directive, or to that provision of the Directive, as amended from time to time;”;

- (e) omit the definition of “EEA”;
- (f) omit the definition of “EEA Agreement”;
- (g) omit the definition of “EEA State”;
- (h) after the definition of “ESMQO 1995”, insert—
  - ““exempt person” means—
  - (a) a national of a relevant European State other than the United Kingdom,
  - (b) a national of the United Kingdom who is seeking access to, or is pursuing, the medical profession by virtue of an enforceable Community right; or
  - (c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the medical profession, no less favourably than a national of a relevant European State;”;
- (i) after the definition of “General Practitioner Register” insert—
  - ““General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007(a);”;
- (j) in the definition of “national”, for “an EEA State” substitute “a relevant European State”;
- (k) omit the definition of “registered dentist”;
- (l) after the definition of “the Registers” insert—
  - ““relevant European State” means an EEA State or Switzerland;”;
- (m) omit the definition of “vocational training certificate”.

#### **Amendment of Schedule 2**

**57.** In Schedule 2 (the Postgraduate Medical Education and Training Board and its Statutory Committees), in Part 2, in paragraph 12(1)(b), for “11(3), 14(4) or 14(5)” substitute “11(3), 11A, 14(4), 14(5) or 14A”.

#### **Amendment of Schedule 3**

**58.** In Schedule 3(b) (specialities in which the UK awards a CCT, and any minimum training periods), in Part 1—

- (a) under the heading “Four years”, omit the asterisk after the words “Clinical oncology”; and
- (b) for the Note substitute—

“Note: The specialties marked \* above are those listed in Annex V, point 5.1.3 of the Directive which are common to all relevant European States. The remaining specialties are those in which the United Kingdom awards a qualification but which are peculiar to two or more relevant European States.”.

#### **Repeal of Schedule 4**

**59.** Schedule 4 (text of articles 30, 31(1) and 34 of Directive 93/16/EEC) is repealed.

#### **Repeal of Schedule 5**

**60.** Schedule 5 (text of Annex I to Directive 93/16/EEC) is repealed.

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(a) S.I. 2007/2781.

(b) There are no relevant amendments to Schedule 3.

### Amendment of Schedule 6

61. In Schedule 6 (acquired rights of general practitioners in the United Kingdom), for paragraph 1(c) substitute—

“(c) on 31st December 1994 he was established in the United Kingdom by virtue of a qualification in medicine awarded in a relevant European State other than the United Kingdom which had in his case to be recognised in the United Kingdom by virtue of the Directive as entitling him to be registered as a fully registered medical practitioner under the Medical Act; or”.

### Repeal of Schedule 6A

62. Schedule 6A (qualifications in general medical practice awarded in EEA States other than the United Kingdom) is repealed.

### Repeal of Schedule 7

63. Schedule 7 (specialist qualifications awarded in EEA States other than the United Kingdom) is repealed.

### Insertion of Schedule 7A

64. After Schedule 7 insert—

## “SCHEDULE 7A

Article 19

### DIRECTIVE 2005/36: FUNCTIONS OF THE GMC AND THE BOARD UNDER ARTICLE 19(2) AND (3)

#### PART 1

#### FUNCTIONS OF THE GMC

<i>Provision of Directive</i>	<i>Function of GMC</i>
Article 7(2)(b)	Issuing certificates containing attestations in relation to persons established, in the United Kingdom, as specialists or general practitioners.
Article 8(1)	Receiving information from, or providing information to, other competent authorities in relation to—
	(a) the legality of a person’s establishment as a specialist or general practitioner;
	(b) the good conduct of such a person;
	(c) the absence of any disciplinary or criminal sanctions of a professional nature against such a person.
Article 8(2)	Receiving information from, or providing information to, other competent authorities in connection with the investigation of complaints made against persons providing services as a specialist or general practitioner.
Article 23(1)	Issuing certificates of effective and lawful practice in the United Kingdom to specialists.
Article 50(1) and paragraph 1(d) of Annex VII	Issuing, in respect of practice as a specialist or general practitioner, the certificates of current professional status referred to in sub-paragraph (d) of paragraph 1 of Annex VII to the Directive within the time limits set by that sub-paragraph.



Article 50(1) and paragraph 1(e) of Annex VII	Issuing, in respect of practice as a specialist or general practitioner, the certificates of good health referred to in sub-paragraph (e) of paragraph 1 of Annex VII to the Directive within the time limits set by that sub-paragraph.
Article 50(2)	In cases of justified doubts—
	(a) requiring confirmation of the authenticity of non-UK specialist or GP qualifications;
	(b) requiring confirmation that holders of non-UK specialist or GP qualifications satisfy the minimum training conditions set out in article 25 or 28 of the Directive (as the case may be) or under article 22(a) of the Directive are to be treated as satisfying those conditions.
Article 50(3)	In cases of justified doubts, verifying information provided in connection with non-UK specialist or GP qualifications awarded following training in a relevant European State other than the State in which the qualification was awarded.
Article 56(1)	Ensuring the confidentiality of information exchanged with other competent authorities.
Article 56(2)	Receiving information from, or providing information to, other competent authorities regarding disciplinary action, criminal sanctions or other serious circumstances likely to have consequences for practice as a specialist or general practitioner.
	Where such information is received by the GMC—
	(a) examining the veracity of the circumstances;
	(b) deciding the nature and scope of any investigations that need to be carried out;
	(c) informing other competent authorities of the GMC's conclusions.

## PART 2

### FUNCTIONS OF THE BOARD

<i>Provision of Directive</i>	<i>Function of Board</i>
Article 23(6)	Issuing certificates stating that specialist qualifications or qualifications in general practice awarded in the United Kingdom, which do not correspond to the titles set out in respect of the United Kingdom at point 5.1.2, 5.1.3 or 5.1.4 of Annex V to the Directive (as the case may be), certify successful completion of specialist training that is in accordance with article 25 of the Directive, or training in general practice which is in accordance with article 28 of the Directive (as the case may be), or that under article 22(a) of the Directive (part-time training) is to be treated as in accordance with article 25 or 28 of the Directive.
Article 50(1) and paragraph 1(b) of Annex VII	Providing information to other competent authorities concerning the training in the United Kingdom of a specialist or general practitioner to whom Chapter 1 of Part 3 of the General Systems Regulations applies.
Article 50(1) and paragraph 2 of Annex VII	Issuing certificates stating that a person's CCT is a qualification covered by the Directive.
Article 50(2)	In cases of justified doubts—
	(a) providing confirmation to competent authorities of other relevant European States of the authenticity of any person's



		CCT;
	(b)	providing confirmation that holders of a CCT satisfy the minimum training conditions set out in article 25 or 28 of the Directive (as the case may be) or under article 22(a) of the Directive are to be treated as satisfying those conditions.
Article 50(3)		In cases of justified doubts, providing information in connection with a person's CCT awarded following training in a relevant European State other than the United Kingdom."

## PART 4

### MEDICAL PRACTITIONERS: OTHER LEGISLATION

#### **Amendment of the Value Added Tax Act 1994**

**65.** In the Value Added Tax Act 1994(a)—

- (a) in Part II of Schedule 8 (zero-rating – the Groups), in the Notes to Group 12 (drugs, medicines, aids for the handicapped), omit Note (2); and
- (b) in Part II of Schedule 9 (exemptions – the Groups), in the Notes to Group 7 (health and welfare), omit Note (4).

#### **Amendment of the European Primary Medical Qualifications Regulations 1996**

**66.** In the European Primary Medical Qualifications Regulations 1996(b), regulation 2 (the competent authority for certain EEA purposes), regulation 5 (visiting EEA practitioners), Schedule 1 (primary European qualifications) and paragraphs 7, 9(c), 10, 11, 12, 13(2)(a) and (b) and 14(3) of Schedule 2 (minor and consequential amendments) are revoked.

#### **Amendment of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004**

**67.** In the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004(c), in regulation 2 (interpretation), in the definition of “CCT”, omit “, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3)(a) of that Order”.

#### **Amendment of the National Health Service (Performers Lists) Regulations 2004**

**68.** In the National Health Service (Performers Lists) Regulations 2004(d), in regulation 21 (interpretation), in paragraph (2), in the definition of “CCT”, omit “, including any such certificate awarded in pursuance of the competent authority functions of the Board specified in article 20(3)(a) of that Order”.

#### **Amendment of the National Health Service (Performers Lists) (Wales) Regulations 2004**

**69.** In the National Health Service (Performers Lists) (Wales) Regulations 2004(e), in regulation 21 (interpretation), in paragraph (1), in the definition of “CCT”, omit “, including any such certificate awarded in pursuance of the competent authority functions of the board specified in article 20(3)(a) of that Order”.

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(a) 1994 c.23, to which there are amendments not relevant to these Regulations.

(b) S.I. 1996/1591.

(c) S.S.I. 2004/114.

(d) S.I. 2004/585; there are no relevant amending instruments.

(e) S.I. 2004/1020; there are no relevant amending instruments.

## **Amendment of the General Medical Council (Fitness to Practise) Rules 2004**

**70.** In the General Medical Council (Fitness to Practise) Rules 2004(a), after rule 17 (procedure before a FTP Panel) insert—

### **“Notification of determination of FTP Panel**

**17A.** The Registrar shall serve notification of the determination of the FTP Panel, and the manner in which the FTP Panel has disposed of the case, on the maker of the allegation (if any).”.

## **PART 5**

### **PHARMACISTS AND PHARMACY TECHNICIANS: THE PHARMACISTS AND PHARMACY TECHNICIANS ORDER 2007**

## **Amendment of the Pharmacists and Pharmacy Technicians Order 2007**

**71.** The Pharmacists and Pharmacy Technicians Order 2007(b) is amended in accordance with this Part.

### **Amendment of article 3**

**72.** In article 3 (interpretation)—

(a) after the definition of “the Charter” insert—

““competent authority” means any authority or body of a relevant European State designated by that State for the purposes of the Directive as competent to—

(a) receive or issue evidence of qualifications or other information or documents,

(b) receive applications and take the decisions referred to in the Directive, in connection with practice as a pharmacist or a pharmacy technician;”;

(b) after the definition of “the Council” insert—

““the Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications(c), and references in this Order to the Directive, or to any provision of the Directive, are references to the Directive, or to that provision of the Directive, as amended from time to time;”;

(c) in the definition of “exempt person”—

(i) in paragraph (b), after “access to” insert “, or is pursuing,” and

(ii) in paragraph (c), after “access to” insert “and pursuit of”;

(d) after the definition of “fitness to practise committee” insert—

““General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007(d);”;

(e) omit the definition of “the Pharmacy Qualifications Directive”;

(f) omit the definition of “the Second General System Directive”; and

(g) omit the definition of “the Second General System Regulations”.

### **Amendment of article 10**

**73.** In article 10 (the Register of Pharmacists), for paragraph (2)(b) substitute—

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(a) Scheduled to S.I. 2004/2608.

(b) S.I. 2007/289.

(c) OJ No. L255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.

(d) S.I. 2007/2781.

- “(b) shall be divided into three parts, and—
- (i) the first part shall be known as “Part 1 – Practising Pharmacists”,
  - (ii) the second part shall be known as “Part 2 – Non-practising Pharmacists”, and
  - (iii) the third part shall be known as “Part 3 – Visiting Pharmacists from relevant European States”.”.

#### **Amendment of article 11**

**74.** In article 11 (entitlement to registration in the Register of Pharmacists)—

- (a) in paragraph (1)(a)(i), after “article 12(1)” insert “and (1A)”; and
- (b) in paragraphs (1), (2) and (3)(b), for “the Register of Pharmacists” substitute “Part 1 or 2 of the Register of Pharmacists”.

#### **Amendment of article 12**

**75.** In article 12 (preregistration requirements for pharmacists in respect of qualifications and additional education, training or experience)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (b), for “the Register of Pharmacists; or” substitute “Part 1 or 2 of the Register of Pharmacists;”,
  - (ii) after sub-paragraph (b) insert—

“(ba) he is an exempt person—

    - (i) whose case falls within regulation 3(9)(a) or (e) of the General Systems Regulations,
    - (ii) to whom regulations 20 to 26 of those Regulations apply by reason of the operation of regulation 3(4) of those Regulations, and
    - (iii) who is permitted to pursue the profession of pharmacist in the United Kingdom by virtue of Part 3 of those Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations); or”, and
  - (iii) in sub-paragraph (c)—
    - (aa) at the beginning insert “subject to paragraph (1A),”, and
    - (bb) in paragraph (ii)(aa), after “referred to in sub-paragraph (b),” insert “and to whom sub-paragraph (ba) does not apply,”;
- (b) after paragraph (1) insert—

“(1A) For the purposes of article 11(1)(a)(i), an exempt person who holds a qualification in pharmacy which—

  - (a) was granted otherwise than in a relevant European State, and
  - (b) has not previously been accepted by a relevant European State as qualifying him to practise as a pharmacist in that State,

is “appropriately qualified” only if his qualification is evidence of training in pharmacy that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 44 of the Directive (training as a pharmacist).”;
- (c) in paragraph (3)—
  - (i) after “paragraph (1)(b)” insert “, (ba)”, and
  - (ii) for “the Pharmacy Qualifications Directive” substitute “the Directive”.

#### **Amendment of article 14**

**76.** In article 14 (specific obligations of the Society in respect of pharmacists' and prospective pharmacists' education, training and the acquisition of experience), in paragraph (h)(a)—

- (a) after “article 11(1)(a)(iii) and (iv),” insert “for the purposes of rules under article 39(1),”; and
- (b) in sub-paragraph (v), after “Part 2” insert “or Part 3”.

#### **Amendment of article 16**

**77.** In article 16 (supplemental matters in connection with articles 14 and 15), for paragraph (5) substitute—

“(5) In making, varying, suspending or revoking any determination mentioned in this article, or granting, refusing, suspending or withdrawing any accreditation or approval mentioned in this article, the Society—

- (a) shall ensure that the relevant requirements of the Treaties are met, and
- (b) shall ensure that the relevant requirements of the Directive are met, and in particular shall ensure that the the requirements of article 44 of the Directive (training as a pharmacist) are met, or under article 22(a) of the Directive (part-time training) are to be treated as being met, and shall act in a manner which is consistent with those requirements.”.

#### **Amendment of article 17**

**78.** In article 17 (form, manner and content of applications for registration in the Register of Pharmacists or retention in that register)—

- (a) in paragraph (1)—
  - (i) for “registration in the Register of Pharmacists, or for retention in that register,” substitute “registration in Part 1 or 2 of the Register of Pharmacists, or for retention in those parts of that register,”, and
  - (ii) after sub-paragraph (b)(i) insert—
    - “(ia) where the applicant is an exempt person, proof that he is a national of a relevant European State or (where he is not a national of a relevant European State) proof of the Community right by virtue of which he is an exempt person,”; and
- (b) for paragraphs (4) to (6) substitute—
  - “(4) Paragraphs (5) to (8) apply in relation to an exempt person (“E”)—
    - (a) to whom article 12(1)(b) or (ba) applies; and
    - (b) who is making an application for entry in Part 1 or 2 of the Register of Pharmacists.
  - (5) For the purpose of determining whether E’s fitness to practise is impaired, the Registrar shall accept as sufficient evidence of E’s good health a certificate which—
    - (a) attests to E’s good physical and mental health; and
    - (b) is required of a person who wishes to practise as a pharmacist in E’s attesting State.
  - (6) If no such certificate is required of persons who wish to practise as a pharmacist in E’s attesting State, for the purpose of determining whether E’s fitness to practise is impaired, the Registrar shall accept as sufficient evidence of E’s good health a certificate which—
    - (a) attests to E’s good physical and mental health; and
    - (b) is issued by a competent authority in E’s attesting State.
  - (7) For the purpose of determining whether E’s fitness to practise is impaired, the Registrar shall accept as sufficient evidence of E’s good character a certificate which—
    - (a) attests to E’s good character or good repute; and

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(a) Paragraph (h) of article 14 is partly in force.

(b) is issued by a competent authority in E's attesting State.

(8) If no such certificate is issued by a competent authority in E's attesting State, for the purpose of determining whether E's fitness to practise is impaired, the Registrar shall accept as sufficient evidence of E's good character a certificate—

(a) attesting to the authenticity of a declaration on oath made by E—

(i) before a competent judicial or administrative authority, notary or qualified professional body of E's attesting State, and

(ii) attesting to E's good character; and

(b) issued by the authority, notary or body referred to in sub-paragraph (a)(i).

In this paragraph, "declaration on oath" includes a solemn declaration.

(9) In paragraphs (5) to (8) the "attesting State", in relation to E, is—

(a) the relevant European State in which E obtained his qualification in pharmacy; or

(b) (if different) the relevant European State from which E comes to Great Britain.

(10) The Registrar shall not accept any certificate referred to in paragraph (5), (6), (7) or (8) if it is presented more than three months after the date on which it was issued."

### **Substitution of article 18**

79. For article 18 substitute—

#### **"Notification of results of application**

18.—(1) This article applies where a person ("A") applies to have his name registered in Part 1 or 2 of the Register of Pharmacists.

(2) The Registrar, within the period of one month beginning with the date of receipt of the application, must—

(a) acknowledge receipt of the application; and

(b) inform A of any missing document required for the purposes of the application.

(3) The Registrar must, within the specified period, notify A—

(a) of the result of the application; and

(b) if the Registrar refuses the application, of the reasons for the decision, and of any right of appeal A has to the Registration Appeals Committee.

(4) In paragraph (3) "the specified period"—

(a) except in a case specified in sub-paragraph (b), means the period of three months beginning with the relevant date;

(b) if A's application is made on the grounds that he is appropriately qualified by virtue of article 12(1)(ba), means the period of four months beginning with the relevant date.

(5) The "relevant date", in relation to an application, is—

(a) the date when the Registrar receives the application; or

(b) if any document required for the purposes of the application, or the relevant fee, is missing when the Registrar receives the application, the date on which the Registrar first has all the documents required for those purposes together with the relevant fee."

### **Insertion of article 18A**

80. After article 18 insert—

#### **"Visiting pharmacists from relevant European States**

18A. Schedule A1 (visiting pharmacists from relevant European States) shall have effect."

### **Amendment of article 21**

**81.** In article 21(a) (the Register of Pharmacy Technicians), for paragraph (2)(b) substitute—

“(b) shall be divided into three parts, and—

- (i) the first part shall be known as “Part 1 – Practising Pharmacy Technicians”,
- (ii) the second part shall be known as “Part 2 – Non-practising Pharmacy Technicians”, and
- (iii) the third part shall be known as “Part 3 – Visiting Pharmacy Technicians from relevant European States”.”.

### **Amendment of article 22**

**82.** In article 22(b) (entitlement to registration in the Register of Pharmacy Technicians), in paragraphs (1) and (2), for “the Register of Pharmacy Technicians” substitute “Part 1 or 2 of the Register of Pharmacy Technicians”.

### **Amendment of article 23**

**83.** In article 23(c) (preregistration requirements for pharmacy technicians in respect of qualifications and additional education, training or experience)—

(a) in paragraph (1)—

(i) for sub-paragraph (b) substitute—

“(b) he is an exempt person and is permitted to pursue the profession of pharmacy technician in Great Britain by virtue of Part 3 of the General Systems Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations); or”, and

(ii) in sub-paragraph (c), omit “having successfully completed any adaptation period or aptitude test that he may be required to complete pursuant to the Second General Systems Regulations”; and

(b) in paragraph (2)(b), for “the Second General Systems Directive” substitute “the Directive”.

### **Amendment of article 25**

**84.** In article 25(d) (specific obligations of the Society in respect of pharmacy technicians’ and prospective pharmacy technicians’ education, training and the acquisition of experience), in paragraph (f)—

(a) after “article 22(1)(a)(iii) and (iv),” insert “for the purposes of rules under article 39(1),”; and

(b) in sub-paragraph (v), after “Part 2” insert “or Part 3”.

### **Amendment of article 27**

**85.** In article 27(e) (supplemental matters in connection with articles 25 and 26), in paragraph (5)(b), for “Second General System Directive” substitute “Directive”.

### **Amendment of article 28**

**86.** In article 28(f) (form, manner and content of applications for registration in the Register of Pharmacy Technicians or retention in that register), in paragraph (1)—

- 
- (a) Article 21 has not yet been brought into force.
  - (b) Article 22 has not yet been brought into force.
  - (c) Article 23 has not yet been brought into force.
  - (d) Article 25 has not yet been brought into force.
  - (e) Article 27 has been brought into force for the purpose only of the exercise of the power to make rules.
  - (f) Article 28 has been brought into force for the purpose only of the exercise of the power to make rules.

- (a) for “registration in the Register of Pharmacy Technicians, or for retention in that register,” substitute “registration in Part 1 or 2 of the Register of Pharmacy Technicians, or for retention in those parts of that register,”; and
- (b) after sub-paragraph (b)(i) insert—
  - “(ia) where the applicant is an exempt person, proof that he is a national of a relevant European State or (where he is not a national of a relevant European State) proof of the Community right by virtue of which he is an exempt person,”.

### **Insertion of articles 28A and 28B**

**87.** After article 28 insert—

#### **“Notification of results of application**

**28A.**—(1) This article applies where an exempt person (“E”) applies to have his name registered in Part 1 or 2 of the Register of Pharmacy Technicians.

(2) The Registrar, within the period of one month beginning with the date of receipt of the application, must—

- (a) acknowledge receipt of the application; and
- (b) inform E of any missing document required for the purposes of the application.

(3) The Registrar must, within the period of four months beginning with the relevant date, notify E—

- (a) of the result of the application; and
- (b) if the Registrar refuses the application, of the reasons for the decision, and of any right of appeal E has to the Registration Appeals Committee.

(4) The “relevant date”, in relation to an application, is—

- (a) the date when the Registrar receives the application; or
- (b) if any document required for the purposes of the application, or the relevant fee, is missing when the Registrar receives the application, the date on which the Registrar first has all the documents required for those purposes together with the relevant fee.

#### **Visiting pharmacy technicians from relevant European States**

**28B.**—(1) This article applies to an exempt person (“V”) who is lawfully established as a pharmacy technician in a relevant European State other than the United Kingdom (“State A”).

(2) Paragraph (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of services as a pharmacy technician in Great Britain on a temporary and occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of services as a pharmacy technician).

(3) V is entitled to be registered in Part 3 of the Register of Pharmacy Technicians; and the Registrar shall give effect to the entitlement.

(4) If V is entitled under paragraph (3) to be registered in Part 3 of the Register of Pharmacy Technicians but is not registered in that part of that register, V shall be treated as being registered in that part of that register.

(5) V’s entitlement under paragraph (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of services as a pharmacy technician in Great Britain on a temporary and occasional basis.

(6) If—

- (a) V’s entitlement under paragraph (3) ceases by reason of the operation of paragraph (5), and
- (b) V is registered in Part 3 of the Register of Pharmacy Technicians,

the Registrar may remove V from that part of that register.



(7) Paragraph (8) applies if—

- (a) V’s establishment in State A is subject to a condition relating to V’s practice as a pharmacy technician;
- (b) V’s name is registered in Part 3 of the Register of Pharmacy Technicians; and
- (c) for any of the purposes of this Order it falls to be decided whether V’s fitness to practise is or may be impaired on the ground of misconduct.

(8) The matters that may be counted as misconduct include (in particular) any act or omission by V during the course of the provision by V of services as a pharmacy technician in Great Britain on a temporary and occasional basis that is, or would be if the condition applied in relation to practice as a pharmacy technician outside State A, a breach of the condition.

(9) In paragraphs (7) and (8) “condition” includes limitation.

(10) Paragraphs (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in Part 3 of the Register of Pharmacy Technicians, of any other provision of this Order under which a registered pharmacy technician’s name may be removed from the Register of Pharmacy Technicians or under which a registered pharmacy technician’s registration in that register may be suspended.”.

### **Amendment of article 33**

**88.** In article 33 (registrants’ duties with regard to their registration entries)—

- (a) in paragraph (2)(a), at the end of paragraph (ii) insert—

“or

- (iii) has changed his name;”;

- (b) in paragraph (3), for “registrant” substitute “person registered in Part 1 or 2 of one of the Society’s registers”.

### **Amendment of article 35**

**89.** In article 35 (fitness to practise matters before registration)—

- (a) in paragraph (1)—

- (i) for sub-paragraph (a) substitute—

“(a) the fitness to practise of a person who is registered in Part 1 or 2 of one of the Society’s registers was impaired at the time of his registration as a result of serious, specific circumstances or because of a problem with his physical or mental health; and”, and

- (ii) in sub-paragraph (b), for “that matter or problem” substitute “those circumstances or that problem”;

- (b) in paragraph (2)—

- (i) for “registrant” substitute “person registered in Part 1 or 2 of one of the Society’s registers”, and

- (ii) for “because of his involvement in a serious matter or a problem” substitute “as a result of serious, specific circumstances or because of a problem”; and

- (c) in paragraph (3), for “registrant” substitute “person”.

### **Amendment of article 36**

**90.** In article 36 (moving between different parts of a register), in paragraph (1)(c), after “Part 2” insert “or Part 3”.

### **Amendment of article 39**

**91.** In article 39(a) (continuing professional development)—

- (a) in paragraph (1), after “Part 1” insert “or 3”; and
- (b) after paragraph (2) insert—

“(2A) Paragraphs (1) and (2)(c), so far as relating to a person (“P”) who is a registrant only as a result of being registered in Part 3 of one of the Society’s registers, have effect subject to, respectively, paragraphs (2B) and (2C).

(2B) Rules under paragraph (1)—

- (a) may not impose requirements on P if P is required to undertake, in P’s home State, continuing professional development in relation to the profession of pharmacy or pharmacy technician (as the case may be); and
- (b) where they impose requirements on P—
  - (i) shall take account of the fact that P is fully qualified to pursue that profession in P’s home State, and
  - (ii) shall specify that continuing professional development which P is required to undertake by the requirements may be undertaken outside Great Britain.

(2C) Where rules make provision such as is mentioned in subsection (2)(c), the rules must secure that any sanction imposed in relation to P by or under that provision is appropriate and proportionate in view of P’s continued lawful establishment in P’s home State as a pharmacist or pharmacy technician (as the case may be).

(2D) In paragraphs (2B) and (2C) “home State”, in relation to P, means the relevant European State in which P is lawfully established as a pharmacist or pharmacy technician (as the case may be).”.

### **Amendment of article 40**

**92.** In article 40 (fees in connection with registration)—

- (a) in paragraph (1), for “The Council” substitute “Subject to paragraph (1A), the Council”; and
- (b) after paragraph (1) insert—

“(1A) Rules under paragraph (1) shall not provide for fees in respect of registration in Part 3 of one of the Society’s registers.”.

### **Amendment of article 42**

**93.** In article 42 (appealable registration decisions), in paragraph (1)—

- (a) before sub-paragraph (a) insert—

“(za) a decision under Part 3 of the General Systems Regulations to require an exempt person to whom article 12(1)(ba)(i) and (ii) applies to complete an adaptation period, or pass an aptitude test, before deciding whether he is “appropriately qualified” for the purposes of article 11(1)(a)(i);”;

- (b) in sub-paragraph (a), for “the Register of Pharmacists” substitute “Part 1 or 2 of the Register of Pharmacists”;
- (c) after sub-paragraph (a) insert—

“(aa) a decision to refuse to register a person in Part 3 of the Register of Pharmacists under Schedule A1 (visiting pharmacists from relevant European States);”;
- (d) in sub-paragraph (c), for “article 18(1)” substitute “article 18(3)(a)”;
- (e) for sub-paragraph (d)(b) substitute—

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(a) Article 39 has been brought into force for the purpose only of the exercise of the power to make rules.  
(b) Sub-paragraph (d) of article 42(1) has not yet been brought into force.

- “(d) a decision under Part 3 of the General Systems Regulations to require an exempt person to complete an adaptation period, or pass an aptitude test, before deciding whether he is “appropriately qualified” for the purposes of article 22(1)(a)(i);”;
- (f) in sub-paragraph (e)(a), for “the Register of Pharmacy Technicians” substitute “Part 1 or 2 of the Register of Pharmacy Technicians”;
- (g) after sub-paragraph (e) insert—
  - “(ea) a decision to refuse to register a person in Part 3 of the Register of Pharmacy Technicians under article 28B (visiting pharmacy technicians from relevant European States);”;
- (h) after sub-paragraph (f)(b) insert—
  - “(fa) a failure to give any notice required by article 28A(3)(a) within the specified period;”.

#### **Amendment of article 43**

- 94.** In article 43 (appeals to the Registration Appeals Committee), in paragraph (1)(b)—
- (a) for “article 18(1)” substitute “article 18(3)(a)”;
  - (b) after “18(3)(a)” insert “or 28A(3)(a)”.

#### **Insertion of article 64A**

- 95.** After article 64 insert—

##### **“The Directive: designation of competent authority etc.**

**64A.**—(1) The Society is designated as the competent authority in Great Britain(c) for the purposes of the Directive so far as relating to the profession of pharmacist.

(2) Accordingly, the Society shall in Great Britain carry out (in particular) the functions specified in Schedule A2.

(3) The Society is designated as the competent authority in Great Britain for the award of evidence of formal qualifications in pharmacy listed in relation to the United Kingdom in Annex V, point 5.6.2 of the Directive.

(4) Subject to paragraph (5), the Secretary of State may give directions to the Society in connection with its functions specified in Schedule A2, and it shall be the duty of the Society to comply with any such directions.

(5) Directions given under paragraph (4) may be as to matters of administration only.

(6) In Schedule A2—

“non-UK pharmacy qualification” means a qualification in pharmacy that is awarded to a person by a competent authority of a relevant European State other than the United Kingdom;

“GB pharmacy qualification” means a qualification in pharmacy that is awarded to a person by a competent authority in Great Britain.”.

#### **Amendment of article 66**

- 96.** In article 66 (rules), in paragraph (2), for “the Treaties, the Pharmacy Qualifications Directive and the Second General System Directive” substitute “the Treaties and the Directive”.

#### **Insertion of Schedules A1 and A2**

- 97.** Before Schedule 1 insert—

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(a) Sub-paragraph (e) of article 42(1) has not yet been brought into force.  
 (b) Sub-paragraph (f) of article 42(1) has not yet been brought into force.  
 (c) In Northern Ireland, the competent authority for the purposes of the Directive so far as relating to the profession of pharmacist is the Pharmaceutical Society of Northern Ireland.

## VISITING PHARMACISTS FROM RELEVANT EUROPEAN STATES

### **Application and interpretation**

1. This Schedule applies to an exempt person who is lawfully established as a pharmacist in a relevant European State other than the United Kingdom.

2. In this Schedule—

- (a) a “visiting practitioner” means an exempt person to whom this Schedule applies;
- (b) the “home State”, in relation to a visiting practitioner, means the relevant European State in which the practitioner is lawfully established as a pharmacist; and
- (c) a reference to the provision of occasional pharmacy services is a reference to the provision of services as a pharmacist in Great Britain on a temporary and occasional basis.

### **Registration in respect of provision of occasional pharmacy services**

3.—(1) A visiting practitioner is entitled to be registered in Part 3 of the Register of Pharmacists if the practitioner is entitled under paragraph 4 or 7 to provide occasional pharmacy services; and the Registrar shall give effect to the entitlement.

(2) A visiting practitioner who is entitled under sub-paragraph (1) to be registered in Part 3 of the Register of Pharmacists, but who is not registered in that part of that register, shall be treated as registered in that part of that register.

(3) Sub-paragraph (4) applies where a person’s entitlement under sub-paragraph (1) to be registered in Part 3 of the Register of Pharmacists ceases because, by reason of the operation of paragraph 8(1), (2) or (5), the person ceases to be entitled under this Schedule to provide occasional pharmacy services.

(4) If the person’s name is registered in Part 3 of the Register of Pharmacists, the Registrar may remove the person’s name from that part of that register.

(5) Sub-paragraphs (1) to (4) are not to be taken to prejudice the application, in relation to persons registered in the Register of Pharmacists on the basis of entitlement under sub-paragraph (1), of any other provision of this Order under which a registered pharmacist’s name may be removed from the Register of Pharmacists or under which a registered pharmacist’s registration in that register may be suspended.

### **Entitlement to provide occasional pharmacy services: first year**

4. A visiting practitioner is entitled to provide occasional pharmacy services if—

- (a) the practitioner has complied with the requirements of paragraph 5, and
- (b) where the practitioner’s case falls within regulation 3(9)(a) or (e) of the General Systems Regulations, the provision by the practitioner of occasional pharmacy services is in accordance with regulations 14 to 16 of those Regulations (the practitioner having, in particular, successfully completed any adaptation period, or passed any aptitude test, that the practitioner may be required to undertake pursuant to Part 2 of those Regulations),

but paragraph 8 contains provision about the duration of entitlement under this paragraph.

### **First provision of services: required documents**

5.—(1) A visiting practitioner who proposes to provide occasional pharmacy services for the first time must, before providing any such services, send or produce to the Registrar the required documents.

(2) The required documents are—

- (a) a written declaration that—

- (i) states the practitioner’s wish to provide occasional pharmacy services, and
  - (ii) contains details of the insurance cover, or other means of personal or collective protection, that the practitioner has with regard to professional liability;
  - (b) if the practitioner is a national of a relevant European State, proof of nationality;
  - (c) if the practitioner is not a national of a relevant European State, proof of the Community right by virtue of which the practitioner is an exempt person;
  - (d) evidence of qualifications in pharmacy (see paragraph 6); and
  - (e) a certificate (or certificates) issued by a competent authority in the practitioner’s home State confirming—
    - (i) that the practitioner is lawfully established as a pharmacist in that State, and
    - (ii) that the practitioner is not prohibited (whether on a permanent or temporary basis) from practising as a pharmacist there.
- (3) A declaration under sub-paragraph (2)(a) may be supplied by any means.

**6.—**(1) Subject to sub-paragraph (3), the evidence referred to in paragraph 5(2)(d) is evidence of the European-recognised qualifications which entitle the visiting practitioner to provide, in the practitioner’s home State, the pharmacy services that the practitioner proposes to provide in Great Britain on a temporary and occasional basis.

(2) This sub-paragraph applies to a visiting practitioner whose case falls within regulation 3(9)(a) or (e) of the General Systems Regulations (with the result that the practitioner is not entitled to provide occasional pharmacy services unless their provision by the practitioner is in accordance with regulations 14 to 16 of those Regulations).

(3) If sub-paragraph (2) applies to a visiting practitioner, the evidence referred to in paragraph 5(2)(d) of the practitioner’s qualifications in pharmacy is evidence of the qualifications which entitle the practitioner to practise as a pharmacist in his home State.

(4) In this paragraph, “European-recognised qualifications” means qualifications which relevant European States are required by the Directive to recognise.

**Entitlement to provide occasional pharmacy services after first year: renewals**

**7.—**(1) Sub-paragraph (2) applies where the Registrar receives the required renewal documents from a visiting practitioner who is entitled under this Schedule to provide occasional pharmacy services.

(2) The visiting practitioner is entitled to continue to provide occasional pharmacy services, but paragraph 8 contains provision about the duration of entitlement continued under this sub-paragraph.

(3) Sub-paragraph (4) applies where the Registrar receives the required renewal documents from a visiting practitioner—

- (a) who is not entitled under this Schedule to provide occasional pharmacy services;
- (b) who has been previously entitled under this Schedule to provide occasional pharmacy services; and
- (c) whose registration in Part 3 of the Register of Pharmacists is not suspended.

(4) The visiting practitioner is once again entitled to provide occasional pharmacy services but, in a case where the practitioner’s name is not in Part 3 of the Register of Pharmacists as a result of removal otherwise than under paragraph 3(4), only if the Registrar decides, after having regard (in particular) to the fact of that removal and the reasons for it, that the entitlement should be renewed.

Paragraph 8 contains provision about the duration of entitlement under this sub-paragraph.

(5) In relation to a visiting practitioner “the required renewal documents” are—

- (a) a renewal declaration; and
- (b) each evidence of change document (if any).

(6) In this paragraph “renewal declaration”, in relation to a visiting practitioner, means a written declaration that—

- (a) states the practitioner’s wish to provide occasional pharmacy services in a further year; and
  - (b) contains details of the insurance cover, or other means of personal or collective protection, that the practitioner has with regard to professional liability.
- (7) Where a document—
- (a) is, in relation to a visiting practitioner, one of the required documents for the purposes of paragraph 5,
  - (b) is not a declaration under paragraph 5(2)(a), and
  - (c) substantiates a matter as respects which there has been a material change since the practitioner last (whether under paragraph 5 or this paragraph) supplied the then-current version of the document to the registrar,

the version of the document current when under this paragraph the practitioner supplies a renewal declaration to the registrar is an “evidence of change document” for the purposes of sub-paragraph (5)(b).

- (8) A renewal declaration supplied under this paragraph may be supplied by any means.

**Duration of entitlement to provide occasional pharmacy services**

**8.—**(1) Unless an entitlement under paragraph 4 or 7(4) is continued (or further continued) by paragraph 7(2), the entitlement ceases at the end of the year that begins with the end of the day on which the Registrar received the documents whose receipt gave rise to the entitlement.

(2) Where an entitlement under paragraph 4 or 7(4) is continued (or further continued) by paragraph 7(2), the entitlement is extended so as to cease at the end of the year that begins with the end of the relevant day.

(3) For the purposes of sub-paragraph (2)—

- (a) if the day on which the Registrar receives the documents whose receipt gives rise to the continuation (or further continuation) is an anniversary of the start day, “the relevant day” means the day on which the Registrar receives those documents;
- (b) otherwise, “the relevant day” means the anniversary of the start day that is the first such anniversary to occur after the Registrar receives the documents whose receipt gives rise to the continuation (or further continuation).

(4) In sub-paragraph (3) “the start day”, in relation to an entitlement under paragraph 4 or 7(4), means the day on which the Registrar receives the documents whose receipt gives rise to the entitlement.

(5) An entitlement under this Schedule to provide occasional pharmacy services ceases if—

- (a) the visiting practitioner concerned becomes established as a pharmacist in the United Kingdom; or
- (b) a disqualifying decision is made against the visiting practitioner concerned.

(6) In sub-paragraph (5) “disqualifying decision”, in relation to a visiting practitioner, means a decision made by a competent or judicial authority in the practitioner’s home State that has the effect that the practitioner—

- (a) ceases in that State to be registered or otherwise officially recognised as a pharmacist; or
- (b) is prohibited (whether on a permanent or temporary basis) from practising as a pharmacist in that State.

(7) If in the case of a visiting practitioner—

- (a) the practitioner’s registration in Part 3 of the Register of Pharmacists is suspended or the practitioner’s name is removed from that part of that register, and
- (b) immediately before the time when the suspension or (as the case may be) removal takes effect, the practitioner is entitled under this Schedule to provide occasional pharmacy services,

that entitlement ceases at that time.



## Conditions

9.—(1) Paragraph (2) applies if—

- (a) the establishment of a visiting practitioner in the practitioner’s home State is subject to a condition relating to the practitioner’s practice as a pharmacist;
- (b) the practitioner’s name is registered in Part 3 of the Register of Pharmacists; and
- (c) for any of the purposes of this Order it falls to be decided whether the practitioner’s fitness to practise is or may be impaired on the ground of misconduct.

(2) The matters that may be counted as misconduct include (in particular) any act or omission by the visiting practitioner during the course of the provision by the practitioner of occasional pharmacy services that is, or would be if the condition applied in relation to practice as a pharmacist outside the practitioner’s home State, a breach of the condition.

(3) In paragraphs (1) and (2) “condition” includes limitation.

## SCHEDULE A2

Article 64A

### DIRECTIVE 2005/36: FUNCTIONS OF THE SOCIETY UNDER ARTICLE 64A(2)

<i>Provision of Directive</i>	<i>Function of Society</i>
Article 7(2)(b)	Issuing certificates containing attestations in relation to persons established as pharmacists in Great Britain.
Article 8(1)	Receiving information from, or providing information to, other competent authorities in relation to—
	(a) the legality of a person’s establishment as a pharmacist;
	(b) the good conduct of such a person;
	(c) the absence of any disciplinary or criminal sanctions of a professional nature against such a person.
Article 8(2)	Receiving information from, or providing information to, other competent authorities in connection with the investigation of complaints made against persons providing services as a pharmacist.
Article 23(1)	Issuing certificates of effective and lawful practice in Great Britain to pharmacists.
Article 23(6)	Issuing certificates stating that GB pharmacy qualifications, which do not correspond to the titles set out in respect of the United Kingdom at point 5.6.2 of Annex V to the Directive, certify successful completion of training in pharmacy that is in accordance with article 44 of the Directive or that under article 22(a) of the Directive (part-time training) is to be treated as in accordance with article 44 of the Directive.
Article 50(1) and paragraph 1(b) of Annex VII	Providing information to other competent authorities concerning the training in Great Britain of a pharmacist to whom Chapter 1 of Part 3 of the General Systems Regulations applies.
Article 50(1) and paragraph 1(d) of Annex VII	Issuing, in respect of practice as a pharmacist, the certificates of current professional status referred to in sub-paragraph (d) of paragraph 1 of Annex VII to the Directive within the time limits set by that sub-paragraph.
Article 50(1) and paragraph 2 of Annex VII	Issuing certificates stating that evidence of GB pharmacy qualifications is that covered by the Directive.
Article 50(2)	In cases of justified doubts—
	(a) requiring confirmation of the authenticity of non-UK



		pharmacy qualifications;
	(b)	requiring confirmation that holders of non-UK pharmacy qualifications satisfy the minimum training conditions set out in article 44 of the Directive or under article 22(a) of the Directive are to be treated as satisfying those conditions;
	(c)	providing confirmation to competent authorities of other relevant European States of the authenticity of any person's GB pharmacy qualifications;
	(d)	providing confirmation that holders of GB pharmacy qualifications satisfy the minimum training conditions set out in article 44 of the Directive or under article 22(a) of the Directive are to be treated as satisfying those conditions.
Article 50(3)		In cases of justified doubts—
	(a)	verifying information provided in connection with non-UK pharmacy qualifications awarded following training in a relevant European State other than the State in which the qualification was awarded;
	(b)	providing information in connection with a person's GB pharmacy qualifications awarded following training in another relevant European State.
Article 56(1)		Ensuring the confidentiality of information exchanged with other competent authorities.
Article 56(2)		Receiving information from, or providing information to, other competent authorities regarding disciplinary action, criminal sanctions or other serious circumstances likely to have consequences for the practice of the profession of pharmacist.
		Where such information is received by the Society—
	(a)	examining the veracity of the circumstances;
	(b)	deciding the nature and scope of any investigations that need to be carried out;
	(c)	informing other competent authorities of the Society's conclusions."

## PART 6

### PHARMACISTS AND PHARMACY TECHNICIANS: OTHER LEGISLATION

#### Amendment of the Medicines Act 1968

**98.** In the Medicines Act 1968(a)—

(a) in section 69(b) (general provisions), after subsection (1) insert—

“(1ZA) In subsection (1)(a) “pharmacist” does not include a person registered in Part 3 of the Register of Pharmacists maintained under article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007(c) (visiting pharmacists from relevant European States).”;

(b) in section 70(d) (business carried on by individual pharmacist or by partners), in the second sentence of subsection (2), in the substituted paragraph (a), for “pharmacists” substitute “persons registered in Part 1 of the Register of Pharmacists maintained under article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007”;

(a) 1968 c.67.

(b) Section 69 was amended by the Statute Law (Repeals) Act 1993 (c.50), Schedule 1, Part 12, and by S.I. 1976/1213 and 2007/289.

(c) S.I. 2007/289.

(d) Section 70 was amended by S.I. 2007/289 and is to be substituted by section 27 of the Health Act 2006 (c.28) on a date to be appointed.

- (c) in section 71(a) (bodies corporate), after subsection (2) add—
  - “(3) In subsection (2)(a) “pharmacist” does not include a person registered in Part 3 of the Register of Pharmacists maintained under article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007 (visiting pharmacists from relevant European States).”; and
- (d) in section 132 (general interpretation provisions), in subsection (1), in the definition of “pharmacist”(b), after “Part 1” insert “or 3”.

#### **Amendment of the National Health Service (Scotland) Act 1978**

**99.** In the National Health Service (Scotland) Act 1978(c), in section 108 (interpretation and construction), in subsection (1), in the definition of “registered pharmacist”, after “Part 1” insert “or 3”.

#### **Amendment of the Medicines for Human Use (Clinical Trials) Regulations 2004**

**100.** In the Medicines for Human Use (Clinical Trials) Regulations 2004(d), in regulation 2 (interpretation), in paragraph (1), in paragraph (a) of the definition of “pharmacist”, after “Part 1” insert “or 3”.

#### **Amendment of the Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005**

**101.** In the Gender Recognition (Disclosure of Information) (England, Wales and Northern Ireland) (No. 2) Order 2005(e), in article 5 (disclosure for medical purposes), in paragraph (3)(c), after “Part 1” insert “or 3”.

#### **Amendment of the Gender Recognition (Disclosure of Information) (Scotland) Order 2005**

**102.** In the Gender Recognition (Disclosure of Information) (Scotland) Order 2005(f), in article 5 (disclosure for medical purposes), in paragraph (2)(b)(iii), after “Part 1” insert “or 3”.

#### **Amendment of the Health Act 2006**

**103.** In the Health Act 2006(g)—

- (a) in section 27(1), in the substituted section 70 of the Medicines Act 1968, in subsection (4)(b), for “pharmacist” substitute “person registered in Part 1 of the Register of Pharmacists maintained under article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007”; and
- (b) in section 28(1), in the substituted section 71 of the Medicines Act 1968, after subsection (6) add—
  - “(7) In subsection (6)(a) “pharmacist” does not include a person registered in Part 3 of the Register of Pharmacists maintained under article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007 (visiting pharmacists from relevant European States).”.

#### **Amendment of the National Health Service Act 2006**

**104.** In the National Health Service Act 2006(h), in section 275 (interpretation), in subsection (1), in the definition of “registered pharmacist”(i), after “Part 1” insert “or 3”.

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(a) Section 71 was amended by S.I. 2007/289 and is to be substituted by section 28 of the Health Act 2006 on a date to be appointed.  
 (b) The definition of “pharmacist” was amended by S.I. 1976/1213 and 2007/289.  
 (c) 1978 c.29.  
 (d) S.I. 2004/1031; the definition of “pharmacist” was amended by S.I. 2007/289.  
 (e) S.I. 2005/916; article 5(3)(c) was amended by S.I. 2007/289.  
 (f) S.S.I. 2005/125; article 5(2)(b)(iii) was amended by S.I. 2007/289.  
 (g) 2006 c.28.  
 (h) 2006 c.41.  
 (i) The definition of “registered pharmacist” was substituted by S.I. 2007/289.

### **Amendment of the National Health Service (Wales) Act 2006**

**105.** In the National Health Service (Wales) Act 2006(a), in section 206 (interpretation), in subsection (1), in the definition of “registered pharmacist”(b), after “Part 1” insert “or 3”.

### **Amendment of the Controlled Drugs (Supervision of Management and Use) Regulations 2006**

**106.** In the Controlled Drugs (Supervision of Management and Use) Regulations 2006(c), in regulation 2 (interpretation), in paragraph (1), for the definition of “registered pharmacist” substitute—

““registered pharmacist” means a person registered in Part 1 or 3 of the Register of Pharmacists maintained under article 10(1) of the Pharmacists and Pharmacy Technicians Order 2007(d);”.

### **Amendment of the Royal Pharmaceutical Society of Great Britain (Registration) Rules 2007**

**107.**—(1) The Royal Pharmaceutical Society of Great Britain (Registration) Rules 2007(e) are amended as follows.

(2) In rule 6 (application for registration in the Register of Pharmacists)—

(a) in paragraph (1), after “applicants for registration in” insert “Part 1 or 2 of”; and

(b) in paragraph (3)—

(i) after “applying for registration” insert “in Part 1 or 2 of the Register of Pharmacists”,

(ii) after sub-paragraph (c) insert—

“(ca) where the applicant is an exempt person—

(i) evidence that he is a national of a relevant European State(f), or

(ii) (where he is not a national of a relevant European State) evidence of the Community right by virtue of which he is an exempt person, which, in a case where sub-paragraph (d) applies, must be the evidence set out in that sub-paragraph;”.

(iii) for sub-paragraph (e) substitute—

“(e) sufficient evidence (in the opinion of the Registrar) that he is appropriately qualified, and if the applicant (“A”)—

(i) is appropriately qualified by virtue of article 12(1)(b) of the Order,

(ii) holds a diploma listed in Annex V, point 5.6.2 of the Directive (evidence of formal qualifications of pharmacists), and

(iii) has successfully completed training as a pharmacist that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 44 of the Directive (training as a pharmacist),

A must also provide a certificate which must be issued by a competent authority in A’s attesting State(g) and which must certify that the evidence of qualification provided by A is a diploma listed in relation to that State in Annex V, point 5.6.2 of the Directive;”.

(iv) in sub-paragraph (f)(i), for “17(4)(a)” substitute “17(5) or (6)”, and

(v) in sub-paragraph (g)(i), for “17(4)(b)” substitute “17(7) or (8)”.

(3) In rule 7 (retention in the Register of Pharmacists), after paragraph (8) add—

“(9) This rule does not apply in relation to a person who is registered in Part 3 of the Register of Pharmacists.”.

(4) In rule 8 (applications to move to a different part of the register), after paragraph (4) add—

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(a) 2006 c.42.

(b) The definition of “registered pharmacist” was substituted by S.I. 2007/289.

(c) S.I. 2006/3148.

(d) S.I. 2007/289.

(e) Scheduled to S.I. 2007/441.

(f) “Relevant European State” is defined in the Pharmacists and Pharmacy Technicians Order 2007 as meaning an EEA State or Switzerland.

(g) “Attesting State” is defined in article 17(9) of the Pharmacists and Pharmacy Technicians Order 2007.

“(5) This rule does not apply in relation to a person wishing to move from Part 3 to Part 1 of the register.”.

(5) In rule 9 (applications for annotations to denote that a registered pharmacist is a supplementary prescriber or an independent prescriber), in paragraph (1), for “registered pharmacist” substitute “person registered in Part 1 of the Register of Pharmacists”.

(6) In rule 12 (applications for restoration within twelve months of specified removals from the register), after paragraph (4) add—

“(5) This rule does not apply in relation to a person who has been removed from Part 3 of the register under rule 10(6).”.

(7) In rule 15 (notice of intention to remove: stage one), for paragraph (1) substitute—

“(1) Where the Registrar has reasonable grounds for believing—

- (a) that a registrant’s entry in the register may have been fraudulently procured or incorrectly made; or
- (b) that the fitness to practise of a person who is registered in Part 1 or 2 of the register was impaired at the time of his registration and he had not informed the Registrar of the relevant matter (that is, serious, specific circumstances or a problem with his physical or mental health for the purposes of article 35(1)(a) of the Order) before his registration,

paragraph (2) applies.”

### **Amendment of the Approved European Pharmacy Qualifications Order of Council 2007**

**108.**—(1) The Approved European Pharmacy Qualifications Order of Council 2007(a) is amended as follows.

(2) In article 1 (citation, commencement and interpretation)—

(a) in paragraph (2)—

(i) for the definition of “competent authorities” substitute—

““competent authorities” means any authority or body of a relevant European State designated by that State for the purposes of the Directive(b) as competent to—

(a) receive or issue evidence of qualifications or other information or documents,

(b) receive applications and take the decisions referred to in the Directive,

in connection with the practice of pharmacy;”,

(ii) omit the definition of “the Pharmacy Training Directive”, and

(iii) for the definition of “reference date” substitute—

““reference date”, in relation to a relevant European State, means the date specified in relation to that State in the column entitled “Reference date” in Annex V, point 5.6.2 of the Directive.”; and

(b) after paragraph (2) add—

“(3) References in this Order to any provision of the Directive are references to that provision of the Directive as amended from time to time.”.

(3) In article 2 (appropriate European diplomas)—

(a) in paragraph (1), after “registration in” insert “Part 1 or 2 of”; and

(b) in paragraph (2)—

(i) for sub-paragraph (a) substitute—

“(a) a diploma listed in Annex V, point 5.6.2 of the Directive which has been granted in a relevant European State after its reference date and which is evidence of training commenced after that date, provided that that diploma is accompanied, where appropriate, by the certificate listed in

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(a) S.I. 2007/564.

(b) “The Directive” is defined in the Pharmacists and Pharmacy Technicians Order as meaning Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005.

relation to that State in the column of Annex V, point 5.6.2 of the Directive entitled “Certificate accompanying the diploma”; or”, and

(ii) in sub-paragraph (b)—

(aa) omit “(where appropriate, duly authenticated)”, and

(bb) in paragraph (iv), for “not specified in Schedule 2” substitute “not listed in Annex V, point 5.6.2 of the Directive”.

(4) Article 3 (conditions relating to a specified diploma awarded in Italy) is revoked.

(5) For article 4 substitute—

**“Conditions relating to diplomas, whether listed or not, awarded in respect of training before a relevant European State’s reference date**

4. A diploma to which article 2(2)(b)(i) applies is only an appropriate European diploma if—

(a) in the case of a diploma which is listed in Annex V, point 5.6.2 of the Directive—

(i) the Registrar is satisfied (by means of a certificate from the relevant competent authorities or otherwise) that the diploma guarantees that the holder’s training satisfies the requirements of article 44 of the Directive (requirements for pharmacists’ training), and

(ii) the diploma is accompanied, where appropriate, by the certificate listed in relation to the relevant European State in which the diploma was awarded in the column of Annex V, point 5.6.2 of the Directive entitled “Certificate accompanying the diploma”;

(b) in the case of a diploma which is not listed in Annex V, point 5.6.2 of the Directive, the diploma is accompanied by a certificate from the competent authorities of the relevant European State in which the diploma was awarded which attests that the diploma—

(i) is evidence of training which satisfies the requirements of article 44 of the Directive, and

(ii) is treated by the competent authorities of the relevant European State in which it was awarded as equivalent to a diploma listed in relation to that State in Annex V, point 5.6.2 of the Directive,

and the certificate is made available to the Registrar; or

(c) whether or not the diploma is listed in Annex V, point 5.6.2 of the Directive, the competent authorities of a relevant European State have certified that the holder has, in a relevant European State, been effectively and lawfully engaged in the practice of an activity open to pharmacists in that State for at least three consecutive years during the five years preceding the date of the certificate, and the certificate is made available to the Registrar.”.

(6) In article 5 (conditions relating to old diplomas granted in respect of training commenced in the former Czechoslovakia, the former Soviet Union or the former Yugoslavia)—

(a) in paragraph (a), for “specified in Schedule 2” substitute “listed in Annex V, point 5.6.2 of the Directive”; and

(b) for paragraph (b) substitute—

“(b) those competent authorities have also certified that the holder of the diploma has, in the relevant European State specified in the appropriate row of column (c) of the table in Schedule 3, been effectively and lawfully engaged in the practice of an activity open to pharmacists in that State for at least three consecutive years during the five years preceding the date of that certificate; and”.

(7) In article 6 (conditions relating to old diplomas granted in respect of training commenced in the former German Democratic Republic)—

(a) in paragraph (a), for “specified in Schedule 2” substitute “listed in Annex V, point 5.6.2 of the Directive”; and

(b) for paragraph (b) substitute—

“(b) the competent authorities in Germany have certified that the holder of the diploma has been effectively and lawfully engaged in Germany in the practice of an activity open to pharmacists

in Germany for at least three consecutive years during the five years preceding the date of that certificate, and the certificate is made available to the Registrar.”.

(8) In article 7 (conditions relating to new diplomas), in paragraph (a)—

(a) for sub-paragraph (i) substitute—

“(i) is evidence of training which satisfies the requirements of article 44 of the Directive, and”;  
and

(b) in sub-paragraph (ii), for “specified in Schedule 2” substitute “listed in Annex V, point 5.6.2 of the Directive”.

(9) For article 8 substitute—

#### **“Justified doubts**

**8.** A diploma is only an appropriate European diploma if—

(a) in a case where the Society (including its Registrar) has justified doubts about the authenticity of the evidence of the diploma made available to the Society and has required of the relevant competent authorities confirmation of the authenticity of the evidence, the relevant competent authorities have confirmed the authenticity of the evidence;

(b) in a case where the Society (including its Registrar) has justified doubts about whether the holder of the diploma has completed training which satisfies the requirements of article 44 of the Directive, and has required of the relevant competent authorities confirmation of completion of such training, the relevant competent authorities have confirmed completion of such training;

(c) in a case where the Society (including its Registrar) has justified doubts concerning training received in a relevant European State other than that in which the diploma was awarded, and has required confirmation of the relevant competent authorities in accordance with article 50(3) of the Directive, the relevant competent authorities have provided confirmation in accordance with that article.”.

(10) Schedules 1 (reference dates) and 2 (specified pharmacy qualifications) are revoked.

## **PART 7**

### **DENTISTS AND PROFESSIONS COMPLEMENTARY TO DENTISTRY: DENTISTS ACT 1984**

#### **Amendment of Dentists Act 1984**

**109.** The Dentists Act 1984(a) is amended in accordance with this Part.

#### **Insertion of section 12A**

**110.** After section 12 insert—

#### **“Degrees and licences in dentistry**

**12A.**—(1) A dental authority may grant a UK diploma in dentistry to a person only if the authority is satisfied that the person has successfully completed basic dental training.

(2) In this section—

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(a) 1984 c.24.



“basic dental training” means dental training that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 34 of the Directive (basic dental training);

“UK diploma in dentistry” means—

- (a) a degree in dentistry that gives its holder the qualification of Bachelor of Dental Surgery (whether abbreviated as BDS or B.Ch.D.), or
- (b) a licence in dentistry that gives its holder the qualification of Licentiate in Dental Surgery.”.

#### **Amendment of section 14**

**111.** In section 14(a) (the dentists register and the registrar), after subsection (1) insert—

“(1A) The register shall consist of three lists, namely—

- (a) the principal list, which shall contain particulars of persons who under section 15 are entitled to be registered in the register;
- (b) the list of temporary registrants, which shall contain particulars of persons who under section 17 are directed to be registered in the register; and
- (c) the list of visiting dentists from relevant European States, which shall contain particulars of persons who under Schedule 4 are entitled to be registered in the register.”.

#### **Amendment of section 15**

**112.** In section 15(b) (qualification for registration in the dentists register)—

(a) in subsection (1), for paragraph (b) substitute—

“(b) any exempt person who holds an appropriate European diploma;

(ba) any exempt person—

- (i) whose case falls within regulation 3(9)(a) or (e) of the General Systems Regulations,
- (ii) to whom regulations 20 to 26 of those Regulations apply by reason of the operation of regulation 3(4) of those Regulations, and
- (iii) who is permitted to pursue the profession of dentistry in the United Kingdom by virtue of Part 3 of those Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations); and”;

(b) in subsection (2), omit the definition of “national”;

(c) omit subsection (2A);

(d) in subsection (3), for “paragraph (a) or (b) of subsection (1)” substitute “paragraph (a), (b) or (ba) of subsection (1)”;

(e) in subsection (4)(d), for sub-paragraph (i) substitute—

“(i) is an exempt person, or”;

(f) for subsections (4A) and (4B) substitute—

“(4A) Subsections (4B) to (4BC) apply in relation to an exempt person (“A”) who applies for registration under paragraph (b) or (ba) of subsection (1).

(4B) For the purposes of subsection (3)(b), the registrar shall accept as sufficient evidence of A’s good character a certificate which—

- (a) attests to A’s good character or good repute; and
- (b) is issued by a competent authority in A’s attesting State.

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(a) Section 14 was substituted by S.I. 2005/2011.

(b) Section 15 was amended by S.I. 1996/1496, 1998/811, 2003/3148 and 2004/1947.



(4BA) If no such certificate is issued by a competent authority in A's attesting State, for the purposes of subsection (3)(b) the registrar shall accept as sufficient evidence of A's good character a certificate—

- (a) attesting to the authenticity of a declaration on oath made by A—
  - (i) before a competent judicial or administrative authority, notary or qualified professional body of A's attesting State, and
  - (ii) attesting to A's good character; and
- (b) issued by the authority, notary or body referred to in paragraph (a)(i).

In this subsection, "declaration on oath" includes a solemn declaration.

(4BB) For the purposes of subsection (3)(c), the registrar shall accept as sufficient evidence of A's good health a certificate which—

- (a) attests to A's good physical and mental health; and
- (b) is required of a person who wishes to practise dentistry in A's attesting State.

(4BC) If no such certificate is required of persons who wish to practise dentistry in A's attesting State, for the purposes of subsection (3)(c) the registrar shall accept as sufficient evidence of A's good health a certificate which—

- (a) attests to A's good physical and mental health; and
- (b) is issued by a competent authority in A's attesting State.

(4BD) In subsections (4B) to (4BC) the "attesting State", in relation to A, is—

- (a) the relevant European State in which A obtained his dental qualification; or
- (b) (if different) the relevant European State from which A comes to the United Kingdom.”;
- (g) in subsection (4C), for “subsection (4A) or (4B)” substitute “subsection (4B), (4BA), (4BB) or (4BC)”; and
- (h) omit subsection (7).

### **Amendment of section 16**

**113.** In section 16 (supplementary provisions as to registration of holders of overseas diplomas)—

- (a) in subsection (2A)(a)—
  - (i) for “a person who is a national of an EEA State (or is treated as such for the purposes of section 15(1)(b))” substitute “an exempt person”, and
  - (ii) for paragraph (b) substitute—

“(b) if the person holds a dental qualification which—

    - (i) was granted otherwise than in a relevant European State, but
    - (ii) has been accepted by a relevant European State, other than the United Kingdom, as qualifying him to practise as a dentist in that State,

shall take that acceptance into account; and”;
- (b) after subsection (2A) insert—

“(2B) In the case of an exempt person who holds a dental qualification which—

  - (a) was granted otherwise than in a relevant European State, and
  - (b) has not previously been accepted by a relevant European State as qualifying him to practise as a dentist in that State,

the Council shall not determine that they are satisfied that that person has the requisite knowledge and skill as mentioned in section 15(4)(c) above unless the dental qualification is evidence of dental training that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 34 of the Directive (basic dental training).”.

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(a) Subsection (2A) was inserted by S.I. 1998/811 and amended by S.I. 2003/3148.

### **Amendment of section 17**

**114.** In section 17(a) (temporary registration)—

- (a) in subsection (2)(d), for sub-paragraph (i) substitute—
  - “(i) is an exempt person, or”; and
- (b) in subsection (3A)—
  - (i) for “a person who is a national of an EEA State (or a person who is treated as such for the purposes of section 15(1)(b))” substitute “an exempt person”, and
  - (ii) for “another EEA State” substitute “a relevant European State other than the United Kingdom”.

### **Amendment of section 18**

**115.** In section 18(b) (procedure for registration)—

- (a) in subsection (1), for “Subject to section 17 above and subsection (3) below, any right to registration” substitute “Subject to subsection (3) below, any right to registration under section 15 above”;
- (b) in subsection (2)—
  - (i) in paragraph (b), for “registration; and” substitute “registration.”, and
  - (ii) omit paragraph (c); and
- (c) after subsection (2) insert—

“(2A) An exempt person (“A”) applying to be registered in the register shall (in addition to the document and statement mentioned in subsection (2)) produce or send to the registrar—

  - (a) if A is applying to be registered in exercise of entitlement under section 15(1)(b), (ba) or (c) and is a national of a relevant European State, proof of A’s nationality;
  - (b) if A is applying to be registered in exercise of entitlement under section 15(1)(b), (ba) or (c) and is not a national of a relevant European State, proof of the Community right by virtue of which A is an exempt person;
  - (c) if A—
    - (i) is applying to be registered in exercise of entitlement under section 15(1)(b),
    - (ii) holds a diploma listed in Annex V, point 5.3.2 of the Directive (evidence of basic formal qualifications of dental practitioners), and
    - (iii) has successfully completed dental training that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 34 of the Directive (basic dental training),

a certificate as mentioned in subsection (2B).

(2B) The certificate—

  - (a) must be a certificate issued by a competent authority in A’s attesting State (as defined by section 15(4BD)); and
  - (b) must certify that the document produced or sent by A under subsection (2)(a) is a diploma listed in relation to that State in Annex V, point 5.3.2 of the Directive.”.

### **Amendment of section 19**

**116.** In section 19(c) (regulations with respect to the register)—

- (a) in subsection (1), for “The Council” substitute “Subject to subsection (1A), the Council”; and
- (b) after subsection (1) insert—

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(a) Section 17 was amended by S.I. 1998/811 and 2003/3148.  
(b) Section 18 was amended by S.I. 1996/1496 and 2005/2011.  
(c) Section 19 was amended by S.I. 2001/3926 and 2005/2011.

“(1A) Regulations under this section shall not prescribe fees in respect of registration in the list mentioned in section 14(1A)(c).”.

### **Substitution of section 21A**

**117.** For section 21A(a) substitute—

#### **“Notification of results of application**

**21A.**—(1) This section applies where a person (“A”) makes an application to be registered in the register in exercise of entitlement under section 15.

(2) The registrar, within the period of one month beginning with the date of receipt of the application, must—

- (a) acknowledge receipt of the application; and
- (b) inform A of any missing document required for the purposes of the application.

(3) The registrar must notify A of the result of the application—

- (a) in the case of an application for registration in exercise of entitlement under section 15(1)(a), (b) or (c), within the period of three months beginning with the relevant date;
- (b) in the case of an application for registration in exercise of entitlement under section 15(1)(ba), within the period of four months beginning with the relevant date.

(4) The “relevant date”, in relation to an application, is—

- (a) the date when the registrar receives the application; or
- (b) if any document required for the purposes of the application is missing when the registrar receives the application, the date on which the registrar first has all the documents required for those purposes.”.

### **Insertion of section 34AA**

**118.** After section 34A insert—

#### **“Limits on section 34A as respects visiting dentists from relevant European States**

**34AA.**—(1) Subsections (1) and (2) of section 34A(b), so far as relating to a person (“P”) who is a registered dentist only as a result of being in the list mentioned in section 14(1A)(c), have effect subject to, respectively, subsections (2) and (3) of this section.

(2) Rules made under section 34A(1)—

- (a) may not impose requirements on P if P is required to undertake, in P’s home State, professional training and development in relation to the profession of dentistry; and
- (b) where they impose requirements on P—
  - (i) shall take account of the fact that P is a fully qualified dentist in P’s home State, and
  - (ii) shall specify that professional training and development which P is required to undertake by the requirements may be undertaken outside the United Kingdom.

(3) The registrar’s power under section 34A(2) is exercisable in relation to P only if it also appears to the registrar that, in the circumstances of the case, erasure from the register is an appropriate and proportionate sanction in view of P’s continued lawful establishment in dental practice in P’s home State.

(4) In this section “home State”, in relation to P, means the relevant European State in which P is lawfully established in dental practice.”.

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(a) Section 21A was inserted by S.I. 1998/811.

(b) Section 34A was inserted by S.I. 2001/3926 but is prospectively substituted by S.I. 2005/2011 except that the 2005 version, for the purpose of the exercise of power to make rules, is in force alongside the 2001 version.

### **Amendment of section 35**

**119.** In section 35(a) (effect on registration of disqualification in another member State)—

- (a) in the side-note, and in the italic heading preceding the section, for “another member” substitute “a relevant European”;
- (b) in subsections (1) and (2), for “an EEA State” substitute “a relevant European State”;
- (c) in subsections (1), (3) and (5), after “section 15(1)(b)” insert “or (ba)”; and
- (d) in subsection (2)(b), after “he is prohibited” insert “(whether on a permanent or temporary basis)”.

### **Amendment of section 36**

**120.** In section 36(b) (visiting EEA practitioners)—

- (a) in the side-note, and in the italic heading preceding the section, for “Visiting EEA practitioners” substitute “Visiting dentists from relevant European States”;
- (b) for “EEA” substitute “relevant European”; and
- (c) omit “without being registered under this Act”.

### **Insertion of sections 36ZA and 36ZB**

**121.** After section 36 insert—

*“The Directive: designation of competent authority etc.*

#### **The Directive: designation of competent authority etc.**

**36ZA.**—(1) The Council is designated as the competent authority in the United Kingdom for the purposes of the Directive so far as relating to dentistry(c).

(2) The designation under subsection (1)—

- (a) does not extend to matters relating to training to be, or qualifications or practice as, a specialist in orthodontics or in oral surgery;
- (b) does not extend to the awarding of UK diplomas in dentistry.

(3) Accordingly, the Council shall in the United Kingdom carry out (in particular) the functions specified in Schedule 4ZA so far as those functions relate to matters other than specialist matters (as respects those functions so far as relating to specialist matters, see regulation 4 of, and Schedule A1 to, the European Primary and Specialist Dental Qualifications Regulations (S.I. 1998/811)); and for this purpose each of the following is a “specialist matter”—

- (a) training to be a specialist in orthodontics or oral surgery;
- (b) qualifications as such a specialist;
- (c) practice as such a specialist.

(4) Each dental authority is designated as a competent authority in the United Kingdom for the purposes of awarding UK diplomas in dentistry.

(5) In subsection (4) “UK diploma in dentistry” means—

- (a) a degree in dentistry that gives its holder the qualification of Bachelor of Dental Surgery (whether abbreviated as BDS or B.Ch.D.); or
- (b) a licence in dentistry that gives its holder the qualification of Licentiate in Dental Surgery (LDS).

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(a) Section 35 was amended by S.I. 1996/1496 and 2005/2011.

(b) Section 36 was amended by S.I. 1996/1496.

(c) See S.I. 2007/2781, regulation 4 and Part 1 of Schedule 1, for the designation of the Council as the competent authority in the United Kingdom for the purposes of the Directive so far as relating to the professions pursued by dental hygienists, dental therapists, clinical dental technicians, dental nurses, dental technicians and orthodontic therapists.

(6) In Schedule 4ZA—

“non-UK dental qualification” means a dental qualification that is awarded to a person by a competent authority of a relevant European State other than the United Kingdom;

“UK dental qualification” means a dental qualification that is awarded to a person by a competent authority in the United Kingdom.

#### **Fees for provision of certificates**

**36ZB.** The Council may charge such reasonable fees as they may determine to cover the cost of providing any of the certificates referred to in Schedule 4ZA.”.

#### **Amendment of section 36B**

**122.** In section 36B(a) (the dental care professionals register), after subsection (1) insert—

“(1A) The dental care professionals register shall consist of two lists, namely—

- (a) the principal list, which shall contain particulars of persons who under section 36C are entitled to be registered in the dental care professionals register; and
- (b) the list of visiting dental care professionals from relevant European States, which shall contain particulars of persons who under section 36Z3 are entitled to be registered in the dental care professionals register.”.

#### **Amendment of section 36C**

**123.** In section 36C(b) (qualifications for registration)—

(a) for subsection (3) substitute—

“(3) Matter B is that the person—

- (a) is an exempt person; and
- (b) is permitted to practise in the United Kingdom as a member of the profession pursued by clinical dental technicians, dental hygienists, dental nurses, dental technicians, dental therapists or orthodontic therapists (as the case may be) by virtue of Part 3 of the General Systems Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations).”;

(b) in subsection (4)(c), for “(except where he is a national of an EEA State or a person within subsection (3)(a)(ii))” substitute “except where he is an exempt person,”;

(c) for subsection (5)(b) substitute—

“(b) in the case of an exempt person who holds a relevant qualification which—

- (i) was granted otherwise than in a relevant European State, and
- (ii) has been accepted by a relevant European State, other than the United Kingdom, as qualifying the person to practise in that State as a member of the profession or class to which the title applies,

shall take that acceptance into account.”; and

(d) omit subsection (7).

#### **Amendment of section 36E**

**124.** In section 36E(c) (rules relating to the dental care professionals register), in paragraph (a), for “in the dental care professionals register” substitute “in the principal list of the dental care professionals register”.

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(a) Section 36B was inserted by S.I. 2005/2011.

(b) Section 36C was inserted by S.I. 2005/2011 and amended by S.I. 2006/1718.

(c) Section 36E was inserted by S.I. 2005/2011.

## Amendment of section 36F

**125.** In section 36F(a) (fees)—

- (a) in subsection (1), for “The Council” substitute “Subject to subsection (1A), the Council”; and
- (b) after subsection (1) insert—

“(1A) Regulations under this section shall not prescribe fees in respect of registration in the list mentioned in section 36B(1A)(b).”.

## Insertion of sections 36Z3 and 36Z4

**126.** After section 36Z2(b) insert—

*“Visiting dental care professionals from relevant European States*

### Visiting dental care professionals from relevant European States

**36Z3.**—(1) This section applies to an exempt person (“V”) who is lawfully established, in a relevant European State other than the United Kingdom (“State A”), as a member of one of the dental care professions (“the established profession”).

(2) Subsection (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of relevant services in the United Kingdom on a temporary and occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of relevant services).

(3) V is entitled to be registered in the dental care professionals register under the title, or (as the case may be) the titles, specified in regulations under section 36A(2) as applying to the established profession; and the registrar shall give effect to the entitlement.

(4) If V—

- (a) is entitled under subsection (3) to be registered in the dental care professionals register under any particular title, but
- (b) is not registered in the list mentioned in section 36B(1A)(b) under that title,

V shall be treated as registered in that list under that title.

(5) V’s entitlement under subsection (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of relevant services in the United Kingdom on a temporary and occasional basis.

(6) If—

- (a) V’s entitlement under subsection (3) ceases by reason of the operation of subsection (5), and
- (b) V’s name is registered in the list mentioned in section 36B(1A)(b) under the title, or any one or more of the titles, specified in regulations under section 36A(2) as applying to the established profession,

the registrar may erase V’s name from registration in that list under the title or titles concerned.

(7) Subsection (8) applies if—

- (a) V’s establishment in State A is subject to a condition relating to V’s practice of the established profession;
- (b) V’s name is registered in the dental care professionals register under the title, or (as the case may be) the titles, specified in regulations under section 36A(2) as applying to the established profession; and

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(a) Section 36F was inserted by S.I. 2005/2011.

(b) Section 36Z2 was inserted by S.I. 2005/2011, and has been brought into force for the purpose only of the exercise of the power to make rules.

(c) for any of the purposes of this Act it falls to be decided whether V’s fitness to practise is or may be impaired on the ground of misconduct.

(8) The matters that may be counted as misconduct include (in particular) any act or omission by V during the course of the provision by V of relevant services in the United Kingdom on a temporary and occasional basis that is, or would be if the condition applied in relation to practice of the established profession outside State A, a breach of the condition.

(9) In subsections (7) and (8) “condition” includes limitation.

(10) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in the list mentioned in section 36B(1A)(b), of any other provision of this Act under which a registered dental care professional’s name may be erased from the dental care professionals register or under which a registered dental care professional’s registration in the dental care professionals register may be suspended.

(11) In this section “relevant services” means services provided in pursuit of the established profession.

(12) For the purposes of this section, each of the following is a dental care profession—

- (a) the profession pursued by clinical dental technicians;
- (b) the profession pursued by dental hygienists;
- (c) the profession pursued by dental nurses;
- (d) the profession pursued by dental technicians;
- (e) the profession pursued by dental therapists;
- (f) the profession pursued by orthodontic therapists.

#### **Limits on section 36Z1 as respects visiting dental care professionals**

**36Z4.**—(1) Subsections (1) and (2) of section 36Z1(a), so far as relating to a person (“P”)—

- (a) who is registered in the list mentioned in section 36B(1A)(b) under a title applying to, or to a class of members of, a particular profession (“the established profession”), but
- (b) who is not registered in the list mentioned in section 36B(1A)(a) under a title applying to, or to a class of members of, the established profession,

have effect subject to, respectively, subsections (2) and (3) of this section.

(2) Rules made under section 36Z1(1)—

- (a) may not impose requirements on P in connection with P’s pursuit of the established profession if P is required to undertake, in P’s home State, professional training and development in relation to the established profession; and
- (b) where they impose requirements on P in connection with P’s pursuit of the established profession—
  - (i) shall take account of the fact that P is fully qualified to pursue the established profession in P’s home State, and
  - (ii) shall specify that professional training and development which P is required to undertake by the requirements may be undertaken outside the United Kingdom.

(3) The registrar’s power under section 36Z1(2) is exercisable in relation to P’s registration under a title applying to, or to a class of members of, the established profession only if it also appears to the registrar that, in the circumstances of the case, erasure from registration under that title is an appropriate and proportionate sanction in view of P’s continued lawful establishment as a member of the established profession in P’s home State.

(4) In this section “home State”, in relation to P, means the relevant European State in which P is lawfully established as a member of the established profession.”.

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(a) Section 36Z1 was inserted by S.I. 2005/2011, and has been brought into force for the purpose only of the exercise of the power to make rules.



### **Amendment of section 38**

127. In section 38 (prohibition on practice of dentistry by laymen), in subsection (1)(a), for “a registered dentist, a registered dental care professional or a visiting EEA practitioner entered in the list of such practitioners” substitute “a registered dentist or a registered dental care professional”.

### **Amendment of section 39**

128. In section 39(b) (prohibition on use of practitioners’ titles by laymen), in subsection (1), omit “or a visiting EEA practitioner entered in the list of such practitioners”.

### **Amendment of section 53**

129. In section 53 (interpretation), in subsection (1)(c)—

(a) before the definition of “the Council” insert—

““competent authority” means any authority or body of a relevant European State designated by that State for the purposes of the Directive as competent to—

(a) receive or issue evidence of qualifications or other information or documents, or

(b) receive applications and take the decisions referred to in the Directive,

in connection with the practice of dentistry or a profession complementary to dentistry;”;

(b) after the definition of “diploma” insert—

““the Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications (OJ No. L255, 30.09.2005, p.22)(d), and references in this Act to the Directive or to any provision of the Directive are references to the Directive, or to that provision of the Directive, as amended from time to time;”;

(c) omit the definitions of “the EEA Agreement” and “EEA State”;

(d) after the definition of “the Directive” insert—

““exempt person”, in relation to the profession of dentistry or in relation to a profession complementary to dentistry, means—

(a) a national of a relevant European State other than the United Kingdom;

(b) a national of the United Kingdom who is seeking access to, or is pursuing, the profession by virtue of an enforceable Community right; or

(c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the profession, no less favourably than a national of a relevant European State;

“the General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781);”;

(e) after the definition of “interim order” insert—

““national”, in relation to a relevant European State, means the same as in the Community Treaties, but does not include a person who by virtue of Article 2 of Protocol No. 3 (Channel Islands and Isle of Man) to the Treaty of Accession is not to benefit from Community provisions relating to the free movement of persons and services;”;

(f) after the definition of “the registrar” insert—

““relevant European State” means an EEA State or Switzerland.”; and

(g) omit the definition of “visiting EEA practitioner entered in the list of such practitioners”.

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(a) Subsection (1) was amended by S.I. 1996/1496 and 2005/2011.

(b) Section 39 was amended by S.I. 1996/1496 and 2005/2011.

(c) Subsection (1) was amended by S.I. 1996/1496 and 2005/2011.

(d) The Directive was amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.

## Amendment of Schedule 2

**130.**—(1) Schedule 2 (European dental qualifications) is amended as follows.

(2) For paragraph 1(a) substitute—

“1. In this Schedule—

“medical qualification” means a diploma, certificate or other evidence of qualifications as a doctor issued by a competent authority in a relevant European State; and

“the reference date”, in relation to a relevant European State, means the date specified in relation to that State in the column entitled “Reference date” in Annex V, point 5.3.2 of the Directive.”.

(3) In paragraph 2(b)—

(a) for “an EEA State” substitute “a relevant European State”; and

(b) after “of this Act” insert “, provided that, where the diploma is listed in Annex V, point 5.3.2 of the Directive, it is accompanied, where appropriate, by the certificate listed in relation to that State in the column of Annex V, point 5.3.2 of the Directive entitled “Certificate accompanying the evidence of qualifications”.”.

(4) For paragraph 3(c) substitute—

“3. A diploma listed in Annex V, point 5.3.2 of the Directive granted in a relevant European State before the reference date, or on or after that date where training of which the diploma is evidence was commenced by the holder before that date, is not an appropriate European diploma for the purposes of section 15(1)(b) unless the holder either—

(a) does the following—

(i) satisfies the registrar (by means of a certificate of a competent authority of that State or otherwise) that the diploma guarantees that the holder’s training satisfies the requirements of article 34 of the Directive (requirements for basic dental training), and

(ii) produces to the registrar, where appropriate, the certificate listed in relation to that State in the column of Annex V, point 5.3.2 of the Directive entitled “Certificate accompanying the evidence of qualifications”; or

(b) produces to the registrar a certificate of a competent authority of any relevant European State that the holder has effectively and lawfully practised dentistry in that State for at least three consecutive years during the five years preceding the date of issue of the certificate.”.

(5) For paragraph 3A(d) substitute—

“3A. A diploma granted in a relevant European State on or after the reference date which is not evidence of training commenced by the holder before that date, and which is not listed in Annex V, point 5.3.2 of the Directive, is not an appropriate European diploma for the purposes of section 15(1)(b) unless the holder produces to the registrar a certificate issued by a competent authority of the relevant European State certifying that the diploma—

(a) is evidence of training which satisfies the requirements of article 34 of the Directive; and

(b) is treated by that State as if it were a qualification listed in relation to that State in Annex V, point 5.3.2 of the Directive.”.

(6) In paragraph 4(e)—

(a) for “an EEA State before the implementation date” substitute “a relevant European State before the reference date”;

(b) for “a scheduled European diploma” substitute “listed in Annex V, point 5.3.2 of the Directive”; and

(c) for “the said purposes” substitute “the purposes of section 15(1)(b)”.

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(a) Paragraph 1 was substituted by S.I. 1996/1496 and amended by S.I. 2003/3148 and 2004/1947.

(b) Paragraph 2 was substituted by S.I. 1996/1496.

(c) Paragraph 3 was amended by S.I. 1996/1496.

(d) Paragraph 3A was inserted by S.I. 1996/1496.

(e) Paragraph 4 was amended by S.I. 1996/1496.

(7) For paragraphs 5 and 6(a) substitute—

“5. A medical qualification awarded in Austria, Italy, Romania or Spain to a person who began his medical training on or before the reference date for the State concerned is an appropriate European diploma for the purposes of section 15(1)(b) of this Act where that person produces to the registrar a certificate issued by a competent authority of the State concerned certifying that the person—

(a) has—

- (i) effectively, lawfully and principally practised dentistry in that State for at least three consecutive years during the five years preceding the date of issue of the certificate, or
- (ii) successfully completed three years of study which are equivalent to the training referred to in article 34 of the Directive; and

(b) is authorised to practise dentistry under the same conditions as holders of a qualification listed in relation to the State concerned in Annex V, point 5.3.2 of the Directive.”.

(8) In paragraph 6A(b)—

(a) in sub-paragraph (1)—

- (i) for “diploma in medicine” substitute “medical qualification”,
- (ii) for “on or after 28th January 1980 but not later than 31st December 1984” substitute “after 28th January 1980”,
- (iii) in paragraph (a), for “specialist” substitute “relevant”, and
- (iv) in paragraphs (a) and (c), for “listed for Italy in Part II of this Schedule” substitute “listed in relation to Italy in Annex V, point 5.3.2 of the Directive”; and

(b) for sub-paragraph (2) substitute—

“(2) A person shall be excepted from satisfying the requirement referred to in sub-paragraph (1)(a) if he satisfies the registrar that he has successfully completed three years of study—

- (a) which, in the case of a person who began medical training at a university after 31st December 1984, were begun before 31st December 1994; and
- (b) which are certified by a competent authority in Italy as being equivalent to the training referred to in article 34 of the Directive.”.

(9) In paragraph 7(b)(c), for “the German scheduled European diploma” substitute “the qualification listed in relation to Germany in Annex V, point 5.3.2 of the Directive”.

(10) In paragraph 8(d)—

(a) in sub-paragraph (1)(b), for “the state (or former state)” substitute “the former state”; and

(b) in sub-paragraph (2)—

(i) for paragraphs (a) and (b) substitute—

“(a) a certificate of a competent authority of the relevant European State specified in the corresponding entry in column (c) of the table stating that the holder has effectively and lawfully practised dentistry in that State for at least three consecutive years during the five years preceding the date of issue of the certificate; and

(b) a certificate from the competent authority of that State stating that that diploma has, on its territory, the same legal validity as regards access to and practice of the dental profession as the qualification listed in relation to that State in Annex V, point 5.3.2 of the Directive.”, and

(ii) in column (b) of the Table, for “Yugoslavia” substitute “Former Yugoslavia”.

(11) For paragraphs 9 and 10(e) substitute—

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(a) Paragraphs 5 and 6 were inserted by S.I. 1986/23 and substituted by SI 1996/1496.  
(b) Paragraph 6A was inserted by S.I. 2003/3148.  
(c) Paragraph 7 was substituted by S.I. 1996/1496.  
(d) Paragraph 8 was inserted by S.I. 2004/1947.  
(e) Paragraphs 9 and 10 were inserted by S.I. 2004/1947.

“9. A medical qualification awarded in the Czech Republic or in the former Czechoslovakia which is evidence of medical training commenced before 1st May 2004 is an appropriate European diploma for the purposes of section 15(1)(b) of this Act if the holder produces to the registrar a certificate of a competent authority of the Czech Republic certifying that the holder—

- (a) has—
  - (i) effectively, lawfully and principally practised dentistry in the Czech Republic for at least three consecutive years during the five years preceding the date of issue of the certificate, or
  - (ii) successfully completed three years of study which are equivalent to the training referred to in article 34 of the Directive; and
- (b) is authorised to practise dentistry under the same conditions as holders of the qualification listed in relation to the Czech Republic in Annex V, point 5.3.2 of the Directive.

10. A medical qualification awarded in Slovakia or in the former Czechoslovakia which is evidence of medical training commenced before 1st May 2004 is an appropriate European diploma for the purposes of section 15(1)(b) of this Act if the holder produces to the registrar a certificate of a competent authority of Slovakia certifying that the holder—

- (a) has—
  - (i) effectively, lawfully and principally practised dentistry in Slovakia for at least three consecutive years during the five years preceding the date of issue of the certificate, or
  - (ii) successfully completed three years of study which are equivalent to the training referred to in article 34 of the Directive; and
- (b) is authorised to practise dentistry under the same conditions as holders of the qualification listed in relation to Slovakia in Annex V, point 5.3.2 of the Directive.”.

(12) Omit Part II (scheduled European diplomas)(a).

#### **Amendment of Schedule 2A**

131. In Schedule 2A(b) (registration appeals: dentists register)—

- (a) in paragraph 1, in the definition of “the requisite period”, after “make the decision” insert “, and in relation to a decision of a kind specified in paragraph 2(1)(aa), means the period of four months beginning with the date when the registrar is first in possession of sufficient information to make the decision”;
- (b) in paragraph 2(1)—
  - (i) for paragraph (a) substitute—

“(a) a decision not to register a person’s name in the register under subsection (1)(a), (b) or (c) of section 15 (qualification for registration) on the grounds that any of the requirements of that section are not met;
  - (aa) a decision not to register a person’s name in the register under subsection (1)(ba) of section 15 on the grounds that any of the requirements of that section are not met;
  - (ab) a decision under Part 3 of the General Systems Regulations to require an exempt person within sub-paragraphs (i) and (ii) of section 15(1)(ba) to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to pursue the profession of dentistry in the United Kingdom;”
  - (ii) in paragraph (j), for “EEA state); and” substitute “relevant European State);”;
  - (iii) after paragraph (k) insert—

“; and

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(a) Part II was substituted by S.I. 2003/3148 and amended by S.I. 2004/1947.

(b) Schedule 2A was inserted by S.I. 2005/2011.

- (l) a decision not to register a person’s name in the register under Schedule 4 (visiting dentists from relevant European States).”; and
- (c) in paragraph 3(2), for “paragraphs (a), (b)” substitute “paragraphs (a), (aa), (b)”.

#### **Substitution of Schedule 4**

132. For Schedule 4 substitute—

## **“SCHEDULE 4**

Section 36

### **VISITING DENTISTS FROM RELEVANT EUROPEAN STATES**

#### **Application and interpretation**

1. This Schedule applies to an exempt person who is lawfully established in dental practice in a relevant European State other than the United Kingdom.

2. In this Schedule—

- (a) a “visiting practitioner” means an exempt person to whom this Schedule applies;
- (b) the “home State”, in relation to a visiting practitioner, means the relevant European State in which the practitioner is lawfully established in dental practice; and
- (c) a reference to the provision of occasional dental services is a reference to the provision of dental services in the United Kingdom on a temporary and occasional basis.

#### **Registration in respect of provision of occasional dental services**

3.—(1) A visiting practitioner is entitled to be registered in the register if the practitioner is entitled under paragraph 4 or 7 to provide occasional dental services; and the registrar shall give effect to the entitlement.

(2) A visiting practitioner who is entitled under sub-paragraph (1) to be registered in the register, but who is not registered in the register’s list of visiting dentists from relevant European States, shall be treated as registered in that list.

(3) Sub-paragraph (4) applies where a person’s entitlement under sub-paragraph (1) to be registered in the register ceases because, by reason of the operation of paragraph 8(1), (2) or (5), the person ceases to be entitled under this Schedule to provide occasional dental services.

(4) If the person’s name is registered in the register’s list of visiting dentists from relevant European States, the registrar may erase the person’s name from that list.

(5) Sub-paragraphs (1) to (4) are not to be taken to prejudice the application, in relation to persons registered in the register on the basis of entitlement under sub-paragraph (1), of any other provision of this Act under which a registered dentist’s name may be erased from the register or under which a registered dentist’s registration in the register may be suspended.

#### **Entitlement to provide occasional dental services: first year**

4. A visiting practitioner is entitled to provide occasional dental services if—

- (a) the practitioner has complied with the requirements of paragraph 5, and
- (b) where the practitioner’s case falls within regulation 3(9)(a) or (e) of the General Systems Regulations, the provision by the practitioner of occasional dental services is in accordance with regulations 14 to 16 of those Regulations (the practitioner having, in particular, successfully completed any adaptation period, or passed any aptitude test, that the practitioner may be required to undertake pursuant to Part 2 of those Regulations),

but paragraph 8 contains provision about the duration of entitlement under this paragraph.

### **First provision of services: required documents**

5.—(1) A visiting practitioner who proposes to provide occasional dental services for the first time must, before providing any such services, send or produce to the registrar the required documents.

(2) The required documents are—

(a) a written declaration that—

(i) states the practitioner's wish to provide occasional dental services, and

(ii) contains details of the insurance cover, or other means of personal or collective protection, that the practitioner has with regard to professional liability;

(b) if the practitioner is a national of a relevant European State, proof of nationality;

(c) if the practitioner is not a national of a relevant European State, proof of the Community right by virtue of which the practitioner is an exempt person;

(d) evidence of dental qualifications (see paragraph 6); and

(e) a certificate (or certificates) issued by a competent authority in the practitioner's home State confirming—

(i) that the practitioner is lawfully established in dental practice in that State, and

(ii) that the practitioner is not prohibited (whether on a permanent or temporary basis) from practising dentistry there.

(3) A declaration under sub-paragraph (2)(a) may be supplied by any means.

(4) In registering a visiting practitioner in the register on the basis of entitlement under this Schedule, the registrar must enter against the practitioner's name in the register details of the qualifications of which the practitioner supplied evidence for the purposes of sub-paragraph (2)(d).

6.—(1) Subject to sub-paragraph (4), the evidence referred to in paragraph 5(2)(d) is evidence of the European-recognised qualifications which entitle the visiting practitioner to provide, in the practitioner's home State, the dental services that the practitioner proposes to provide in the United Kingdom on a temporary and occasional basis.

(2) For the purposes of this paragraph and subject to sub-paragraph (4), the evidence of qualifications must, if the visiting practitioner proposes to provide any specialist dental services in the United Kingdom on a temporary and occasional basis, include evidence of the European-recognised qualifications which entitle the practitioner to provide, in the practitioner's home State, those specialist dental services.

(3) This sub-paragraph applies to a visiting practitioner whose case falls within regulation 3(9)(a) or (e) of the General Systems Regulations (with the result that the practitioner is not entitled to provide occasional dental services unless their provision by the practitioner is in accordance with regulations 14 to 16 of those Regulations).

(4) If sub-paragraph (3) applies to a visiting practitioner, the evidence referred to in paragraph 5(2)(d) of the practitioner's dental qualifications is evidence of the qualifications which entitle the practitioner to practise dentistry in his home State.

(5) In this paragraph, "European-recognised qualifications" means qualifications which relevant European States are required by the Directive to recognise.

### **Entitlement to provide occasional dental services after first year: renewals**

7.—(1) Sub-paragraph (2) applies where the registrar receives the required renewal documents from a visiting practitioner who is entitled under this Schedule to provide occasional dental services.

(2) The visiting practitioner is entitled to continue to provide occasional dental services, but paragraph 8 contains provision about the duration of entitlement continued under this sub-paragraph.

(3) Sub-paragraph (4) applies where the registrar receives the required renewal documents from a visiting practitioner—

(a) who is not entitled under this Schedule to provide occasional dental services;



- (b) who has been previously entitled under this Schedule to provide occasional dental services; and
- (c) whose registration in the list of visiting dentists from relevant European States is not suspended.

(4) The visiting practitioner is once again entitled to provide occasional dental services but, in a case where the practitioner's name is not in the list of visiting dentists from relevant European States as a result of erasure otherwise than under paragraph 3(4), only if the registrar decides, after having regard (in particular) to the fact of that erasure and the reasons for it, that the entitlement should be renewed.

Paragraph 8 contains provision about the duration of entitlement under this sub-paragraph.

(5) In relation to a visiting practitioner "the required renewal documents" are—

- (a) a renewal declaration; and
- (b) each evidence of change document (if any).

(6) In this paragraph "renewal declaration", in relation to a visiting practitioner, means a written declaration that—

- (a) states the practitioner's wish to provide occasional dental services in a further year; and
- (b) contains details of the insurance cover, or other means of personal or collective protection, that the practitioner has with regard to professional liability.

(7) Where a document—

- (a) is, in relation to a visiting practitioner, one of the required documents for the purposes of paragraph 5,
- (b) is not a declaration under paragraph 5(2)(a), and
- (c) substantiates a matter as respects which there has been a material change since the practitioner last (whether under paragraph 5 or this paragraph) supplied the then-current version of the document to the registrar,

the version of the document current when under this paragraph the practitioner supplies a renewal declaration to the registrar is an "evidence of change document" for the purposes of sub-paragraph (5)(b).

(8) A renewal declaration supplied under this paragraph may be supplied by any means.

### **Duration of entitlement to provide occasional dental services**

**8.—**(1) Unless an entitlement under paragraph 4 or 7(4) is continued (or further continued) by paragraph 7(2), the entitlement ceases at the end of the year that begins with the end of the day on which the registrar received the documents whose receipt gave rise to the entitlement.

(2) Where an entitlement under paragraph 4 or 7(4) is continued (or further continued) by paragraph 7(2), the entitlement is extended so as to cease at the end of the year that begins with the end of the relevant day.

(3) For the purposes of sub-paragraph (2)—

- (a) if the day on which the registrar receives the documents whose receipt gives rise to the continuation (or further continuation) is an anniversary of the start day, "the relevant day" means the day on which the registrar receives those documents;
- (b) otherwise, "the relevant day" means the anniversary of the start day that is the first such anniversary to occur after the registrar receives the documents whose receipt gives rise to the continuation (or further continuation).

(4) In sub-paragraph (3) "the start day", in relation to an entitlement under paragraph 4 or 7(4), means the day on which the registrar receives the documents whose receipt gives rise to the entitlement.

(5) An entitlement under this Schedule to provide occasional dental services ceases if—

- (a) the visiting practitioner concerned becomes established in dental practice in the United Kingdom; or
- (b) a disqualifying decision is made against the visiting practitioner concerned.



(6) In sub-paragraph (5) “disqualifying decision”, in relation to a visiting practitioner, means a decision made by a competent or judicial authority in the practitioner’s home State that has the effect that the practitioner—

- (a) ceases in that State to be registered or otherwise officially recognised as a dental practitioner; or
- (b) is prohibited (whether on a permanent or temporary basis) from practising dentistry in that State.

(7) If in the case of a visiting practitioner—

- (a) the practitioner’s registration in the list of visiting dentists from relevant European States is suspended or the practitioner’s name is erased from that list, and
- (b) immediately before the time when the suspension or (as the case may be) erasure takes effect, the practitioner is entitled under this Schedule to provide occasional dental services,

that entitlement ceases at that time.

### Conditions

9.—(1) Paragraph (2) applies if—

- (a) the establishment of a visiting practitioner in the practitioner’s home State is subject to a condition relating to the practitioner’s dental practice;
- (b) the practitioner’s name is registered in the register; and
- (c) for any of the purposes of this Act it falls to be decided whether the practitioner’s fitness to practise is or may be impaired on the ground of misconduct.

(2) The matters that may be counted as misconduct include (in particular) any act or omission by the visiting practitioner during the course of the provision by the practitioner of occasional dental services that is, or would be if the condition applied in relation to dental practice outside the practitioner’s home State, a breach of the condition.

(3) In paragraphs (1) and (2) “condition” includes limitation.”.

### Insertion of Schedule 4ZA

133. After Schedule 4 insert—

## “SCHEDULE 4ZA

Section 36ZA

### DIRECTIVE 2005/36: FUNCTIONS OF THE COUNCIL UNDER SECTION 36ZA(3)

<i>Provision of Directive</i>	<i>Function of Council</i>
Article 7(2)(b)	Issuing certificates containing attestations in relation to persons established as dentists in the United Kingdom.
Article 8(1)	Receiving information from, or providing information to, other competent authorities in relation to—
	(a) the legality of a person’s establishment as a dentist;
	(b) the good conduct of such a person;
	(c) the absence of any disciplinary or criminal sanctions of a professional nature against such a person.
Article 8(2)	Receiving information from, or providing information to, other competent authorities in connection with the investigation of complaints made against persons providing dental services.

Article 23(1)	Issuing certificates of effective and lawful practice in the United Kingdom to dentists.
Article 23(6)	Issuing certificates stating that UK dental qualifications, which do not correspond to the titles set out in respect of the United Kingdom at point 5.3.2 of Annex V to the Directive, certify successful completion of basic dental training that is in accordance with article 34 of the Directive or that under article 22(a) of the Directive (part-time training) is to be treated as in accordance with article 34 of the Directive.
Article 50(1) and paragraph 1(d) of Annex VII	Issuing, in respect of the practice of dentistry, the certificates of current professional status referred to in sub-paragraph (d) of paragraph 1 of Annex VII to the Directive within the time limits set by that sub-paragraph.
Article 50(1) and paragraph 2 of Annex VII	Issuing certificates stating that evidence of UK dental qualifications is that covered by the Directive.
Article 50(2)	In cases of justified doubts—
	(a) requiring confirmation of the authenticity of non-UK dental qualifications;
	(b) requiring confirmation that holders of non-UK dental qualifications satisfy the minimum training conditions set out in article 34 of the Directive or under article 22(a) of the Directive are to be treated as satisfying those conditions;
	(c) providing confirmation to competent authorities of other relevant European States of the authenticity of any person's UK dental qualifications;
	(d) providing confirmation that holders of UK dental qualifications satisfy the minimum training conditions set out in article 34 of the Directive or under article 22(a) of the Directive are to be treated as satisfying those conditions.
Article 50(3)	In cases of justified doubts—
	(a) verifying information provided in connection with non-UK dental qualifications awarded following training in a relevant European State other than the State in which the qualification was awarded;
	(b) providing information in connection with a person's UK dental qualifications awarded following training in another relevant European State.
Article 56(1)	Ensuring the confidentiality of information exchanged with other competent authorities.
Article 56(2)	Receiving information from, or providing information to, other competent authorities regarding disciplinary action, criminal sanctions or other serious circumstances likely to have consequences for the practice of dentistry.
	Where such information is received by the Council—
	(a) examining the veracity of the circumstances;
	(b) deciding the nature and scope of any investigations that need to be carried out;
	(c) informing other competent authorities of the Council's conclusions.”

#### **Amendment of Schedule 4A**

**134.** In Schedule 4A(a) (registration appeals: dental care professionals register), in paragraph 2(1)—

(a) after paragraph (a) insert—

“(aa) a decision under Part 3 of the General Systems Regulations to require an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to practise in the United Kingdom as a member of one of the professions mentioned in section 36C(3)(b);”; and

(b) after paragraph (h) insert—

“; and

(i) a decision not to register a person’s name under a particular title in the dental care professionals register under section 36Z3 (visiting dental care professionals from relevant European States).”.

## **PART 8**

### **DENTISTS: THE EUROPEAN PRIMARY AND SPECIALIST DENTAL QUALIFICATIONS REGULATIONS 1998**

#### **Amendment of the European Primary and Specialist Dental Qualifications Regulations 1998**

**135.** The European Primary and Specialist Dental Qualifications Regulations 1998(b) are amended in accordance with this Part.

#### **Amendment of regulation 2**

**136.—**(1) Regulation 2(c) (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) after the definition of “CCST” insert—

““competent authority” means any authority or body of a relevant European State designated by that State for the purposes of the Directive as competent to—

(a) receive or issue evidence of qualifications or other information or documents, or

(b) receive applications and take the decisions referred to in the Directive,

in connection with practice as a specialist dentist in orthodontics or oral surgery;”;

(b) for the definition of “the Dental Training Directive” substitute—

““the Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications(d), and references in these Regulations to any provision of the Directive are references to that provision of the Directive as amended from time to time;”;

(c) omit the definition of “EEA”;

(d) omit the definition of “EEA Agreement”;

(e) omit the definition of “EEA State”;

(f) for the definition of “exempt person” substitute—

““exempt person” means—

(a) a national of a relevant European State other than the United Kingdom;

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(a) Schedule 4A was inserted by S.I. 2005/2011.

(b) S.I. 1998/811.

(c) Regulation 2 was amended by S.I. 2003/3148 and 2004/1947.

(d) OJ No. L255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.

- (b) a national of the United Kingdom who is seeking access to, or is pursuing, the profession of dentistry by virtue of an enforceable Community right; or
  - (c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the profession of dentistry, no less favourably than a national of a relevant European State;”;
  - (g) after the definition of “GDC” insert—
    - ““General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007(a);”;
  - (h) in the definition of “national”, for “an EEA State” substitute “a relevant European State”;
  - (i) omit the definition of “the Recognition Directive”; and
  - (j) after the definition of “registration number” add—
    - ““relevant European State” means an EEA State or Switzerland.”.
- (3) Omit paragraph (3).

### **Amendment of regulation 3**

**137.** In regulation 3 (power of direction), in paragraph (1)(a) and (b), for “the EEA” substitute “a relevant European State”.

### **Substitution of regulation 4**

**138.** For regulation 4(b) substitute—

#### **“The Directive: designation of competent authority etc.**

**4.—(1)** The GDC is designated as the competent authority in the United Kingdom for the purposes of the Directive relating to practice as a specialist dentist in orthodontics or oral surgery, including the awarding of CCSTs in orthodontics and oral surgery.

(2) Accordingly, the GDC shall in the United Kingdom carry out (in particular) the functions specified in Schedule A1.

(3) In Schedule A1, “non-UK specialist qualification” means a qualification as a specialist dentist in orthodontics or oral surgery that is awarded to a person by a competent authority of a relevant European State other than the United Kingdom.”.

### **Amendment of regulation 7**

**139.** In regulation 7 (minimum requirements of specialist dental training), for paragraphs (1) to (3) substitute—

“(1) The GDC shall not approve specialist dental training intended to lead to the award of a CCST unless that training meets the conditions specified in article 35 of the Directive (specialist dental training), or under article 22(a) of the Directive (part-time training) is to be treated as meeting those conditions.

(2) The GDC may withdraw any such approval if it is satisfied that the training no longer meets, or under article 22(a) of the Directive can no longer be treated as meeting, the conditions specified in article 35 of the Directive.”.

### **Amendment of regulation 8**

**140.** In regulation 8 (distinctive titles and specialist lists), for paragraph (2) substitute—

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(a) S.I. 2007/2781.

(b) Regulation 4 was amended by S.I. 2003/3148.

“(2) Where this paragraph applies, the GDC shall secure that the regulations mentioned in paragraph (1) provide that a registered dentist is entitled to use the title prescribed for a specialty and (if appropriate) to have his name entered in the list for that specialty only if (subject to paragraph (2A)) he pays any fee determined by the GDC on application for entry in the appropriate list, and—

- (a) he holds a CCST awarded by the GDC under regulation 6 in the specialty in question;
- (b) he is an eligible specialist as specified in regulation 9;
- (c) he is an exempt person—
  - (i) whose case falls within regulation 3(9)(a) or (e) of the General Systems Regulations,
  - (ii) to whom regulations 20 to 26 of those Regulations apply by reason of the operation of regulation 3(4) of those Regulations, and
  - (iii) who is permitted to practise orthodontics or oral surgery in the United Kingdom by virtue of Part 3 of those Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations);
- (d) he is an existing specialist as specified in regulation 12; or
- (e) he is an exempt person—
  - (i) who is registered in the list of visiting dentists from relevant European States mentioned in section 14(1A)(c) of the Act, and
  - (ii) who is providing services in the United Kingdom as a specialist dentist in orthodontics or oral surgery on a temporary and occasional basis, in exercise of entitlement under Schedule 4 (visiting dentists from relevant European States) to the Act.

(2A) No application shall be required, and no fee shall be payable, in respect of entry in a specialist list pursuant to paragraph (2)(e).

(2B) If a person whose name is included in a specialist list pursuant to paragraph (2)(e) ceases to satisfy either of the conditions specified in paragraph (2)(e), the registrar may remove that person’s name from that specialist list.”.

### **Amendment of regulation 9**

**141.** In regulation 9(a) (eligible specialists)—

(a) for paragraph (1) substitute—

“(1) A person is an eligible specialist for the purposes of regulation 8(2)(b) if—

- (a) he is an exempt person; and
- (b) he holds a recognised specialist dental qualification (as specified in regulation 10).”;

(b) in paragraphs (2) and (4), for “regulation 8(2)” substitute “regulation 8(2)(b)”;

(c) in paragraph (2), for “A person” substitute “Subject to paragraph (2A), a person”;

(d) after paragraph (2) insert—

“(2A) If a person falling within paragraph (2) is an exempt person and he holds a specialist dental qualification in orthodontics or oral surgery which—

- (a) was granted otherwise than in a relevant European State, and
- (b) has not previously been accepted by a relevant European State as qualifying him to practise as a specialist dentist in orthodontics or oral surgery (as the case may be) in that State,

he is not an eligible specialist unless his specialist dental qualification is evidence of specialist dental training that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 35 of the Directive (specialist dental training).”;

(e) in paragraph (3), for sub-paragraph (b) substitute—

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(a) Regulation 9 was amended by S.I. 2003/3148.

- “(b) where the person has a specialist qualification in orthodontics or (as the case may be) oral surgery which—
- (i) was granted otherwise than in a relevant European State, but
  - (ii) has been accepted by a relevant European State, other than the United Kingdom, as qualifying him to practise as a specialist dentist in that State, that acceptance.”;
- (f) in paragraph (4), for sub-paragraph (a) substitute—
- “(a) if his specialist qualification in oral and maxillo-facial surgery was awarded in a relevant European State other than the United Kingdom, he satisfies the GDC that his training in oral and maxillo-facial surgery included elements which taken together satisfy, or under article 22(a) of the Directive (part-time training) are to be treated as satisfying, the requirements of article 35 of the Directive (specialist dental training); and”;
- (g) omit paragraphs (5), (6) and (7).

### **Insertion of regulation 9A**

**142.** After regulation 9 insert—

#### **“Applications and notification of decisions**

**9A.**—(1) An exempt person (“A”) applying to have his name entered in the list for the specialty of orthodontics or oral surgery shall produce or send to the GDC a certificate as mentioned in paragraph (2), if—

- (a) he is applying to be considered as an eligible specialist by virtue of regulation 9(1);
- (b) he holds a qualification listed in Annex V, point 5.3.3 of the Directive (evidence of formal qualifications of specialised dentists); and
- (c) he has successfully completed specialist dental training that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 35 of the Directive (specialist dental training).

(2) The certificate—

- (a) must be a certificate issued by a competent authority in the relevant European State in which A obtained his specialist dental qualification, or (if different) the relevant European State from which A comes to the United Kingdom; and
- (b) must certify that his specialist dental qualification is a qualification listed in relation to that State in Annex V, point 5.3.3 of the Directive.

(3) Paragraphs (4), (5) and (6) apply where an exempt person (“S”) makes an application for the entry of his name in a specialist list pursuant to regulation 8(2)(b) or (c).

(4) The GDC, within the period of one month beginning with the date of receipt of the application, must—

- (a) acknowledge receipt of the application; and
- (b) inform S of any missing document required for the purposes of the application.

(5) The GDC must, within the specified period, give S notice—

- (a) of the result of the application;
- (b) if it refuses the application, of the reasons for that refusal and any right of appeal S has under regulation 14(1)(b) or (ba).

(6) Failure to notify S of the result of the application within the specified period shall be treated as a decision from which S may appeal under regulation 14(1)(b) or (ba).

(7) In this regulation “the specified period” means—

- (a) in the case of an application pursuant to regulation 8(2)(b), the period of three months beginning with the relevant date;

- (b) in the case of an application pursuant to regulation 8(2)(c), the period of four months beginning with the relevant date.
- (8) The “relevant date”, in relation to an application, is—
  - (a) the date when the GDC receives the application; or
  - (b) if any document required for the purposes of the application is missing when the GDC receives the application, the date on which the GDC first has all the documents required for those purposes.”.

**Amendment of regulation 10**

**143.**—(1) Regulation 10(a) (recognised specialist dental qualifications) is amended as follows.

(2) In paragraph (1)—

(a) for sub-paragraphs (a) to (d) substitute—

“(a) a qualification which—

- (i) is listed in Annex V, point 5.3.3 of the Directive (evidence of formal qualifications in orthodontics and oral surgery),
- (ii) was awarded in a relevant European State other than the United Kingdom on or after the reference date, and
- (iii) is not evidence of training commenced by the holder before that date;

(aa) a qualification which—

- (i) is listed in Annex V, point 5.3.3 of the Directive,
- (ii) was awarded in a relevant European State other than the United Kingdom, and
- (iii) is evidence of training commenced by the holder before the reference date, provided that the holder of the qualification satisfies the GDC (by means of a certificate of a competent authority of the relevant European State in which the qualification was awarded or otherwise) that the qualification satisfies the requirements of article 35 of the Directive (specialist dental training);

(b) a qualification in orthodontics or (as the case may be) oral surgery which—

- (i) was awarded in a relevant European State other than the United Kingdom,
- (ii) does not satisfy the requirements of article 35 of the Directive, and
- (iii) is evidence of training commenced by the holder before the reference date, provided that the qualification is accompanied by a certificate of a competent authority of any relevant European State that the holder has effectively and lawfully been engaged in the practice of his specialty in that State for at least three consecutive years during the five years preceding the date of issue of the certificate;

(c) a qualification in orthodontics or (as the case may be) oral surgery which—

- (i) does not correspond to the titles listed in Annex V, point 5.3.3 of the Directive, and
- (ii) was awarded at any time in a relevant European State other than the United Kingdom, provided that the qualification is accompanied by a certificate of a competent authority of that State to the effect that the qualification is evidence of training which satisfies the requirements of article 35 of the Directive and is treated by that State as if it were a qualification listed in respect of the relevant specialty in relation to that State in Annex V, point 5.3.3 of the Directive;

(d) subject to compliance with paragraph (2), a qualification in orthodontics or (as the case may be) oral surgery which is evidence of training commenced by the holder before 3rd October 1990 on the territory of the former German Democratic Republic, and which does not satisfy the requirements of article 35 of the Directive;” and

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(a) Regulation 10 was amended by S.I. 2003/3148 and 2004/1947.



- (b) in sub-paragraph (e)—
  - (i) in paragraph (ii)(aa)—
    - (aa) for “the competent authorities of the EEA State” substitute “a competent authority of the relevant European State”, and
    - (bb) for “Schedule 1 to this Order” substitute “Annex V, point 5.3.3 of the Directive”,
  - (ii) in paragraph (ii)(bb), for “the competent authorities” substitute “a competent authority”, and
  - (iii) in column (a) of the Table, for “Yugoslavia” substitute “Former Yugoslavia”.
- (3) For paragraphs (2) and (3) substitute—
  - “(2) This paragraph is complied with where—
    - (a) the qualification referred to in paragraph (1)(d) is accompanied by a certificate of a competent authority in Germany that the holder of the qualification has effectively and lawfully been engaged in the practice of his specialty in Germany for at least three consecutive years during the five years preceding the date of that certificate; and
    - (b) the holder of the qualification is authorised to practise his specialty throughout the territory of Germany under the same conditions as holders of the German qualification listed in respect of that specialty in Annex V, point 5.3.3 of the Directive.
  - (3) In paragraph (1) “reference date”, in relation to the practice of orthodontics or oral surgery in a relevant European State, means the date specified in relation to that State in the column entitled “Reference date” in the table relating to that specialty in Annex V, point 5.3.3 of the Directive.”.

**Amendment of regulation 13**

**144.** In regulation 13(a) (other specialties), in paragraph (2)(a), for “outside the EEA has been accepted by another EEA State” substitute “otherwise than in a relevant European State has been accepted by a relevant European State, other than the United Kingdom,”.

**Amendment of regulation 14**

- 145.** In regulation 14 (appeals)—
- (a) for the heading substitute “Appeal panels”; and
  - (b) in paragraph (1)—
    - (i) for sub-paragraph (b) substitute—
      - “(b) a person whose application for entry in a specialist list pursuant to regulation 8(2)(b) is refused by the GDC;
      - (ba) a person whose application for entry in a specialist list pursuant to regulation 8(2)(c) is refused by the GDC;
      - (bb) a person within paragraphs (i) and (ii) of regulation 8(2)(c) whom the GDC requires to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of Part 3 of the General Systems Regulations to practise as a specialist in orthodontics or oral surgery in the United Kingdom;
      - (bc) a person in respect of whom the GDC refuses entry in a specialist list pursuant to regulation 8(2)(e); and”, and
    - (ii) in the tailpiece, for “whether or not the appellant should be awarded a CCST or should so satisfy the GDC (as the case may be)” substitute “that appeal”.

**Insertion of regulation 14A**

**146.** After regulation 14 insert—

(a) Regulation 13 was substituted by S.I. 2003/3148.

**“Appeals from an appeal panel**

**14A.**—(1) Where—

- (a) an appeal panel determines an appeal under regulation 14, and
- (b) the result of the appeal is unfavourable to the person concerned,

the person concerned may appeal against the determination to the relevant court.

(2) On an appeal under this regulation, the relevant court may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the determination appealed against,
- (c) substitute for the determination appealed against any other determination which could have been made by an appeal panel, or
- (d) remit the case to an appeal panel to dispose of in accordance with the directions of the relevant court,

and may make such order as to costs (or, in Scotland, expenses) as the relevant court thinks fit.

(3) In this paragraph “the relevant court” means—

- (a) where the person concerned is entered in a specialist list, and his address in that list is in Scotland, the sheriff in whose sheriffdom that address is situated;
- (b) where the person concerned is not entered in a specialist list, but his address would (if he were to be entered) be in Scotland, the sheriff in whose sheriffdom that address is situated; and
- (c) in any other case, the county court.”.

**Repeal of regulations 16, 17, 18 and 21**

**147.** Regulations 16 (the competent authorities), 17 (fees), 18 (minimum requirements of primary dental training) and 21 (minor amendments to the Act) are repealed.

**Insertion of Schedule A1**

**148.** Before Schedule 1 insert—

**“SCHEDULE A1**

Regulation 4

**DIRECTIVE 2005/36: FUNCTIONS OF THE GDC UNDER  
REGULATION 4(2)**

<i>Provision of Directive</i>	<i>Function of GDC</i>
Article 7(2)(b)	Issuing certificates containing attestations in relation to persons established, in the United Kingdom, as specialist dentists in orthodontics or oral surgery.
Article 8(1)	Receiving information from, or providing information to, other competent authorities in relation to—
	(a) the legality of a person’s establishment as a specialist dentist in orthodontics or oral surgery;
	(b) the good conduct of such a person;
	(c) the absence of any disciplinary or criminal sanctions of a professional nature against such a person.
Article 8(2)	Receiving information from, or providing information to, other competent authorities in connection with the investigation of complaints made against persons providing specialist dental

	services in orthodontics or oral surgery.
Article 23(1)	Issuing, in respect of practice as a specialist dentist in orthodontics or oral surgery, certificates of effective and lawful practice in the United Kingdom.
Article 23(6)	Issuing certificates stating that specialist dental qualifications in orthodontics or oral surgery issued in the United Kingdom, which do not correspond to the titles set out in respect of the United Kingdom at point 5.3.3 of Annex V to the Directive, certify successful completion of specialist dental training that is in accordance with article 35 of the Directive or that under article 22(a) of the Directive (part-time training) is to be treated as in accordance with article 35 of the Directive.
Article 50(1) and paragraph 1(d) of Annex VII	Issuing, in respect of practice as a specialist dentist in orthodontics or oral surgery, the certificates of current professional status referred to in sub-paragraph (d) of paragraph 1 of Annex VII to the Directive within the time limits set by that sub-paragraph.
Article 50(1) and paragraph 2 of Annex VII	Issuing certificates stating that a person's CCST in orthodontics or oral surgery is a qualification covered by the Directive.
Article 50(2)	In cases of justified doubts—
	(a) requiring confirmation of the authenticity of non-UK specialist qualifications;
	(b) requiring confirmation that holders of non-UK specialist qualifications satisfy the minimum training conditions set out in article 35 of the Directive or under article 22(a) of the Directive are to be treated as satisfying those conditions;
	(c) providing confirmation to competent authorities of other relevant European States of the authenticity of any person's CCST in orthodontics or oral surgery;
	(d) providing confirmation that holders of a CCST in orthodontics or oral surgery satisfy the minimum training conditions set out in article 35 of the Directive or under article 22(a) of the Directive are to be treated as satisfying those conditions.
Article 50(3)	In cases of justified doubts—
	(a) verifying information provided in connection with non-UK specialist qualifications awarded following training in a relevant European State other than the State in which the qualification was awarded;
	(b) providing information in connection with a person's CCST in orthodontics or oral surgery awarded following training in a relevant European State other than the United Kingdom.
Article 56(1)	Ensuring the confidentiality of information exchanged with other competent authorities.
Article 56(2)	Receiving information from, or providing information to, other competent authorities regarding disciplinary action, criminal sanctions or other serious circumstances likely to have consequences for practice as a specialist dentist in orthodontics or oral surgery.
	Where such information is received by the GDC—
	(a) examining the veracity of the circumstances;
	(b) deciding the nature and scope of any investigations that need to be carried out;
	(c) informing other competent authorities of the GDC's conclusions.”

### **Repeal of Schedule 1**

**149.** Schedule 1 (specialist dental qualifications awarded in EEA States other than the United Kingdom in orthodontics and oral surgery) is repealed.

### **Repeal of Schedule 2**

**150.** Schedule 2 (minimum training requirements for training leading to the award of primary dental qualifications in the United Kingdom) is repealed.

## **PART 9**

### **DENTISTS: OTHER LEGISLATION**

#### **Amendment of the Medicines Act 1968**

**151.** In the Medicines Act 1968(a), in section 132 (general interpretation provisions), in subsection (1), in the definition of “dentist”(b) omit the words “or entered in the list of visiting EEA practitioners under Schedule 4 to that Act”.

#### **Amendment of the Misuse of Drugs Act 1971**

**152.** In the Misuse of Drugs Act 1971(c), in section 37 (interpretation), in subsection (1), in the definition of “dentist”(d) omit the words “or entered in the list of visiting EEA practitioners under Schedule 4 to that Act”.

#### **Amendment of the Poisons Act 1972**

**153.** In the Poisons Act 1972(e), in section 11 (interpretation), in subsection (2), in the definition of “dentist”(f) omit the words “or a person entered in the list of visiting EEA practitioners under Schedule 4 to that Act”.

#### **Amendment of the Medicines for Human Use (Clinical Trials) Regulations 2004**

**154.** In the Medicines for Human Use (Clinical Trials) Regulations 2004(g), in regulation 2 (interpretation), in paragraph (1), in the definition of “dentist” omit the words “or entered in the list of visiting EEC practitioners under Schedule 4 to that Act”.

## **PART 10**

### **NURSES AND MIDWIVES: NURSING AND MIDWIFERY ORDER 2001**

#### **Amendment of Nursing and Midwifery Order 2001**

**155.** The Nursing and Midwifery Order 2001(h) is amended in accordance with this Part.

#### **Amendment of article 6**

**156.** In article 6 (register), in paragraph (3), after sub-paragraph (a) insert—

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(a) 1968 c.67.  
(b) The definition of “dentist” was amended by the Dentists Act 1984 (c.24), section 54(1), Schedule 5, paragraph 2, and by S.I. 1996/1496.  
(c) 1971 c.38.  
(d) The definition of “dentist” was amended by the Dentists Act 1984, section 54(1), Schedule 5, paragraph 3, and by S.I. 1996/1496.  
(e) 1972 c.66.  
(f) The definition of “dentist” was amended by the Dentists Act 1984, section 54(1), Schedule 5, paragraph 4, and by S.I. 1996/1496.  
(g) S.I. 2004/1031; there are no relevant amending instruments.  
(h) S.I. 2002/253.

“(aa) the register to include an annotation denoting that a registrant is a visiting nurse or midwife from a relevant European State;”.

#### **Amendment of article 7**

**157.** In article 7 (the register: supplemental provisions), after paragraph (3) add—

“(4) Rules under this article shall not provide for fees to be charged in respect of a person’s registration in exercise of entitlement under article 39A or Schedule 2A (visiting nurses and midwives from relevant European States).”.

#### **Amendment of article 8**

**158.** In article 8 (access to register etc), in paragraph (5)—

- (a) for “EEA State” substitute “relevant European State”; and
- (b) for “the relevant Directive” substitute “the relevant provisions of the Directive”.

#### **Amendment of article 9**

**159.** In article 9 (registration)—

- (a) in paragraph (1), for “A person” substitute “Subject to paragraph (7), a person”;
- (b) after paragraph (3) insert—

“(3A) Where an exempt person makes an application under paragraph (1), the Registrar, within the period of one month beginning with the date of receipt of the application, must—

- (a) acknowledge receipt of the application; and
- (b) inform the applicant of any missing document required for the purposes of the application.”;

- (c) for paragraphs (4) and (5) substitute—

“(4) Where a person makes an application under paragraph (1), the Registrar must, as soon as reasonably practicable and in any event within the specified period, notify the applicant in writing—

- (a) of the result of the application; and
- (b) if the Registrar refuses the application, of the reasons for the decision, and of the applicant’s right of appeal.

(5) In paragraphs (4) and (6) “the specified period”—

- (a) except in a case specified in sub-paragraph (b), means the period of three months beginning with the relevant date;
- (b) in the case of an application by a person seeking registration in the register on the basis that he is to be regarded as having an approved qualification by virtue of falling within article 13(1)(e) or (f), means the period of four months beginning with the relevant date.

(5A) The “relevant date”, in relation to an application, is—

- (a) the date when the Registrar receives the application; or
- (b) if any document required for the purposes of the application is missing when the Registrar receives the application, the date on which the Registrar first has all the documents required for those purposes.”;

- (d) in paragraph (6), for “the time specified in paragraph (4)” substitute “the specified period”; and

- (e) after paragraph (6) add—

“(7) This article does not apply to a person who seeks registration in exercise of entitlement under article 39A or Schedule 2A (visiting nurses and midwives from relevant European States).”.

#### **Amendment of article 10**

**160.** In article 10 (renewal of registration and readmission)—

- (a) in paragraph (1), for “Where a person” substitute “Subject to paragraph (6), where a person”; and
- (b) after paragraph (5) add—
  - “(6) This article does not apply to a visiting nurse or midwife from a relevant European State.”.

### **Omission of article 11**

**161.** Article 11 (deemed registration of visiting EEA nurses and midwives) is omitted.

### **Amendment of article 13**

**162.** In article 13 (approved qualifications)—

- (a) in paragraph (1), for sub-paragraphs (b) and (c) substitute—
  - “(b) he is an exempt person who has a qualification of the kind mentioned in article 14;
  - (c) subject to paragraph (1A), he is an exempt person (other than a person to whom sub-paragraph (b), (e) or (f) applies) who has a qualification awarded outside the United Kingdom, and either—
    - (i) the Council is satisfied that his qualification attests to a standard of proficiency comparable to that attested to by a qualification referred to in sub-paragraph (a), or
    - (ii) the Council is not so satisfied, but the applicant has undergone in the United Kingdom or elsewhere such additional training or experience as satisfies the Council, following any test of competence as it may require him to take, that he has the requisite standard of proficiency for admission to the part of the register in respect of which he is applying;
  - (d) he is not an exempt person and he has, elsewhere than in the United Kingdom, undergone training in nursing or midwifery, and either—
    - (i) the Council is satisfied that his qualification attests to a standard of proficiency comparable to that attested to by a qualification referred to in sub-paragraph (a), or
    - (ii) the Council is not so satisfied, but the applicant has undergone in the United Kingdom or elsewhere such additional training or experience as satisfies the Council, following any test of competence as it may require him to take, that he has the requisite standard of proficiency for admission to the part of the register in respect of which he is applying,
 and, in either case, he satisfies prescribed requirements as to knowledge of English;
  - (e) he is an exempt person—
    - (i) whose case falls within regulation 3(9)(a), (c), (d) or (e) of the General Systems Regulations,
    - (ii) to whom regulations 20 to 26 of those Regulations apply by reason of the operation of regulation 3(4) of those Regulations, and
    - (iii) who is permitted to pursue the profession of nursing or midwifery in the United Kingdom by virtue of Part 3 of those Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations); or
  - (f) he is an exempt person (other than a person to whom sub-paragraph (e) applies) who is permitted to practise as a nurse in the United Kingdom by virtue of Part 3 of the General Systems Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to complete pursuant to that Part of those Regulations).”; and
- (b) after paragraph (1) insert—
  - “(1A) In the case of an exempt person to whom paragraph (1)(c) applies, who holds a qualification in nursing or midwifery which was granted otherwise than in a relevant European State, and has not previously been accepted by a relevant European State as qualifying him to practise as a nurse or midwife in that State, that qualification shall not be regarded as an approved qualification unless the qualification—

- (a) is evidence of nursing training that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 31 of the Directive (training of nurses responsible for general care), or
  - (b) is evidence of training in midwifery that meets, or under article 22(a) of the Directive is to be treated as meeting, the requirements of article 40 of the Directive (training of midwives),
- as the case may be.

(1B) In considering whether an exempt person to whom paragraph (1)(c) applies is to be regarded as having an approved qualification, the Council shall take into account—

- (a) if the person holds a qualification in nursing or midwifery which—
  - (i) was granted otherwise than in a relevant European State, but
  - (ii) has been accepted by a relevant European State, other than the United Kingdom, as qualifying him to practise as a nurse or midwife in that State (as the case may be), the acceptance of that qualification; and
- (b) all other qualifications, knowledge or experience, wherever acquired, which are relevant to the determination of the application.”.

#### **Amendment of article 14**

**163.** In article 14 (EEA qualifications)—

- (a) in paragraph (1)—
  - (i) for “outside the United Kingdom” substitute “in a relevant European State other than the United Kingdom”, and
  - (ii) for “an EC Directive” substitute “the Directive”;
- (b) in paragraph (2)(a)—
  - (i) for “a Directive issued by the Council of the European Communities” substitute “the relevant provisions of the Directive”, and
  - (ii) for “circumstances; and” substitute “circumstances.”; and
- (c) omit paragraphs (2)(b) and (3).

#### **Amendment of article 15**

**164.** In article 15 (education and training), in paragraph (2), for “provided for in the Second Nursing and Second Midwifery Directives” substitute “of article 31 (training of nurses responsible for general care) and article 40 (training of midwives) of the Directive”.

#### **Amendment of article 19**

**165.** In article 19 (post-registration training), after paragraph (2) insert—

“(2A) Paragraphs (1) and (2), so far as relating to a person (“P”) who is a registrant only as a result of being a visiting nurse or midwife from a relevant European State, have effect subject to, respectively, paragraphs (2B) and (2C).

(2B) Rules made under paragraph (1)—

- (a) may not impose requirements on P if P is required to undertake, in P’s home State, continuing professional development in relation to the profession of nursing or midwifery (as the case may be); and
- (b) where they impose requirements on P—
  - (i) shall take account of the fact that P is fully qualified to pursue that profession in P’s home State, and
  - (ii) shall specify that continuing professional development which P is required to undertake by the requirements may be undertaken outside the United Kingdom.



(2C) Where rules make provision such as is mentioned in paragraph (2), the rules must secure that any sanction imposed in relation to P by or under that provision is appropriate and proportionate in view of P’s continued lawful establishment in P’s home State as a nurse or midwife (as the case may be).

(2D) In paragraphs (2B) and (2C) “home State”, in relation to P, means the relevant European State in which P is lawfully established as a nurse or midwife (as the case may be).”.

#### **Amendment of article 37**

**166.** In article 37 (appeals against Registrar’s decisions), in paragraph (1), after sub-paragraph (a) insert—

“(aa) refuses to register a person under article 39A (visiting general systems nurses from relevant European States) or Schedule 2A (visiting midwives, and certain visiting nurses, from relevant European States);”.

#### **Amendment of article 38**

**167.** In article 38 (appeals)—

(a) in paragraph (1)(b), for “any decision of the Council under article 37” substitute “a decision of the Council mentioned in paragraph (1A)”;

(b) after paragraph (1) insert—

“(1A) The decisions referred to in paragraph (1)(b) are—

(a) any decision of the Council under article 37;

(b) a decision of the Council under Part 3 of the General Systems Regulations requiring an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to have access to, and to pursue, the profession of nurse or midwife in the United Kingdom.”; and

(c) in paragraph (4)(c), omit the words “in the case of a visiting EEA nurse or midwife or”.

#### **Substitution of article 39**

**168.** For article 39 substitute—

##### **“Visiting midwives, and certain visiting nurses, from relevant European States**

**39.** Schedule 2A (visiting midwives, and certain visiting nurses, from relevant European States) shall have effect.”.

#### **Insertion of article 39A**

**169.** After article 39 insert—

##### **“Visiting general systems nurses from relevant European States**

**39A.**—(1) This article applies to an exempt person (“V”)—

(a) who is lawfully established as a nurse in a relevant European State other than the United Kingdom (“State A”); and

(b) who seeks to provide, or is providing, nursing services in the United Kingdom of a kind which are provided, in the United Kingdom, by nurses admitted to—

(i) sub-part 1 of the nurses’ part of the register whose field of practice is mental health nursing, learning disabilities nursing or children’s nursing, or

(ii) sub-part 2 of the nurses’ part of the register.

(2) Paragraph (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of nursing services in the United Kingdom on a temporary and

occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of nursing services).

(3) V is entitled to be registered in the appropriate part of the register; and the Registrar shall give effect to the entitlement.

(4) If V is entitled under paragraph (3) to be registered, but is not registered in the appropriate part of the register, V shall be treated as being registered in that part.

(5) V's entitlement under paragraph (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of nursing services in the United Kingdom on a temporary and occasional basis.

(6) If—

(a) V's entitlement under paragraph (3) ceases by reason of the operation of paragraph (5), and

(b) V is registered,

the Registrar may remove V's name from the register.

(7) Paragraph (8) applies if—

(a) V's establishment in State A is subject to a condition relating to V's practice as a nurse,

(b) V's name is registered in the appropriate part of the register, and

(c) for any of the purposes of this Order it falls to be decided whether V's fitness to practise is or may be impaired on the ground of misconduct.

(8) The matters that may be counted as misconduct include (in particular) any act or omission by V during the course of the provision by V of nursing services in the United Kingdom on a temporary and occasional basis that is, or would be if the condition applied in relation to practice as a nurse outside State A, a breach of the condition.

(9) In paragraphs (7) and (8) "condition" includes limitation.

(10) Paragraphs (1) to (6) are not to be taken to prejudice the application, in relation to registrants, of any other provision of this Order under which a registered nurse's name may be removed from the register or under which a registered nurse's registration may be suspended."

## **Substitution of article 40**

**170.** For article 40 substitute—

### **“The Directive: designation of competent authority etc.**

**40.—**(1) The Council is designated as the competent authority in the United Kingdom for the purposes of the Directive so far as relating to the professions of nurse responsible for general care<sup>(a)</sup> and midwife.

(2) Accordingly, the Council shall in the United Kingdom carry out (in particular) the functions specified in Schedule 3.

(3) The Council is designated as the competent authority in the United Kingdom for the award of—

(a) evidence of formal qualifications of nurses responsible for general care listed in relation to the United Kingdom in Annex V, point 5.2.2 of the Directive; and

(b) evidence of formal qualifications of midwives listed in relation to the United Kingdom in Annex V, point 5.5.2 of the Directive.

(4) Subject to paragraph (5), the Secretary of State may give directions to the Council in connection with its functions specified in Schedule 3, and it shall be the duty of the Council to comply with any such directions.

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(a) See S.I. 2007/2781, regulation 4 and Part 1 of Schedule 1, for the designation of the Council as the competent authority in the United Kingdom for the purposes of the Directive so far as relating to the profession pursued in the United Kingdom by nurses other than those admitted to sub-part 1 of the nurses' part of the register whose field of practice is adult nursing.

(5) Directions given under paragraph (4) may be as to matters of administration only.

(6) In Schedule 3—

“non-UK nursing qualification” means a nursing qualification that—

- (a) attests to satisfaction of the training conditions specified in article 31 of the Directive (training of nurses responsible for general care), and
- (b) is awarded to a person by a competent authority of a relevant European State other than the United Kingdom;

“non-UK midwifery qualification” means a midwifery qualification that is awarded to a person by a competent authority of a relevant European State other than the United Kingdom;

“UK nursing qualification” means a nursing qualification that—

- (a) attests to satisfaction of the training conditions specified in article 31 of the Directive, and
- (b) is awarded to a person by a competent authority in the United Kingdom;

“UK midwifery qualification” means a qualification that is awarded to a person by a competent authority in the United Kingdom.”.

### **Insertion of Schedule 2A**

171. After Schedule 2 insert—

## “SCHEDULE 2A

Article 39

### VISITING MIDWIVES, AND CERTAIN VISITING NURSES, FROM RELEVANT EUROPEAN STATES

#### **Application and interpretation**

1. This Schedule applies to an exempt person—

- (a) who is lawfully established as a nurse in a relevant European State other than the United Kingdom; or
- (b) who is lawfully established as a midwife in a relevant European State other than the United Kingdom.

2. In this Schedule—

- (a) a “visiting practitioner” means an exempt person to whom this Schedule applies;
- (b) the “home State”, in relation to a visiting practitioner, means the relevant European State in which the practitioner is lawfully established as a nurse or midwife;
- (c) a reference to the provision of occasional nursing services is a reference to the provision, in the United Kingdom, of nursing services—
  - (i) of a kind which are provided, in the United Kingdom, by nurses whose training satisfies the requirements of article 31 of the Directive (training of nurses responsible for general care), and
  - (ii) on a temporary and occasional basis; and
- (d) a reference to the provision of occasional midwifery services is a reference to the provision of midwifery services in the United Kingdom on a temporary and occasional basis.

### **Registration in respect of provision of occasional nursing services or occasional midwifery services**

3.—(1) A visiting practitioner is entitled to be registered in the appropriate part of the register if the practitioner is entitled under paragraph 4 or 7 to provide occasional nursing services or occasional midwifery services; and the Registrar shall give effect to the entitlement.

(2) A visiting practitioner who is entitled under sub-paragraph (1) to be registered, but who is not registered in the appropriate part of the register, shall be treated as registered in that part.

(3) Sub-paragraph (4) applies where a person's entitlement under sub-paragraph (1) to be registered ceases because, by reason of the operation of paragraph 8(1), (2) or (5), the person ceases to be entitled under this Schedule to provide occasional nursing services or occasional midwifery services.

(4) If the person's name is registered, the Registrar may remove the person's name from the register.

(5) Sub-paragraphs (1) to (4) are not to be taken to prejudice the application, in relation to persons registered on the basis of entitlement under sub-paragraph (1), of any other provision of this Order under which the name of a registered nurse or midwife may be removed from the register or under which the registration of a registered nurse or midwife may be suspended.

### **Entitlement to provide occasional nursing services or occasional midwifery services: first year**

4. A visiting practitioner is entitled to provide occasional nursing services or occasional midwifery services if—

- (a) the practitioner has complied with the requirements of paragraph 5, and
- (b) where the practitioner's case falls within regulation 3(9)(a), (c), (d) or (e) of the General Systems Regulations, the provision by the practitioner of occasional nursing services or occasional midwifery services is in accordance with regulations 14 to 16 of those Regulations (the practitioner having, in particular, successfully completed any adaptation period, or passed any aptitude test, that the practitioner may be required to undertake pursuant to Part 2 of those Regulations),

but paragraph 8 contains provision about the duration of entitlement under this paragraph.

### **First provision of services: required documents**

5.—(1) A visiting practitioner who proposes to provide occasional nursing services or occasional midwifery services for the first time must, before providing any such services, send or produce to the Registrar the required documents.

(2) The required documents are—

- (a) a written declaration that states the practitioner's wish to provide occasional nursing services or occasional midwifery services;
- (b) if the practitioner is a national of a relevant European State, proof of nationality;
- (c) if the practitioner is not a national of a relevant European State, proof of the Community right by virtue of which the practitioner is an exempt person;
- (d) evidence of qualifications in nursing or midwifery (see paragraph 6); and
- (e) a certificate (or certificates) issued by a competent authority in the practitioner's home State confirming—
  - (i) that the practitioner is lawfully established as a nurse or midwife in that State, and
  - (ii) that the practitioner is not prohibited (whether on a permanent or temporary basis) from practising as a nurse or midwife there.

(3) A declaration under sub-paragraph (2)(a) may be supplied by any means.

6.—(1) Subject to sub-paragraph (3), the evidence referred to in paragraph 5(2)(d) is evidence of the European-recognised qualifications which entitle the visiting practitioner to provide, in the

practitioner's home State, the nursing or midwifery services that the practitioner proposes to provide in the United Kingdom on a temporary and occasional basis.

(2) This sub-paragraph applies to a visiting practitioner whose case falls within regulation 3(9)(a), (c), (d) or (e) of the General Systems Regulations (with the result that the practitioner is not entitled to provide occasional nursing services or occasional midwifery services unless their provision by the practitioner is in accordance with regulations 14 to 16 of those Regulations).

(3) If sub-paragraph (2) applies to a visiting practitioner, the evidence referred to in paragraph 5(2)(d) of the practitioner's qualifications in nursing or midwifery is evidence of the qualifications which entitle the practitioner to practise as a nurse or midwife in his home State.

(4) In this paragraph, "European-recognised qualifications" means qualifications which relevant European States are required by the Directive to recognise.

### **Entitlement to provide occasional nursing services or occasional midwifery services after first year: renewals**

7.—(1) Sub-paragraph (2) applies where the Registrar receives the required renewal documents from a visiting practitioner who is entitled under this Schedule to provide occasional nursing services or occasional midwifery services.

(2) The visiting practitioner is entitled to continue to provide occasional nursing services or occasional midwifery services, but paragraph 8 contains provision about the duration of entitlement continued under this sub-paragraph.

(3) Sub-paragraph (4) applies where the Registrar receives the required renewal documents from a visiting practitioner—

- (a) who is not entitled under this Schedule to provide occasional nursing services or occasional midwifery services;
- (b) who has been previously entitled under this Schedule to provide occasional nursing services or occasional midwifery services; and
- (c) whose registration in the register is not suspended.

(4) The visiting practitioner is once again entitled to provide occasional nursing services or occasional midwifery services but, in a case where the practitioner's name is not in the register as a result of removal otherwise than under paragraph 3(4), only if the Registrar decides, after having regard (in particular) to the fact of that removal and the reasons for it, that the entitlement should be renewed.

Paragraph 8 contains provision about the duration of entitlement under this sub-paragraph.

(5) In relation to a visiting practitioner "the required renewal documents" are—

- (a) a renewal declaration; and
- (b) each evidence of change document (if any).

(6) In this paragraph "renewal declaration", in relation to a visiting practitioner, means a written declaration that states the practitioner's wish to provide occasional nursing services or occasional midwifery services in a further year.

(7) Where a document—

- (a) is, in relation to a visiting practitioner, one of the required documents for the purposes of paragraph 5,
- (b) is not a declaration under paragraph 5(2)(a), and
- (c) substantiates a matter as respects which there has been a material change since the practitioner last (whether under paragraph 5 or this paragraph) supplied the then-current version of the document to the registrar,

the version of the document current when under this paragraph the practitioner supplies a renewal declaration to the registrar is an "evidence of change document" for the purposes of sub-paragraph (5)(b).

(8) A renewal declaration supplied under this paragraph may be supplied by any means.

### **Duration of entitlement to provide occasional nursing services or occasional midwifery services**

8.—(1) Unless an entitlement under paragraph 4 or 7(4) is continued (or further continued) by paragraph 7(2), the entitlement ceases at the end of the year that begins with the end of the day on which the Registrar received the documents whose receipt gave rise to the entitlement.

(2) Where an entitlement under paragraph 4 or 7(4) is continued (or further continued) by paragraph 7(2), the entitlement is extended so as to cease at the end of the year that begins with the end of the relevant day.

(3) For the purposes of sub-paragraph (2)—

- (a) if the day on which the Registrar receives the documents whose receipt gives rise to the continuation (or further continuation) is an anniversary of the start day, “the relevant day” means the day on which the Registrar receives those documents;
- (b) otherwise, “the relevant day” means the anniversary of the start day that is the first such anniversary to occur after the Registrar receives the documents whose receipt gives rise to the continuation (or further continuation).

(4) In sub-paragraph (3) “the start day”, in relation to an entitlement under paragraph 4 or 7(4), means the day on which the Registrar receives the documents whose receipt gives rise to the entitlement.

(5) An entitlement under this Schedule to provide occasional nursing services or occasional midwifery services ceases if—

- (a) the visiting practitioner concerned becomes established as a nurse or as a midwife in the United Kingdom; or
- (b) a disqualifying decision is made against the visiting practitioner concerned.

(6) In sub-paragraph (5) “disqualifying decision”, in relation to a visiting practitioner, means a decision made by a competent or judicial authority in the practitioner’s home State that has the effect that the practitioner—

- (a) ceases in that State to be registered or otherwise officially recognised as a nurse or midwife; or
- (b) is prohibited (whether on a permanent or temporary basis) from practising as a nurse or midwife in that State.

(7) If in the case of a visiting practitioner—

- (a) the practitioner’s registration in the register is suspended or the practitioner’s name is removed from the register, and
- (b) immediately before the time when the suspension or (as the case may be) removal takes effect, the practitioner is entitled under this Schedule to provide occasional nursing services or occasional midwifery services,

that entitlement ceases at that time.

### **Conditions**

9.—(1) Paragraph (2) applies if—

- (a) the establishment of a visiting practitioner in the practitioner’s home State is subject to a condition relating to the practitioner’s practice as a nurse or midwife;
- (b) the practitioner’s name is registered in the appropriate part of the register; and
- (c) for any of the purposes of this Order it falls to be decided whether the practitioner’s fitness to practise is or may be impaired on the ground of misconduct.

(2) The matters that may be counted as misconduct include (in particular) any act or omission by the visiting practitioner during the course of the provision by the practitioner of occasional nursing services or occasional midwifery services that is, or would be if the condition applied in relation to practice as a nurse or midwife outside the practitioner’s home State, a breach of the condition.

(3) In paragraphs (1) and (2) “condition” includes limitation.”.



**Substitution of Schedule 3**

172. For Schedule 3 substitute—

“**SCHEDULE 3**

Article 40

**DIRECTIVE 2005/36: FUNCTIONS OF THE COUNCIL UNDER  
ARTICLE 40(2)**

<i>Provision of Directive</i>	<i>Function of Council</i>
Article 7(2)(b)	Issuing certificates containing attestations in relation to persons established in the United Kingdom as nurses responsible for general care or midwives.
Article 8(1)	Receiving information from, or providing information to, other competent authorities in relation to—
	(a) the legality of a person’s establishment as a nurse responsible for general care or midwife;
	(b) the good conduct of such a person;
	(c) the absence of any disciplinary or criminal sanctions of a professional nature against such a person.
Article 8(2)	Receiving information from, or providing information to, other competent authorities in connection with the investigation of complaints made against persons providing services as a nurse responsible for general care or as a midwife.
Article 23(1)	Issuing certificates of effective and lawful practice in the United Kingdom to— (a) nurses responsible for general care; and (b) midwives.
Article 23(6)	Issuing certificates stating— (a) that UK nursing qualifications, which do not correspond to the titles set out in respect of the United Kingdom at point 5.2.2 of Annex V to the Directive, certify successful completion of nursing training that is in accordance with article 31 of the Directive (training of nurses responsible for general care) or that under article 22(a) of the Directive (part-time training) is to be treated as in accordance with article 31 of the Directive; (b) that UK midwifery qualifications, which do not correspond to the titles set out in respect of the United Kingdom at point 5.5.2 of Annex V to the Directive, certify successful completion of training in midwifery that is in accordance with article 40 of the Directive (training of midwives) or that under article 22(a) of the Directive is to be treated as in accordance with article 40 of the Directive.
Article 41	Issuing certificates of professional practice in the United Kingdom to midwives.
Article 43(1)	Issuing certificates of effective and lawful practice in the United Kingdom to midwives.
Article 50(1) and paragraph 1(d) of Annex VII	Issuing, in respect of practice as a nurse responsible for general care or as a midwife, the certificates of current



	professional status referred to in sub-paragraph (d) of paragraph 1 of Annex VII to the Directive within the time limits set by that sub-paragraph.
Article 50(1) and paragraph 2 of Annex VII	Issuing certificates stating that evidence of UK nursing qualifications or UK midwifery qualifications is that covered by the Directive.
Article 50(2)	In cases of justified doubts—
	(a) requiring confirmation of the authenticity of non-UK nursing qualifications or non-UK midwifery qualifications;
	(b) requiring confirmation that holders of non-UK nursing qualifications or non-UK midwifery qualifications satisfy the minimum training conditions set out in article 31 or 40 of the Directive (as the case may be) or under article 22(a) of the Directive are to be treated as satisfying those conditions;
	(c) providing confirmation to competent authorities of other relevant European States of the authenticity of any person’s UK nursing qualifications or UK midwifery qualifications;
	(d) providing confirmation that holders of UK nursing qualifications or UK midwifery qualifications satisfy the minimum training conditions set out in article 31 or 40 of the Directive (as the case may be) or under article 22(a) of the Directive are to be treated as satisfying those conditions.
Article 50(3)	In cases of justified doubts—
	(a) verifying information provided in connection with non-UK nursing qualifications or non-UK midwifery qualifications awarded following training in a relevant European State other than the State in which the qualification was awarded;
	(b) providing information in connection with a person’s UK nursing qualifications or UK midwifery qualifications awarded following training in another relevant European State.
Article 56(1)	Ensuring the confidentiality of information exchanged with other competent authorities.
Article 56(2)	Receiving information from, or providing information to, other competent authorities regarding disciplinary action, criminal sanctions or other serious circumstances likely to have consequences for the practice of the professions of nurse responsible for general care or midwife.
	Where such information is received by the Council—
	(a) examining the veracity of the circumstances;
	(b) deciding the nature and scope of any investigations that need to be carried out;
	(c) informing other competent authorities of the Council’s conclusions.”

## Amendment of Schedule 4

173. In Schedule 4(a) (interpretation)—

- (a) omit the definition of “the Accession of Greece Act”;
- (b) omit the definition of “the Accession of Spain and Portugal Act”;
- (c) omit the definition of “the Accession of Austria, Finland and Sweden Act”;
- (d) omit the definition of “the Act of Accession 2003”;
- (e) omit the definition of “Community law”;
- (f) for the definition of “competent authority” substitute—
  - ““competent authority” means any authority or body of a relevant European State designated by that State for the purposes of the Directive as competent to—
  - (a) receive or issue evidence of qualifications or other information or documents, or
  - (b) receive applications and take the decisions referred to in the Directive, in connection with the practice of nursing or midwifery;”;
- (g) after the definition of “the Council” insert—
  - ““the Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications<sup>(b)</sup>, and references in this Order to the Directive or to any provision of the Directive are references to the Directive, or to that provision of the Directive, as amended from time to time;”;
- (h) omit the definition of “EEA Agreement”;
- (i) omit the definition of “EEA national”;
- (j) omit the definition of “EEA State”;
- (k) for the definition of “exempt person” substitute—
  - ““exempt person”, in relation to the profession of nursing or in relation to the profession of midwifery, means—
  - (a) a national of a relevant European State other than the United Kingdom;
  - (b) a national of the United Kingdom who is seeking access to, or is pursuing, the profession by virtue of an enforceable Community right; or
  - (c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the profession, no less favourably than a national of a relevant European State;”;
- (l) after the definition of “exempt person” insert—
  - ““General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007<sup>(c)</sup>;”;
- (m) omit the definition of “Midwifery Directive”;
- (n) in the definition of “national”, for “an EEA State” substitute “a relevant European State”;
- (o) omit the definition of “Nursing Directive”;
- (p) after the definition of “Registrar” insert—
  - ““relevant European State” means an EEA State or Switzerland;”;
- (q) omit the definition of “second Nursing Directive”;
- (r) omit the definition of “second Midwifery Directive”;
- (s) omit the definition of “the Swiss Agreement”; and
- (t) after the definition of “United Kingdom country” insert—

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(a) Relevant amendments to Schedule 4 were made by S.I. 2003/3148 and 2004/1947.

(b) OJ No. L255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.

(c) S.I. 2007/2781.

““visiting nurse or midwife from a relevant European State” means a nurse or midwife registered in exercise of entitlement under article 39A (visiting general systems nurses from relevant European States) or Schedule 2A (visiting midwives, and certain visiting nurses, from relevant European States); and”.

## PART 11

### NURSES AND MIDWIVES: OTHER LEGISLATION

#### **The Nursing and Midwifery Council (Fees) Rules 2004**

**174.** In the Nursing and Midwifery Council (Fees) Rules 2004(a), in rule 3(b) (fees), in the table—

- (a) in the entry in column (2) of row (b), for “13(1)(a) or (b)” substitute “13(1)(a), (b), (c), (e) or (f)”;
- (b) in the entry in column (2) of row (c), for “13(1)(c)” substitute “13(1)(d)”;
- (c) in the entry in column (2) of row (d), after “13(1)(c)” substitute “or (d)”.

#### **The Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004**

**175.** In the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004(c), after article 7 add—

##### **“Annotations denoting visiting nurses or midwives from relevant European States**

**8.** The entries in the register are to include such annotation as the Council considers appropriate to denote that a registrant is a visiting nurse or midwife from a relevant European State(d).”.

#### **The European Nursing and Midwifery Qualifications Designation Order of Council 2004**

**176.—**(1) The European Nursing and Midwifery Qualifications Designation Order of Council 2004(e) is amended as follows.

(2) In article 2 (interpretation)—

- (a) in paragraph (1)—
  - (i) in the definition of “diploma”, omit “and Schedule 2”,
  - (ii) after the definition of “diploma” insert—

““listed diploma” means—

    - (a) in the case of a nursing diploma, evidence of formal qualifications as a nurse responsible for general care listed in Annex V, point 5.2.2 of the Directive(f), or
    - (b) in the case of a midwifery diploma, evidence of formal qualifications as a midwife listed in Annex V, point 5.5.2 of the Directive;”
  - (iii) omit the definition of “the Nursing Directives”, and
  - (iv) before the definition of “registration” insert—

““reference date” means—

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(a) Scheduled to S.I. 2004/1654.

(b) Rule 3 was amended by S.I. 2005/3353 and 2007/1885.

(c) S.I. 2004/1765; there are no relevant amending instruments.

(d) “Visiting nurse or midwife from a relevant European State” is defined in Schedule 4 to the Order as a nurse or midwife registered in exercise of entitlement under article 39A of or Schedule 2A to the Order.

(e) S.I. 2004/1766.

(f) “The Directive” is defined in Schedule 4 to the Order as Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005.

- (a) in the case of a nursing qualification awarded in a relevant European State, the date listed in relation to that State in the column entitled “Reference date” in Annex V, point 5.2.2 of the Directive, and
  - (b) in the case of a midwifery qualification awarded in a relevant European State, the date listed in relation to that State in the column entitled “Reference date” in Annex V, point 5.5.2 of the Directive;”;
- (b) for paragraph (2) substitute—
- “(2) In this Order, “a competent authority certificate” means a certificate issued by a competent authority in a relevant European State stating that the person named in the certificate has practised effectively and lawfully in that State—
- (a) as a midwife, or
  - (b) as a nurse responsible for general care whose activities include full responsibility for the planning, organisation and carrying out of the nursing care of the patient,
- for at least three consecutive years or, for the purposes of articles 4(3)(b)(ii), 6(3)(b)(ii) and 8, two consecutive years, during the period of five years ending with the date of issue of the certificate.”;
- (c) for paragraph (3) substitute—
- “(3) In this Order, “an article 41(2) certificate” means a certificate issued to a person by a competent authority in a relevant European State in accordance with article 41(2) of the Directive (procedures for the recognition of evidence of formal qualifications as a midwife), to the effect that the person, after qualifying as a midwife, has practised satisfactorily, for the period provided for in article 41(1)(a)(ii) or (c) of the Directive, as a midwife in a hospital or other health care establishment approved for the purposes of article 41(2) of the Directive.
- (3A) In this Order, references to the Directive or to any provision of the Directive are references to the Directive, or to that provision of the Directive, as amended from time to time.”; and
- (d) omit paragraph (4).
- (3) For article 3 substitute—

**“Qualifications in respect of which a listed diploma is awarded on or after the reference date**

- 3.—(1) A professional qualification in respect of which a listed diploma is awarded in a relevant European State on or after the reference date and which is not evidence of training commenced by the holder before that date, shall be an approved qualification for the purposes of registration, subject in the case of a midwifery qualification to paragraph (2).
- (2) A midwifery qualification in respect of which a midwife holds a diploma referred to in paragraph (1) shall be an approved qualification for the purposes of registration only if—
- (a) it attests to training which satisfies the conditions in paragraph (1)(a), (b) or (c) of article 41 of the Directive; and
  - (b) in the case of conditions specified in paragraph (1)(a)(ii) or (c) of that article, it is accompanied by an article 41(2) certificate relating to the holder.”.
- (4) For article 4 substitute—

**“Qualifications in respect of which a listed diploma is awarded before the reference date**

- 4.—(1) Subject to paragraph (2), a professional qualification in respect of which a listed diploma is awarded in a relevant European State other than Poland or Romania before the reference date, or on or after that date in respect of a course of training begun before that date, shall be an approved qualification for the purposes of registration.
- (2) The diploma referred to in paragraph (1) shall—
- (a) be one awarded in respect of training which complies with the requirements laid down—
    - (i) in the case of a nursing qualification, in article 31 of the Directive (training of nurses responsible for general care), or

- (ii) in the case of a midwifery qualification, in article 40 of the Directive (training of midwives),  
subject also in the case of a midwifery qualification to paragraph (3); or
- (b) be accompanied by a competent authority certificate relating to the holder.

(3) A midwifery qualification referred to in paragraph (1), in respect of which a diploma which falls within paragraphs (1) and (2)(a) has been awarded, shall be an approved qualification for the purposes of registration only if—

- (a) it attests to training which satisfies the conditions in paragraph (1)(a), (b) or (c) of article 41 of the Directive; and
- (b) in the case of conditions specified in paragraph (1)(a)(ii) or (c) of that article—
  - (i) it is accompanied by an article 41(2) certificate relating to the holder, or
  - (ii) if the diploma was awarded before the reference date, it is accompanied by a competent authority certificate relating to the holder.”.

(5) For article 5 substitute—

**“Qualifications in respect of which a diploma other than a listed diploma is awarded before the reference date in respect of training which does not comply with Directive requirements**

5.—(1) A professional qualification in respect of which a diploma specified in paragraph (2) is awarded in a relevant European State other than Poland or Romania shall be an approved qualification for the purposes of registration if it is accompanied by a competent authority certificate.

(2) The diploma referred to in paragraph (1) is—

- (a) a diploma in nursing in general care which is not a listed diploma and is awarded —
  - (i) before the reference date or on or after that date in respect of a course of training begun before that date, and
  - (ii) in respect of training which does not comply with the requirements of article 31 of the Directive; or
- (b) a midwifery diploma which is not a listed diploma and is awarded—
  - (i) before the reference date or on or after that date in respect of a course of training begun before that date, and
  - (ii) in respect of training which does not comply with the requirements of article 40 of the Directive.”.

(6) For article 6 substitute—

**“Qualifications in respect of which a diploma other than a listed diploma is awarded in respect of training which complies with Directive requirements**

6.—(1) A professional qualification in respect of which a diploma specified in paragraph (2) is awarded in a relevant European State shall be an approved qualification for the purposes of registration, subject in the case of a midwifery qualification to paragraph (3).

(2) The diploma referred to in paragraph (1) is one which—

- (a) is not a listed diploma; and
- (b) is accompanied by a certificate issued by a competent authority of the relevant European State in which the diploma was obtained to the effect that the diploma—
  - (i) is evidence of training which complied with the requirements of article 31 or 40 of the Directive (as the case may be), and
  - (ii) is treated by that State as if it were a qualification listed in relation to that State in Annex V, point 5.2.2 or point 5.5.2 of the Directive (as the case may be).

(3) A midwifery qualification in respect of which a midwife holds a diploma referred to in paragraph (1) shall be an approved qualification for the purposes of registration only if—

- (a) it attests to training which satisfies the conditions in paragraph (1)(a), (b) or (c) of article 41 of the Directive; and
- (b) in the case of conditions specified in paragraph (1)(a)(ii) or (c) of that article—
  - (i) it is accompanied by an article 41(2) certificate relating to the holder, or
  - (ii) if the diploma was awarded before the reference date, it is accompanied by a competent authority certificate relating to the holder.”.

(7) In article 7 (qualifications awarded in Poland before the implementation date or relevant date, or awarded in respect of nursing or midwifery training begun before those dates which do not comply with Directive requirements)—

- (a) for the heading substitute “Qualifications awarded in Poland before the reference date in respect of training which does not comply with Directive requirements”;
- (b) for paragraph (1) substitute—

“(1) This article applies to a professional qualification in respect of which a diploma in nursing in general care or midwifery is awarded in Poland—

- (a) subject to paragraph (2)(b), before the reference date or on or after that date in respect of a course of training begun before that date; and
- (b) in respect of training which does not comply with the requirements of article 31 or 40 of the Directive (as the case may be).”;

- (c) for paragraph (2) substitute—

“(2) A qualification referred to in paragraph (1) shall be an approved qualification for the purposes of registration only if—

- (a) the requirements of paragraph (3) are satisfied; or
- (b) it is a qualification in nursing in general care or midwifery—
  - (i) attested by the diploma “bachelor” and obtained on the basis of the special upgrading programme described in article 33(3) of the Directive (acquired rights specific to nurses responsible for general care) or in article 43(4) of the Directive (acquired rights specific to midwives), and
  - (ii) awarded in respect of training completed before the reference date.”; and

- (d) in paragraph (3)—

- (i) in sub-paragraph (a)—

- (aa) for “the diploma of bachelor of nursing” substitute “evidence of formal qualifications as a nurse at degree level”, and
- (bb) for “the diploma of bachelor of midwifery” substitute “evidence of formal qualifications as a midwife at degree level”,

- (ii) in sub-paragraph (b)—

- (aa) for “the diploma of nurse” substitute “evidence of formal qualifications as a nurse”, and
- (bb) for “the diploma of midwife” substitute “evidence of formal qualifications as a midwife”, and

- (iii) in the tailpiece, for “the diploma of bachelor of nursing or the diploma of nurse” substitute “evidence of formal qualifications as a nurse mentioned in either of those sub-paragraphs”.

- (8) After article 7 insert—

**“Qualifications awarded in Romania before the reference date in respect of training which does not comply with Directive requirements**

**7A.**—(1) This article applies to a professional qualification in respect of which a diploma in nursing in general care or midwifery is awarded in Romania—

- (a) before the reference date or (in the case of a diploma in nursing in general care only) on or after that date in respect of a course of training begun before that date; and



- (b) in respect of training which does not comply with the requirements of article 31 or 40 of the Directive (as the case may be).

(2) A qualification referred to in paragraph (1) shall be an approved qualification for the purposes of registration only if it is accompanied by a certificate from a Romanian competent authority stating that the person named in the certificate has practised effectively and lawfully as a nurse responsible for general care or, as the case may be, as a midwife in Romania for—

- (a) in the case of a person holding evidence of formal qualifications as a nurse (*certificat de competente profesionale de asistent medical generalist*) with post-secondary education obtained from a *scoala postliceala*, at least five consecutive years during the period of seven years ending with the date of issue of the certificate, provided that that period of practice has included the person taking full responsibility for the planning, organisation and carrying out of the nursing care of the patient; or
- (b) in the case of a person holding evidence of formal qualifications as a midwife (*asistent medical obstetrica-ginecologie/obstetrics-gynecology nurse*), at least five consecutive years during the period of seven years ending with the date of issue of the certificate.”.

(9) For article 8 substitute—

**“Qualifications in midwifery awarded following training in the former German Democratic Republic which complies with Directive requirements**

8. A professional qualification in respect of which a midwifery diploma has been awarded in respect of training which—

- (a) was received in the territory of the former German Democratic Republic,
- (b) commenced before 3rd October 1990, and
- (c) complies with the requirements of article 40 of the Directive,

shall be an approved qualification for the purposes of registration, provided that it is accompanied by a competent authority certificate issued by a competent authority in Germany and relating to the holder.”.

(10) In article 9 (qualifications following training in the former German Democratic Republic which does not comply with Directive requirements)—

(a) in paragraph (1)—

- (i) for “not specified in Part 1 of Schedule 2 or, as the case may be, a midwifery diploma not specified in Part 2 of Schedule 2” substitute “other than a listed diploma or, as the case may be, a midwifery diploma other than a listed diploma”, and

(ii) for sub-paragraph (c) substitute—

“(c) does not comply with the requirements of article 31 or 40 of the Directive (as the case may be),”;

(b) in paragraph (2), for “under the heading “Germany” in Part 1 (nursing diplomas) or, as the case may be, Part 2 (midwifery diplomas) of Schedule 2” substitute “in relation to Germany in Annex V, point 5.2.2 or point 5.5.2 of the Directive (as the case may be)”; and

(c) for paragraph (3) substitute—

“(3) The diploma shall be accompanied by a competent authority certificate issued by a competent authority in Germany and relating to the holder.”.

(11) In article 10 (qualifications following training in the former Czechoslovakia, the former Soviet Union or Yugoslavia)—

(a) in the heading, for “Yugoslavia” substitute “the former Yugoslavia”;

(b) in paragraph (1), in the table, for “Yugoslavia” substitute “Former Yugoslavia”; and

(c) in paragraph (2)—

(i) for sub-paragraph (a) substitute—

“(a) be accompanied by a competent authority certificate issued by a competent authority of the State specified in column (c) of the corresponding row of the table in paragraph (1); and”, and



- (ii) in sub-paragraph (b), for “in Part 1 of Schedule 2 or, as the case may be, Part 2 of Schedule 2” substitute “in Annex V, point 5.2.2 or point 5.5.2 of the Directive (as the case may be)”.
- (12) Omit article 11 (transitional provision for Spanish midwifery qualifications).
- (13) Omit Schedule 1.
- (14) Omit Schedule 2 (diplomas listed in the Annex to the Nursing Directive and the Annex to the Midwifery Directive).

### **The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004**

**177.**—(1) The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004(a) are amended as follows.

(2) In rule 2 (interpretation)—

- (a) the existing provision containing a table of definitions shall be numbered as paragraph (1); and
- (b) after paragraph (1) add—

“(2) In these Rules, a reference to any provision of the Directive(b) is a reference to that provision of the Directive as amended from time to time.”.

(3) After rule 2 insert—

#### **“Application to visiting nurses and midwives from relevant European States**

**2A.** In these Rules—

- (a) Part 2 shall not apply to visiting nurses and midwives from relevant European States(c), or in respect of a person’s registration in exercise of entitlement under article 39A of, or Schedule 2A to, the Order, except for rule 3(3);
- (b) Part 3 shall not apply in respect of a person’s registration in exercise of entitlement under article 39A of, or Schedule 2A to, the Order, except for rules 4 (the register), 14 (lapse of registration) and 16 (amendments to the register);
- (c) Part 4 shall apply in respect of a person’s registration in exercise of entitlement under article 39A of, or Schedule 2A to, the Order.”.

(4) In rule 3 (education leading to registration and re-registration)—

(a) for paragraph (1) substitute—

“(1) Subject to paragraph (1B), where an approved programme of education leads to the award of a qualification listed in relation to the United Kingdom in Annex V, point 5.2.2 of the Directive (evidence of formal qualifications as a nurse responsible for general care), that programme must comply with the training requirements laid down in article 31 of the Directive (training of nurses responsible for general care).

(1A) Subject to paragraph (1B), where an approved programme of education leads to the award of a qualification listed in relation to the United Kingdom in Annex V, point 5.5.2 of the Directive (evidence of formal qualifications as a midwife), that programme must comply with the training requirements laid down in article 40 of the Directive (training of midwives).

(1B) Notwithstanding the requirements of article 31 or 40 of the Directive, an approved programme of education may consist of part-time training, provided that such training complies with the requirements laid down in article 22(a) of the Directive (common provisions on training: part-time training).”; and

(b) for paragraph (2) substitute—

(a) Scheduled to S.I. 2004/1767; there are no relevant amending instruments.

(b) “The Directive” is defined in Schedule 4 to the Order as Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005.

(c) “Visiting nurse or midwife from a relevant European State” is defined in Schedule 4 to the Order as a nurse or midwife registered in exercise of entitlement under article 39A of or Schedule 2A to the Order.

“(2) The requirements for entry to an approved programme of education which leads to the award of a qualification listed in relation to the United Kingdom in Annex V, point 5.2.2 or point 5.5.2 of the Directive, shall include the requirements of article 31(1) or article 40(2) of the Directive (as the case may be).”.

(5) In rule 5 (application for admission to a part of the register)—

(a) in paragraph (2)—

(i) in sub-paragraph (a)(ii)—

(aa) for “EEA State” substitute “European State”, and

(bb) for “been met, or” substitute “been met,”,

(ii) in sub-paragraph (a)(iii)—

(aa) for “article 13(1)(c)” substitute “article 13(1)(c) or (d)”, and

(bb) for “applying; and” substitute “applying, or”, and

(iii) after sub-paragraph (a)(iii) insert—

“(iv) where the applicant is relying on article 13(1)(e) or (f) of the Order, evidence of her qualification and details as to her training; and”;

(b) after paragraph (2) add—

“(3) If the applicant (“A”)—

(a) is relying on article 13(1)(b) of the Order,

(b) holds a diploma listed in Annex V, point 5.2.2 or point 5.5.2 of the Directive (as the case may be), and

(c) has successfully completed training as a nurse or midwife that meets, or under article 22(a) of the Directive (part-time training) is to be treated as meeting, the requirements of article 31 or 40 of the Directive (as the case may be),

A must also provide a certificate as mentioned in paragraph (4).

(4) The certificate—

(a) must be a certificate issued by a competent authority in A’s attesting State (as defined by rule 6(1F)); and

(b) must certify that the document provided by A under paragraph (2)(a)(ii) is a diploma listed in relation to that State in Annex V, point 5.2.2 or point 5.5.2 of the Directive (as the case may be).”.

(6) In rule 6 (requirements for declarations of good health and good character)—

(a) in paragraph (1)—

(i) omit sub-paragraph (d), and

(ii) in sub-paragraph (e), for “article 13(1)(c)” substitute “article 13(1)(c) or (d)”;

(b) after paragraph (1) insert—

“(1A) In the case of an applicant (“A”) who is relying on article 13(1)(b), (e) or (f) of the Order, the declaration by A as to her good health and good character, provided under rule 5(1)(a), shall be supported by—

(a) a certificate as to good character—

(i) to which either paragraph (1B) or (1C) applies, and

(ii) issued within the three months preceding the date of A’s application, and

(b) a certificate as to good health—

(i) to which either paragraph (1D) or (1E) applies, and

(ii) issued within the three months preceding the date of A’s application,

and for the purposes of paragraphs (5) and (6), any such certificate shall be considered to be a supporting declaration.

(1B) This paragraph applies to a certificate which—

- (a) attests to A's good character or good repute; and
- (b) is issued by a competent authority in A's attesting State.

(1C) If no such certificate is issued by a competent authority in A's attesting State, this paragraph applies to a certificate—

- (a) attesting to the authenticity of a declaration on oath made by A—
  - (i) before a competent judicial or administrative authority, notary or qualified professional body of A's attesting State, and
  - (ii) attesting to A's good character; and
- (b) issued by the authority, notary or body referred to in sub-paragraph (a)(i).

In this paragraph, "declaration on oath" includes a solemn declaration.

(1D) This paragraph applies to a certificate which—

- (a) attests to A's good physical and mental health; and
- (b) is required of a person who wishes to practise as a nurse or midwife in A's attesting State.

(1E) If no such certificate is required of persons who wish to practise as a nurse or midwife in A's attesting State, this paragraph applies to a certificate which—

- (a) attests to A's good physical and mental health; and
- (b) is issued by a competent authority in A's attesting State.

(1F) In paragraphs (1B) to (1E) the "attesting State", in relation to A, is—

- (a) the relevant European State in which A obtained her qualification in nursing or midwifery; or
- (b) (if different) the relevant European State from which A comes to the United Kingdom.”;
- (c) in paragraph (5)(b), for “(1)(a), (b), (c), (d)(i), (e), (2) or (3)” substitute “(1)(a), (b), (c) or (e) or paragraph (1D), (1E), (2) or (3)”;
- (d) in paragraph (6)(b), for “(1)(a), (b), (c), (d)(ii), (e), (2) or (3)” substitute “(1)(a), (b), (c) or (e) or paragraph (1B), (1C), (2) or (3)”;
- (e) in paragraph (7), omit the definition of “Member State of origin”.

(7) In rule 8 (overseas applications for registration which are unsuccessful), for “article 13(1)(c)” substitute “article 13(1)(d)”.

(8) In rule 9 (knowledge of English), for “an EEA national exercising an enforceable Community right, or an exempt person,” substitute “an exempt person(a)”.

(9) In rule 15 (readmission to the register), in paragraph (2), after “6(1)” insert “to (1E)”.

(10) In rule 20 (period during which an appeal may be made)—

- (a) in paragraph (a), for “sub-paragraph (a)” substitute “sub-paragraph (a), (aa)”;
- (b) in paragraph (b), for “article 9(4)” substitute “article 9(5)”.

(11) In rule 21 (notice of appeal), in paragraph (2)(a)(iii), after “37(1)(a),” insert “(aa),”.

(12) Omit Schedule 1 (extract from the Second Nursing Directive).

(13) Omit Schedule 2 (extract from the Second Midwifery Directive).

(14) In Schedule 3 (application for admission to a part of the register), after paragraph (b) insert—

- “(ba) if the applicant is relying on article 13(1)(b), (c), (e) or (f) of the Order and is a national of a relevant European State, proof of her nationality;
- (bb) if the applicant is relying on article 13(1)(b), (c), (e) or (f) of the Order and is not a national of a relevant European State, proof of the Community right by virtue of which she is an exempt person;”.

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(a) “Exempt person” is defined in Schedule 4 to the Order.

**PART 12**  
**OPTICIANS: OPTICIANS ACT 1989**

**Amendment of Opticians Act 1989**

**178.** The Opticians Act 1989(a) is amended in accordance with this Part.

**Amendment of section 8**

**179.** In section 8(b) (qualifications for being registered)—

(a) in subsection (1A), for paragraphs (a) and (b) substitute—

“(a) is an exempt person;

(b) is permitted to pursue the profession of optometrist or dispensing optician in the United Kingdom by virtue of Part 3 of the General Systems Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations); and”;

(b) omit subsection (10).

**Insertion of sections 8B, 8C and 8D**

**180.** After section 8A(c) insert—

**“Visiting opticians from relevant European States: registers**

**8B.**—(1) The Council shall establish and maintain—

(a) a register of visiting optometrists from relevant European States; and

(b) a register of visiting dispensing opticians from relevant European States.

(2) The Council may prescribe particulars to be entered in the registers mentioned in subsection (1).

**Visiting optometrists: entitlement to registration**

**8C.**—(1) This section applies to an exempt person (“O”) who is lawfully established, in a relevant European State other than the United Kingdom (“State A”), in the profession pursued in the United Kingdom by optometrists.

(2) Subsection (3) applies if O has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by O of services as an optometrist in the United Kingdom on a temporary and occasional basis (O having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by O of services as an optometrist).

(3) O is entitled to be registered in the register of visiting optometrists from relevant European States; and the registrar shall give effect to the entitlement.

(4) If O is entitled under subsection (3) to be registered in the register of visiting optometrists from relevant European States but is not registered in that register, O shall be treated as being registered in that register.

(5) O’s entitlement under subsection (3) ceases if O ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by O of services as an optometrist in the United Kingdom on a temporary and occasional basis.

(6) If—

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(a) 1989 c.44.

(b) Section 8 was amended by S.I. 2005/848.

(c) Section 8A was inserted by S.I. 2005/848.

(a) O’s entitlement under subsection (3) ceases by reason of the operation of subsection (5), and  
(b) O’s name is registered in the register of visiting optometrists from relevant European States,  
the registrar may remove O’s name from that register.

(7) Subsection (8) applies if—

- (a) O’s establishment in State A is subject to a condition relating to O’s practice of the profession pursued in the United Kingdom by optometrists;
- (b) O’s name is registered in the register of visiting optometrists from relevant European States; and
- (c) for any of the purposes of this Act it falls to be decided whether O’s fitness to practise is or may be impaired on the ground of misconduct.

(8) The matters that may be counted as misconduct include (in particular) any act or omission by O during the course of the provision by O of services as an optometrist in the United Kingdom on a temporary and occasional basis that is, or would be if the condition applied in relation to practice of the profession outside State A, a breach of the condition.

(9) In subsections (7) and (8) “condition” includes limitation.

(10) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in the register of visiting optometrists from relevant European States, of any other provision of this Act under which a registered optometrist’s name may be removed or erased from that register or under which a registered optometrist’s registration in that register may be suspended.

#### **Visiting dispensing opticians: entitlement to registration**

**8D.**—(1) This section applies to an exempt person (“D”) who is lawfully established, in a relevant European State other than the United Kingdom (“State A”), in the profession pursued in the United Kingdom by dispensing opticians.

(2) Subsection (3) applies if D has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by D of services as a dispensing optician in the United Kingdom on a temporary and occasional basis (D having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by D of services as a dispensing optician).

(3) D is entitled to be registered in the register of visiting dispensing opticians from relevant European States; and the registrar shall give effect to the entitlement.

(4) If D is entitled under subsection (3) to be registered in the register of visiting dispensing opticians from relevant European States but is not registered in that register, D shall be treated as being registered in that register.

(5) D’s entitlement under subsection (3) ceases if D ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by D of services as a dispensing optician in the United Kingdom on a temporary and occasional basis.

(6) If—

- (a) D’s entitlement under subsection (3) ceases by reason of the operation of subsection (5), and
- (b) D’s name is registered in the register of visiting dispensing opticians from relevant European States,

the registrar may remove D’s name from that register.

(7) Subsection (8) applies if—

- (a) D’s establishment in State A is subject to a condition relating to D’s practice of the profession pursued in the United Kingdom by dispensing opticians;
- (b) D’s name is registered in the register of visiting dispensing opticians from relevant European States; and
- (c) for any of the purposes of this Act it falls to be decided whether D’s fitness to practise is or may be impaired on the ground of misconduct.

(8) The matters that may be counted as misconduct include (in particular) any act or omission by D during the course of the provision by D of services as a dispensing optician in the United Kingdom on a temporary and occasional basis that is, or would be if the condition applied in relation to practice of the profession outside State A, a breach of the condition.

(9) In subsections (7) and (8) “condition” includes limitation.

(10) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in the register of visiting dispensing opticians from relevant European States, of any other provision of this Act under which a registered dispensing optician’s name may be removed or erased from that register or under which a registered dispensing optician’s registration in that register may be suspended.”.

#### **Amendment of section 10**

**181.** In section 10(a) (general provisions as to registers and lists)—

- (a) in subsection (1)(c), for “prescribing” substitute “subject to subsection (1ZA), prescribing”; and
- (b) after subsection (1) insert—

“(1ZA) Rules under subsection (1) may not make provision for the payment of fees in connection with registration in a register maintained under section 8B.”.

#### **Amendment of section 10A**

**182.** In section 10A(b) (insurance for individual registrants and persons applying for their name to be registered), after subsection (6) insert—

“(6A) Subsections (1) to (6) do not apply in relation to persons who are registered, or who are seeking registration, in a register maintained under section 8B.”.

#### **Amendment of section 11A**

**183.** In section 11A(c) (requirement for continuing education and training), after subsection (4) add—

“(5) Subsection (6) circumscribes the power under subsection (1) in relation to a person (“P”)—

- (a) who is a registered optometrist only as a result of being in the register of visiting optometrists from relevant European States, or
- (b) who is a registered dispensing optician only as a result of being in the register of visiting dispensing opticians from relevant European States.

(6) A scheme made by rules under subsection (1)—

- (a) may not impose requirements on P if P is required to undertake, in P’s home State, continuing education and training in relation to the profession pursued in the United Kingdom by optometrists or dispensing opticians (as the case may be); and
- (b) where it imposes requirements on P—
  - (i) shall take account of the fact that P is fully qualified to pursue that profession in P’s home State, and
  - (ii) shall specify that continuing education and training which P is required to undertake by the requirements may be undertaken outside the United Kingdom.

(7) In subsection (6) “home State”, in relation to P, means the relevant European State in which P is lawfully established in the profession pursued in the United Kingdom by optometrists or dispensing opticians (as the case may be).”.

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(a) Section 10 was amended by S.I. 2005/848.  
(b) Section 10A was inserted by S.I. 2005/848.  
(c) Section 11A was inserted by S.I. 2005/848.



### **Amendment of section 11B**

**184.** In section 11B(a) (failure to satisfy requirements imposed under a scheme), after subsection (1) insert—

“(1A) Subsection (1B) circumscribes the power under subsection (1) in relation to a person (“P”)—

- (a) who is a registered optometrist only as a result of being in the register of visiting optometrists from relevant European States, or
- (b) who is a registered dispensing optician only as a result of being in the register of visiting dispensing opticians from relevant European States.

(1B) A power under subsection (1)(a) is exercisable in relation to P only if it also appears to the registrar that, in the circumstances of the case, exercise of the power is an appropriate and proportionate sanction in view of P’s continued lawful establishment in P’s home State in the profession pursued in the United Kingdom by optometrists or dispensing opticians (as the case may be).

(1C) In subsection (1B) “home State”, in relation to P, means the relevant European State in which P is lawfully established in the profession pursued in the United Kingdom by optometrists or dispensing opticians (as the case may be).”.

### **Amendment of section 28**

**185.** In section 28(b) (penalty for pretending to be registered etc), in subsection (1)—

- (a) in paragraph (a), for “registered in the register of optometrists” substitute “a registered optometrist”;
- (b) in paragraph (b), for “registered in the register of dispensing opticians” substitute “a registered dispensing optician”; and
- (c) in paragraph (c), for “registered in the register of optometrists maintained under section 7 above” substitute “a registered optometrist”.

### **Amendment of section 29**

**186.** In section 29(c) (provision as to death or bankruptcy of registered optician), after subsection (2) insert—

“(2A) In subsections (1) and (2)—

“registered optometrist” does not include a person registered in the register maintained under section 8B(1)(a);

“registered dispensing optician” does not include a person registered in the register maintained under section 8B(1)(b).”.

### **Amendment of section 36**

**187.** In section 36(d) (interpretation), in subsection (1)—

- (a) after the definition of “electronic communication” insert—

““exempt person”, in relation to the profession of optometrist or the profession of dispensing optician, means—

- (a) a national of a relevant European State other than the United Kingdom;
- (b) a national of the United Kingdom who is seeking access to, or is pursuing, the profession by virtue of an enforceable Community right; or

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(a) Section 11B was inserted by S.I. 2005/848.  
(b) Section 28 was amended by S.I. 2005/848.  
(c) Relevant amendments were made to section 29 by S.I. 2005/848.  
(d) Section 36 was amended by S.I. 2005/848.



- (b) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the profession, no less favourably than a national of a relevant European State;”;
- (b) after the definition of “functions” insert—
  - ““General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781);”;
- (c) in the definition of “individual registrant”, for “section 7 or 8A” substitute “section 7, 8A or 8B”;
- (d) in the definition of “register”—
  - (i) after paragraph (c) insert—
    - “(ca) the registers of visiting optometrists from relevant European States and visiting dispensing opticians from relevant European States maintained under section 8B;”, and
    - (ii) for “except where used in relation to medical practitioners” substitute “except in the expressions “registered medical practitioner”, “registered dispensing optician” and “registered optometrist””;
- (e) after the definition of “register” insert—
  - ““registered dispensing optician” means a person whose name is in the register of dispensing opticians maintained under section 7 or in the register of visiting dispensing opticians from relevant European States maintained under section 8B;
  - “registered optometrist” means a person whose name is in the register of optometrists maintained under section 7 or in the register of visiting optometrists from relevant European States maintained under section 8B;”; and
- (f) after the definition of “registrant” insert—
  - ““relevant European State” means an EEA State or Switzerland;”.

#### **Amendment of Schedule 1A**

**188.** In Schedule 1A(a) (registration appeals), in paragraph 2(1)—

- (a) after paragraph (a) insert—
  - “(aa) a decision by the Council under Part 3 of the General Systems Regulations on an application made under section 8 above to require an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to pursue in the United Kingdom the profession of optometrist or dispensing optician;”; and
- (b) after paragraph (c) insert—
  - “(ca) a decision by the Council not to register an individual in the register of visiting optometrists from relevant European States or the register of visiting dispensing opticians from relevant European States maintained under section 8B above;”.

## **PART 13**

### **OPTICIANS: OTHER LEGISLATION**

#### **Amendment of the National Health Service Act 1977**

**189.** In the National Health Service Act 1977(b), in section 128 (interpretation and construction), in subsection (1), in the definition of “ophthalmic optician”, after “Opticians Act 1989” insert “, or in the register

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(a) Schedule 1A was inserted by S.I. 2005/848.

(b) 1977 c.49. The definition of “ophthalmic optician” was substituted by S.I. 2005/848, and is prospectively amended by the Health Act 2006 (c.28), Schedule 8, paragraph 24(b). The National Health Service Act 1977 (“the 1977 Act”) was repealed by the National Health Service

of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act(a),”.

#### **Amendment of the National Health Service (Scotland) Act 1978**

**190.** In the National Health Service (Scotland) Act 1978(b), in section 108 (interpretation and construction), in subsection (1), in the definition of “ophthalmic optician”, after “Opticians Act 1989” insert “, or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act,”.

#### **Amendment of the Medicines (Contact Lens Fluids and Other Substances) (Exemption from Licences) Order 1979**

**191.** In the Medicines (Contact Lens Fluids and Other Substances) (Exemption from Licences) Order 1979(c), in article 1 (citation, commencement and interpretation), in paragraph (2), for the definition of “optician” substitute—

““optician” means a person whose name is entered in the register of optometrists maintained under section 7(a) of the Opticians Act 1989, or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act.”.

#### **Amendment of the Medicines (Contact Lens Fluids and Other Substances) (Advertising and Miscellaneous Amendments) Regulations 1979**

**192.** In the Medicines (Contact Lens Fluids and Other Substances) (Advertising and Miscellaneous Amendments) Regulations 1979(d), in regulation 2 (interpretation), in paragraph (1), for the definition of “optician” substitute—

““optician” means a person whose name is entered in the register of optometrists or the register of dispensing opticians maintained under section 7 of the Opticians Act 1989, or in the register of visiting optometrists from relevant European States or visiting dispensing opticians from relevant European States maintained under section 8B of that Act; and”.

#### **Amendment of the Medicines (Sale or Supply) (Miscellaneous Provisions) Regulations 1980**

**193.** In the Medicines (Sale or Supply) (Miscellaneous Provisions) Regulations 1980(e), in regulation 1 (citation, commencement and interpretation), in paragraph (2), for the definition of “registered optometrist” substitute—

““registered optometrist” means a person whose name is registered in the register of optometrists maintained under section 7(a) of the Opticians Act 1989, or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act;”.

#### **Amendment of the National Health Service (General Ophthalmic Services) Regulations 1986**

**194.** In the National Health Service (General Ophthalmic Services) Regulations 1986(f), in regulation 2 (interpretation), in paragraph (1), in the definition of “optician”, after “Opticians Act 1989” insert “or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act,”.

#### **Amendment of the National Health Service (Service Committees and Tribunal) Regulations 1992**

**195.** In the National Health Service (Service Committees and Tribunal) Regulations 1992(g), in regulation 2 (interpretation), in paragraph (1), in paragraph (b) of the definition of “optician”, after “section 7(a) of that

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(Consequential Provisions) Act 2006 (c.43) (“the 2006 Act”). However, by virtue of section 8(4)(q) and (5) of the 2006 Act, the repeal of the definition of “ophthalmic optician” in the 1977 Act has not yet come into force.

(a) Section 8B was inserted by S.I. 2007/3101

(b) 1978 c.29.

(c) S.I. 1979/1585; a relevant amendment was made by S.I. 2005/848.

(d) S.I. 1979/1760, amended by S.I. 2005/848.

(e) S.I. 1980/1923; a relevant amendment was made by S.I. 2005/1520.

(f) S.I. 1986/975; a relevant amendment was made by S.I. 2005/1481.

(g) S.I. 1992/664; a relevant amendment was made by S.I. 2005/848.

Act” insert “or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act,”.

#### **Amendment of the General Optical Council (Testing of Sight by Persons Training as Ophthalmic Opticians) Rules 1993**

**196.** In the General Optical Council (Testing of Sight by Persons Training as Ophthalmic Opticians) Rules 1993(a), in rule 4 (classes of persons training as optometrists), in paragraph (c)—

- (a) for “Regulation 6 of the European Communities (Recognition of Professional Qualifications) Regulations 1991” substitute “the General Systems Regulations(b)”; and
- (b) for “that regulation” substitute “those Regulations”.

#### **Amendment of the Prescription Only Medicines (Human Use) Order 1997**

**197.** In the Prescription Only Medicines (Human Use) Order 1997(c), in article 1 (citation, commencement and interpretation), in paragraph (2), for the definition of “registered optometrist” substitute—

““registered optometrist” means a person whose name is registered in the register of optometrists maintained under section 7(a) of the Opticians Act 1989, or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act;”.

#### **Amendment of the Primary Care Trusts (Consultation on Establishment, Dissolution and Transfer of Staff) Regulations 1999**

**198.** In the Primary Care Trusts (Consultation on Establishment, Dissolution and Transfer of Staff) Regulations 1999(d), in regulation 1 (citation, commencement and interpretation), in paragraph (2), in paragraph (d) of the definition of “health professional”, after “section 7” insert “or 8B”.

#### **Amendment of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000**

**199.** In the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000(e), in regulation 5 (disqualification for appointment: chairman and non-officer members), in paragraph (5)(d), after “section 7” insert “or 8B”.

#### **Amendment of the General Social Care Council (Appointments and Procedure) Regulations 2001**

**200.** In the General Social Care Council (Appointments and Procedure) Regulations 2001(f), in regulation 4 (disqualification for appointment), in paragraph (7)(d), after “section 7” insert “or 8B”.

#### **Amendment of the Medicines for Human Use (Clinical Trials) Regulations 2004**

**201.** In the Medicines for Human Use (Clinical Trials) Regulations 2004(g), in regulation 2 (interpretation), in paragraph (1), for paragraph (e) of the definition of “health care professional” substitute—

“(e) a person registered in the register of optometrists maintained under section 7(a) of the Opticians Act 1989, or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act,”.

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(a) Scheduled to S.I. 1994/70; relevant amendments were made by S.I. 2005/848.

(b) The “General Systems Regulations” are defined in section 36 of the Opticians Act 1989.

(c) S.I. 1997/1830; a relevant amendment was made by S.I. 2005/848.

(d) S.I. 1999/2337; a relevant amendment was made by S.I. 2005/848.

(e) S.I. 2000/89; a relevant amendment was made by S.I. 2005/848.

(f) S.I. 2001/1744; a relevant amendment was made by S.I. 2005/848.

(g) S.I. 2004/1031; there are no relevant amending instruments.

## **Amendment of the General Optical Council (Registration Rules) 2005**

**202.** In the General Optical Council (Registration Rules) 2005(a)—

(a) in rule 2 (interpretation), after paragraph (1) insert—

“(1A) These Rules do not apply in relation to registration in a register maintained under section 8B (registers relating to visiting opticians from relevant European States), except for rules 21A (visiting opticians from relevant European States: registration information), 21B (visiting opticians from relevant European States: changes in information provided to the Council) and 25(a) (erasure of registration).”;

(b) in rule 12 (registration and restoration of registration)—

(i) the existing provision shall be numbered as paragraph (1), and

(ii) after that provision add—

“(2) In determining an application by a person who falls within section 8(1A)(a), the Council—

(a) shall take into account all his qualifications, knowledge or experience, wherever acquired, which are relevant to the determination of his application; and

(b) if the person holds a qualification which—

(i) was granted otherwise than in a relevant European State(b), but

(ii) has been accepted by a relevant European State, other than the United Kingdom, as qualifying him to practise as an optometrist or a dispensing optician in that State,

shall take that acceptance into account.”;

(c) in rule 13 (entry and restoration of an entry relating to a speciality in a register), in paragraph (2)(a), for “another EEA State” substitute “a relevant European State other than the United Kingdom”; and

(d) after rule 21 insert—

### **“Visiting opticians from relevant European States: registration information**

**21A.** The register of visiting optometrists from relevant European States and the register of visiting dispensing opticians from relevant European States shall contain, in respect of each person whose name is registered in either of those registers, the following particulars—

(a) the person’s full name;

(b) the person’s registration number;

(c) the date of the person’s registration; and

(d) the person’s contact address in the United Kingdom.

### **Visiting opticians from relevant European States: changes in information provided to the Council**

**21B.** A person whose name is registered in the register of visiting optometrists from relevant European States or in the register of visiting dispensing opticians from relevant European States shall notify the Council forthwith of—

(a) any change to the name under which he practises; or

(b) any change to the contact details that he has notified to the Council.”.

## **Amendment of the National Health Service Act 2006**

**203.** In the National Health Service Act 2006(c), in section 275 (interpretation), in subsection (1), in the definition of “optometrist”, after “Act 1989 (c.44)” insert “, or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act,”.

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(a) Scheduled to S.I. 2005/1478.

(b) “Relevant European State” is defined in section 36 of the Opticians Act 1989.

(c) 2006 c.41. By virtue of section 277(3)(o) and (4) of the National Health Service Act 2006, the definition of “optometrist” in that Act does not come into force until the commencement of paragraph 24(b) of Schedule 8 to the Health Act 2006 (c.28) (which amends the definition of

### **Amendment of the National Health Service (Wales) Act 2006**

**204.** In the National Health Service (Wales) Act 2006(a), in section 206 (interpretation), in subsection (1), in the definition of “optometrist”, after “Act 1989 (c.44)” insert “, or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act,”.

### **Amendment of the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006**

**205.** In the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006(b), in regulation 2(1) (interpretation), in the definitions of “optometrist” and “register”, after “Opticians Act 1989” insert “or in the register of visiting optometrists from relevant European States maintained under section 8B(1)(a) of that Act”.

## **PART 14**

### **OSTEOPATHS: OSTEOPATHS ACT 1993**

#### **Amendment of the Osteopaths Act 1993**

**206.** The Osteopaths Act 1993(c) shall be amended in accordance with this Part.

#### **Insertion of section 5A**

**207.** After section 5 insert—

#### **“Temporary registration for visiting osteopaths from relevant European States**

**5A.—(1)** This section applies to an exempt person (“V”) who is lawfully established as an osteopath in a relevant European State other than the United Kingdom (“State A”).

(2) Subsection (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of services as an osteopath in the United Kingdom on a temporary and occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of services as an osteopath).

(3) V is entitled to be registered as a temporarily registered osteopath; and the Registrar shall give effect to the entitlement.

(4) If V is entitled under subsection (3) to be registered as a temporarily registered osteopath but is not registered with temporary registration, V shall be treated as being registered with temporary registration.

(5) V’s entitlement under subsection (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of services as an osteopath in the United Kingdom on a temporary and occasional basis.

(6) If—

- (a) V’s entitlement under subsection (3) ceases by reason of the operation of subsection (5), and
- (b) V is registered as a temporarily registered osteopath,

the Registrar may remove from the register V’s entry as a temporarily registered osteopath.

(7) Subsection (8) applies if—

- (a) V’s establishment in State A is subject to a condition relating to V’s practice as an osteopath,

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“ophthalmic optician” in the National Health Service Act 1977 (c.49)). See also paragraph 4 of Schedule 3 to the National Health Service (Consequential Provisions) Act 2006 (c.43).

(a) 2006 c.42.

(b) S.S.I. 2006/135.

(c) 1993 c.21.

- (b) V is registered as a temporarily registered osteopath, and
- (c) for any of the purposes of this Act it falls to be decided whether V is or may be guilty of unacceptable professional conduct.

(8) The matters that may be counted as unacceptable professional conduct include (in particular) any act or omission by V during the course of the provision by V of services as an osteopath in the United Kingdom on a temporary and occasional basis that is, or would be if the condition applied in relation to practice as an osteopath outside State A, a breach of the condition.

(9) In subsections (7) and (8) “condition” includes limitation.

(10) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to temporarily registered osteopaths, of any other provision of this Act under which a registered osteopath’s name may be removed from the register or under which a registered osteopath’s registration may be suspended.”.

#### **Amendment of section 6**

**208.** In section 6 (registration: supplemental provision)—

- (a) in subsection (1)(a), for “or provisional registration” substitute “, provisional or temporary registration”;
- (b) in subsection (2), for “The General Council” substitute “Subject to subsection (4A), the General Council”;
- (c) after subsection (4) insert—  
“(4A) Rules under this section may not prescribe a fee in connection with temporary registration.”;
- (d) in subsection (5), after “payment” insert “, except in the case of temporary registration,”; and
- (e) after subsection (5) add—  
“(6) In subsection (3)(b) to (f), “registration” does not include temporary registration.”.

#### **Amendment of section 8**

**209.** In section 8 (restoration to the register of osteopaths who have been struck off), in subsection (8), for “or provisionally registered osteopaths” substitute “, provisionally registered osteopaths or temporarily registered osteopaths”.

#### **Amendment of section 17**

**210.** In section 17 (post registration training), after subsection (2) insert—

“(2A) Subsections (1) and (2), so far as relating to a person (“P”) who is a registered osteopath only as a result of being registered with temporary registration, have effect subject to, respectively, subsections (2B) and (2C).

(2B) Rules made under subsection (1)—

- (a) may not impose requirements on P if P is required to undertake, in P’s home State, further courses of training in relation to the profession of osteopathy; and
- (b) where they impose requirements on P—
  - (i) shall take account of the fact that P is a fully qualified osteopath in P’s home State, and
  - (ii) shall specify that training which P is required to undertake by the requirements may be undertaken outside the United Kingdom.

(2C) Where rules make provision such as is mentioned in subsection (2), the rules must secure that any sanction imposed in relation to P by or under that provision is appropriate and proportionate in view of P’s continued lawful establishment as an osteopath in P’s home State.

(2D) In this section “home State”, in relation to P, means the relevant European State in which P is lawfully established as an osteopath.”.



### **Amendment of section 29**

**211.** In section 29(a) (appeals against decisions of the Registrar), in subsection (1), after paragraph (b) insert—

“(ba) refuses to register a person with temporary registration,”.

### **Insertion of section 29A**

**212.** After section 29 insert—

#### **“Appeals against decisions of the General Council**

**29A.**—(1) A person aggrieved by a decision mentioned in subsection (2) may appeal to a county court or, in the case of a person whose address in the register is (or if he were registered would be) in Scotland, the sheriff in whose sheriffdom the address is situated.

(2) Those decisions are—

- (a) a decision of the General Council under section 14(10)(b) imposing conditions;
- (b) a decision of the General Council under Part 3 of the General Systems Regulations requiring an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to have access to, and to pursue, the profession of osteopathy in the United Kingdom.

(3) On an appeal under subsection (1), the court (or the sheriff) may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the decision appealed against,
- (c) substitute for the decision appealed against any other decision which could have been made by the General Council, or
- (d) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),

and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”.

### **Amendment of section 37**

**213.** In section 37 (professional indemnity insurance), after subsection (1) insert—

“(1A) In subsection (1) “registered osteopath” does not include a temporarily registered osteopath.”.

### **Amendment of section 41**

**214.** In section 41(b) (interpretation)—

(a) after the definition of “conditionally registered osteopath” insert—

““exempt person” means—

- (a) a national of a relevant European State other than the United Kingdom,
- (b) a national of the United Kingdom who is seeking access to, or is pursuing, the profession of osteopathy by virtue of an enforceable Community right, or
- (c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the profession of osteopathy, no less favourably than a national of a relevant European State,

and in this definition, “national”, in relation to a relevant European State, means the same as in the Community Treaties, but does not include a person who by virtue of Article 2 of Protocol No. 3

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(a) Section 29 was amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 33.

(b) Section 41 was amended by the Chiropractors Act 1994 (c.17), Schedule 2.



(Channel Islands and Isle of Man) to the Treaty of Accession is not to benefit from Community provisions relating to the free movement of persons and services;”;

- (b) after the definition of “the General Council” insert—

““the General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781);”;
- (c) in the definition of “registered osteopath”, for “or as a provisionally registered osteopath” substitute “, as a provisionally registered osteopath or as a temporarily registered osteopath”;
- (d) after the definition of “the Registrar” insert—

““relevant European State” means an EEA State or Switzerland;” and
- (e) after the definition of “the statutory committees” insert—

““temporarily registered osteopath” means a person who is registered with temporary registration;”.

## PART 15

### OSTEOPATHS: OTHER LEGISLATION

#### **Amendment of the General Osteopathic Council (Registration) Rules 1998**

**215.** In the General Osteopathic Council (Registration) Rules 1998(a)—

- (a) in rule 3 (the form of the register)—
  - (i) in paragraph (1), for “European Economic Area State” (in both places) substitute “relevant European State”,
  - (ii) in paragraph (3)—
    - (aa) in sub-paragraph (b), for “fully registered or conditionally registered” substitute “fully registered, conditionally registered or temporarily registered(b)”,
    - (bb) in sub-paragraph (d), for ““full” or “conditional”” substitute ““full”, “conditional” or “temporary””, and
  - (iii) in paragraph (4), omit sub-paragraph (b); and
- (b) in rule 7 (issue and form of certificates), in paragraph (2)(a)(iv), after “fully registered osteopath” insert “, a temporarily registered osteopath”.

#### **Amendment of the General Osteopathic Council (Professional Indemnity Insurance) Rules 1998**

**216.** In the General Osteopathic Council (Professional Indemnity Insurance) Rules 1998(c), in rule 2 (interpretation), in paragraph (1), for the definition of “osteopath” substitute—

““osteopath” means a person who is registered as a fully registered osteopath, as a conditionally registered osteopath or as a provisionally registered osteopath;”.

#### **Amendment of the General Osteopathic Council (Recognition of Qualifications) Rules 2000**

**217.** In the General Osteopathic Council (Recognition of Qualifications) Rules 2000(d), in rule 4 (non-United Kingdom qualifications)—

- (a) the existing provision shall be numbered as paragraph (1); and
- (b) after paragraph (1) insert—

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(a) Scheduled to S.I. 1998/1328, amended by S.I. 2004/1947.  
(b) “Temporarily registered osteopath” is defined in section 41 of the Osteopaths Act 1993.  
(c) Scheduled to S.I. 1998/1329.  
(d) Scheduled to S.I. 2000/1281.

“(2) In considering whether an exempt person(a) has reached the required standard of proficiency for the purposes of paragraph (1)(c), the Registrar—

- (a) shall take into account all his relevant qualifications, knowledge and experience, wherever acquired; and
- (b) if the applicant holds a qualification which—
  - (i) was granted otherwise than in a relevant European State, but
  - (ii) has been accepted by a relevant European State, other than the United Kingdom, as qualifying him to practise as an osteopath in that State,shall take that acceptance into account.”.

## PART 16

### CHIROPRACTORS: CHIROPRACTORS ACT 1994

#### Amendment of the Chiropractors Act 1994

**218.** The Chiropractors Act 1994(b) shall be amended in accordance with this Part.

#### Insertion of section 5A

**219.** After section 5 insert—

##### “Temporary registration for visiting chiropractors from relevant European States

**5A.**—(1) This section applies to an exempt person (“V”) who is lawfully established as a chiropractor in a relevant European State other than the United Kingdom (“State A”).

(2) Subsection (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of services as a chiropractor in the United Kingdom on a temporary and occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of services as a chiropractor).

(3) V is entitled to be registered as a temporarily registered chiropractor; and the Registrar shall give effect to the entitlement.

(4) If V is entitled under subsection (3) to be registered as a temporarily registered chiropractor but is not registered with temporary registration, V shall be treated as being registered with temporary registration.

(5) V’s entitlement under subsection (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of services as a chiropractor in the United Kingdom on a temporary and occasional basis.

(6) If—

- (a) V’s entitlement under subsection (3) ceases by reason of the operation of subsection (5), and
- (b) V is registered as a temporarily registered chiropractor,

the Registrar may remove from the register V’s entry as a temporarily registered chiropractor.

(7) Subsection (8) applies if—

- (a) V’s establishment in State A is subject to a condition relating to V’s practice as a chiropractor,
- (b) V is registered as a temporarily registered chiropractor, and

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(a) “Exempt person” is defined in section 5A of the Osteopaths Act 1993.

(b) 1994 c.17.

(c) for any of the purposes of this Act it falls to be decided whether V is or may be guilty of unacceptable professional conduct.

(8) The matters that may be counted as unacceptable professional conduct include (in particular) any act or omission by V during the course of the provision by V of services as a chiropractor in the United Kingdom on a temporary and occasional basis that is, or would be if the condition applied in relation to practice as a chiropractor outside State A, a breach of the condition.

(9) In subsections (7) and (8) “condition” includes limitation.

(10) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to temporarily registered chiropractors, of any other provision of this Act under which a registered chiropractor’s name may be removed from the register or under which a registered chiropractor’s registration may be suspended.”.

#### **Amendment of section 6**

**220.** In section 6 (registration: supplemental provision)—

- (a) in subsection (1)(a), for “or provisional registration” substitute “, provisional or temporary registration”;
- (b) in subsection (2), for “The General Council” substitute “Subject to subsection (4A), the General Council”;
- (c) after subsection (4) insert—

“(4A) Rules under this section may not prescribe a fee in connection with temporary registration.”;
- (d) in subsection (5), after “payment” insert “, except in the case of temporary registration,”; and
- (e) after subsection (5) add—

“(6) In subsection (3)(b) to (f), “registration” does not include temporary registration.”.

#### **Amendment of section 8**

**221.** In section 8 (restoration to the register of chiropractors who have been struck off), in subsection (8), for “or provisionally registered chiropractors” substitute “, provisionally registered chiropractors or temporarily registered chiropractors”.

#### **Amendment of section 17**

**222.** In section 17 (post registration training), after subsection (2) insert—

“(2A) Subsections (1) and (2), so far as relating to a person (“P”) who is a registered chiropractor only as a result of being registered with temporary registration, have effect subject to, respectively, subsections (2B) and (2C).

(2B) Rules made under subsection (1)—

- (a) may not impose requirements on P if P is required to undertake, in P’s home State, further courses of training in relation to the profession of chiropractic; and
- (b) where they impose requirements on P—
  - (i) shall take account of the fact that P is a fully qualified chiropractor in P’s home State, and
  - (ii) shall specify that training which P is required to undertake by the requirements may be undertaken outside the United Kingdom.

(2C) Where rules make provision such as is mentioned in subsection (2), the rules must secure that any sanction imposed in relation to P by or under that provision is appropriate and proportionate in view of P’s continued lawful establishment as a chiropractor in P’s home State.

(2D) In this section “home State”, in relation to P, means the relevant European State in which P is lawfully established as a chiropractor.”.

### **Amendment of section 29**

**223.** In section 29(a) (appeals against decisions of the Registrar), in subsection (1), after paragraph (b) insert—

“(ba) refuses to register a person with temporary registration,”.

### **Insertion of section 29A**

**224.** After section 29 insert—

#### **“Appeals against decisions of the General Council**

**29A.**—(1) A person aggrieved by a decision mentioned in subsection (2) may appeal to a county court or, in the case of a person whose address in the register is (or if he were registered would be) in Scotland, the sheriff in whose sheriffdom the address is situated.

(2) Those decisions are—

- (a) a decision of the General Council under section 14(10)(b) imposing conditions;
- (b) a decision of the General Council under Part 3 of the General Systems Regulations requiring an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to have access to, and to pursue, the profession of chiropractic in the United Kingdom.

(3) On an appeal under subsection (1), the court (or the sheriff) may—

- (a) dismiss the appeal,
- (b) allow the appeal and quash the decision appealed against,
- (c) substitute for the decision appealed against any other decision which could have been made by the General Council, or
- (d) remit the case to the General Council to dispose of the case in accordance with the directions of the court (or the sheriff),

and may make such order as to costs (or, in Scotland, expenses) as it (or he) thinks fit.”.

### **Amendment of section 37**

**225.** In section 37 (professional indemnity insurance), after subsection (1) insert—

“(1A) In subsection (1) “registered chiropractor” does not include a temporarily registered chiropractor.”.

### **Amendment of section 43**

**226.** In section 43 (interpretation)—

(a) after the definition of “conditionally registered chiropractor” insert—

““exempt person” means—

- (a) a national of a relevant European State other than the United Kingdom,
- (b) a national of the United Kingdom who is seeking access to, or is pursuing, the profession of chiropractic by virtue of an enforceable Community right, or
- (c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of the profession of chiropractic, no less favourably than a national of a relevant European State, and in this definition, “national”, in relation to a relevant European State, means the same as in the Community Treaties, but does not include a person who by virtue of Article 2 of Protocol No. 3

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(a) Section 29 was amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 33.

- (Channel Islands and Isle of Man) to the Treaty of Accession is not to benefit from Community provisions relating to the free movement of persons and services;”;
- (b) after the definition of “the General Council” insert—
- ““the General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781);”;
- (c) in the definition of “registered chiropractor”, for “or as a provisionally registered chiropractor” substitute “, as a provisionally registered chiropractor or as a temporarily registered chiropractor”;
- (d) after the definition of “the Registrar” insert—
- ““relevant European State” means an EEA State or Switzerland;” and
- (e) after the definition of “the statutory committees” insert—
- ““temporarily registered chiropractor” means a person who is registered with temporary registration;”.

## PART 17

### CHIROPRACTORS: OTHER LEGISLATION

#### **Amendment of the General Chiropractic Council (Registration) Rules 1999**

**227.** In the General Chiropractic Council (Registration) Rules 1999(a)—

- (a) in rule 2 (interpretation), after paragraph (2) insert—
- “(2A) These Rules do not apply in relation to a temporarily registered chiropractor(b) or a person seeking registration as a temporarily registered chiropractor, except for rules 3 (form of register), 6 (certificates), 7 (amendments of register) and 9 (removal from the register).”;
- (b) in rule 3 (form of register), in paragraph (4)(a), for “and provisionally registered chiropractors” substitute “, provisionally registered and temporarily registered chiropractors”;
- (c) in rule 6 (certificates), in paragraph (2), for “or provisionally” substitute “, provisionally or temporarily”;
- (d) in rule 7 (amendments of register), in paragraph (4), after “Form B and” insert “, except in the case of a temporarily registered chiropractor;” and
- (e) in Schedule 2 (fees)—
- (i) in paragraphs 1, 3, 4 and 5, for “European Economic Area State” substitute “relevant European State”, and
- (ii) omit paragraph 6.

#### **Amendment of the General Chiropractic Council (Professional Indemnity Insurance) Rules 1999**

**228.** In the General Chiropractic Council (Professional Indemnity Insurance) Rules 1999(c), in rule 2 (interpretation)—

- (a) the existing provision shall be numbered as paragraph (1); and
- (b) after paragraph (1) add—
- “(2) These Rules do not apply in relation to temporarily registered chiropractors.”.

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(a) Scheduled to S.I. 1999/1856; relevant amendments to Schedule 2 were made by S.I. 2003/3148 and 2004/1947.  
(b) “Temporarily registered chiropractor” is defined in section 43 of the Chiropractors Act 1994.  
(c) Scheduled to S.I. 1999/3071.

## **Amendment of the General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules 2002**

**229.**—(1) The General Chiropractic Council (Registration of Chiropractors with Foreign Qualifications) Rules 2002(a) are amended as follows.

(2) In rule 2 (interpretation, etc), after the definition of “the Council” insert—

““the Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications(b), and references in these Rules to the Directive are to the Directive as amended from time to time;”.

(3) In Part II, for the heading (“cases where Community law does not apply”), substitute “Cases where the applicant is not treated as having a recognised qualification by virtue of section 14(10)(a) of the Act”.

(4) In rule 5 (treatment of foreign qualifications)—

- (a) in paragraph (1), after “proficiency and” insert “, subject to paragraph (3),”;
- (b) in paragraph (2), after “Registrar may,” insert “subject to paragraph (3),”;
- (c) after paragraph (2) add—

“(3) A requirement to satisfy the Registrar as to satisfactory command of the English language under paragraph (1) or (2) shall not apply in the case of an applicant who is an exempt person(c).”.

(5) In rule 6 (required standard of proficiency)—

- (a) in paragraph (1), for “In determining” substitute “Subject to paragraph (1A), in determining”; and
- (b) after paragraph (1) insert—

“(1A) In considering whether an applicant who is an exempt person has reached the required standard of proficiency for the purposes of rule 5(1), the Registrar—

- (a) shall take into account all his relevant qualifications, knowledge and experience, wherever acquired; and
- (b) if the applicant holds a qualification which—
  - (i) was granted otherwise than in a relevant European State, but
  - (ii) has been accepted by a relevant European State, other than the United Kingdom, as qualifying him to practise as a chiropractor in that State,shall take that acceptance into account.”.

(6) In Part III, for the heading (“cases where Community law applies”), substitute “Cases where the applicant is treated as having a recognised qualification by virtue of section 14(10)(a) of the Act”.

(7) In rule 9(d) (application and interpretation of Part III), omit the definitions of “the Directive”, “EEA State” and “relevant EEA State”.

(8) In rule 10(e) (applications)—

- (a) in paragraph (1), for “rule 11(2) or 12(2) or (3)” substitute “rule 12”; and
- (b) omit paragraph (4).

(9) For rules 11 and 12(f) substitute—

### **“Evidence of good character and health: Directive cases**

**11.**—(1) Paragraphs (2) to (5) apply in relation to an applicant—

- (a) who is an exempt person (“A”); and
- (b) in a case to which the Directive applies.

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(a) Scheduled to S.I. 2002/2704.

(b) OJ No. L255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.

(c) “Exempt person” is defined in section 43 of the Chiropractors Act 1994.

(d) Rule 9 was amended by S.I. 2004/1947.

(e) Rule 10 was amended by S.I. 2004/1947.

(f) Rules 11 and 12 were amended by S.I. 2004/1947.

(2) For the purposes of section 3(2)(b) of the Act, the document required as evidence of A's good character is a certificate which—

- (a) attests to A's good character or good repute; and
- (b) is issued by a competent authority in A's attesting State.

(3) If no such certificate is issued by a competent authority in A's attesting State, for the purposes of section 3(2)(b) of the Act the document required as evidence of A's good character is a certificate—

- (a) attesting to the authenticity of a declaration on oath made by A—
  - (i) before a competent judicial or administrative authority, notary or qualified professional body of A's attesting State, and
  - (ii) attesting to A's good character; and
- (b) issued by the authority, notary or body referred to in sub-paragraph (a)(i).

In this paragraph, "declaration on oath" includes a solemn declaration.

(4) For the purposes of section 3(2)(c) of the Act, the document required as evidence of A's good health is a certificate which—

- (a) attests to A's good physical and mental health; and
- (b) is required of a person who wishes to practise chiropractic in A's attesting State.

(5) If no such certificate is required of persons who wish to practise chiropractic in A's attesting State, for the purposes of section 3(2)(c) of the Act the document required as evidence of A's good health is a certificate which—

- (a) attests to A's good physical and mental health; and
- (b) is issued by a competent authority in A's attesting State.

(6) In paragraphs (2) to (5) the "attesting State", in relation to A, is—

- (a) the relevant European State in which A obtained his qualification in chiropractic; or
- (b) (if different) the relevant European State from which A comes to the United Kingdom.

(7) A certificate referred to in paragraph (2), (3), (4) or (5) must be issued within the period of three months preceding the date of A's application.

#### **Evidence of good character and health: non-Directive cases**

**12.**—(1) In a case to which the Directive does not apply, for the purposes of section 3(2)(b) of the Act, rules 4(2)(a) and 5(1) and (3) of the 1999 Rules shall apply, in so far as relevant.

(2) In a case to which the Directive does not apply, for the purposes of section 3(2)(c) of the Act, rules 4(2)(b) and 5(2) and (3) of the 1999 Rules shall apply, in so far as relevant."



**PART 18**  
**SOCIAL WORKERS: CARE STANDARDS ACT 2000**

**Amendment of the Care Standards Act 2000**

**230.** The Care Standards Act 2000(a) shall be amended in accordance with this Part.

**Amendment of section 55**

**231.** In section 55(b) (interpretation), after subsection (5) add—

“(6) “The General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781).

(7) “Relevant European State” means an EEA State or Switzerland.

(8) “Exempt person” means—

- (a) a national of a relevant European State other than the United Kingdom,
- (b) a national of the United Kingdom who is seeking to engage in relevant social work by virtue of an enforceable Community right, or
- (c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, as regards the right to engage in relevant social work, no less favourably than a national of a relevant European State;

and in this subsection, “national”, in relation to a relevant European State, means the same as in the Community Treaties, but does not include a person who by virtue of Article 2 of Protocol No. 3 (Channel Islands and the Isle of Man) to the Treaty of Accession is not to benefit from Community provisions relating to the free movement of persons and services.”.

**Amendment of section 56**

**232.** In section 56 (the register)—

(a) in subsection (1), omit “and” at the end of paragraph (a), and after paragraph (b) insert—

“; and

(c) visiting social workers from relevant European States.”; and

(b) for subsection (2) substitute—

“(2) There shall be a separate part of the register—

- (a) for social workers;
- (b) for each description of social care workers specified pursuant to subsection (1)(b); and
- (c) for visiting social workers from relevant European States.

(2A) For the purposes of this Part—

- (a) the part mentioned in subsection (2)(a) is the “principal part” of the register;
- (b) a part mentioned in subsection (2)(b) is an “added part” of the register;
- (c) the part mentioned in subsection (2)(c) is the “visiting European part” of the register.”.

**Amendment of section 57**

**233.** In section 57 (applications for registration), in subsection (1), for “under this Part” substitute “in the principal part, or an added part, of the register maintained by a Council”.

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(a) 2000 c.14.

(b) There are no relevant amendments to section 55.

### **Amendment of section 58**

**234.** In section 58 (grant or refusal of registration), in subsection (1), for “If the Council” substitute “In the case of an application under section 57(1), if the Council”.

### **Insertion of section 58A**

**235.** After section 58 insert—

#### **“Visiting social workers from relevant European States**

**58A.—**(1) This section applies to an exempt person (“V”) who is lawfully established as a social worker in a relevant European State other than the United Kingdom.

(2) Subsection (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of services as a social worker in the United Kingdom on a temporary and occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of services as a social worker).

(3) V is entitled to be registered in the visiting European part of the register maintained by a Council; and the Council shall give effect to the entitlement.

(4) If V is entitled under subsection (3) to be registered in the visiting European part of a register but is not registered in that part, V shall be treated as being registered in that part.

(5) V’s entitlement under subsection (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of services as a social worker in the United Kingdom on a temporary and occasional basis.

(6) If—

(a) V’s entitlement under subsection (3) ceases by reason of the operation of subsection (5), and

(b) V is registered in the visiting European part of the register maintained by a Council,

that Council may remove V from that part.

(7) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in the visiting European part of the register maintained by a Council, of rules under section 59.”.

### **Amendment of section 60**

**236.** In section 60 (rules about registration)—

(a) in paragraph (b), for “for registration or” substitute “under section 57(1) for registration or applying”; and

(b) in paragraph (c), after “removal from the register” insert “under section 58A(6) or”.

### **Amendment of section 61**

**237.** In section 61 (use of title “social worker” etc), in subsection (1)—

(a) after “relevant register” insert “, and is not registered as a visiting social worker from a relevant European State in any relevant register.”; and

(b) in paragraph (b), for “so registered”, in the first place those words appear, substitute “registered in either of those ways”.

### **Substitution of section 64**

**238.** In section 64(a) (qualifications gained outside a Council’s area)—

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(a) Section 64 was amended by S.I. 2004/1947.

(a) before subsection (1) insert—

“(A1) An applicant for registration in the principal part of the register maintained by a Council satisfies the requirements of this section if the applicant is an exempt person who by virtue of Part 3 of the General Systems Regulations is permitted to pursue the profession of social worker in the United Kingdom (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that the applicant may be required to undertake pursuant to that Part of those Regulations).”;

(b) in each of subsections (1) and (2)—

- (i) for “as a social worker in” substitute “in the principal part of”, and
- (ii) omit paragraph (a); and

(c) omit subsections (3) to (5).

### **Amendment of section 65**

**239.** In section 65 (post registration training), after subsection (2) insert—

“(2A) Subsections (1) and (2), so far as relating to a person (“P”) who is registered as a social worker only in the visiting European part of the register, have effect subject to, respectively, subsections (2B) and (2C).

(2B) Rules made under subsection (1)—

- (a) may not impose requirements on P if P is required to undertake, in P’s home State, further training in relation to the profession of social worker; and
- (b) where they impose requirements on P—
  - (i) shall take account of the fact that P is a fully qualified social worker in P’s home State, and
  - (ii) shall specify that training which P is required to undertake by the requirements may be undertaken outside the United Kingdom.

(2C) Where rules make provision such as is mentioned in subsection (2), the rules must secure that any sanction imposed in relation to P by or under that provision is appropriate and proportionate in view of P’s continued lawful establishment as a social worker in P’s home State.

(2D) In this section “home State”, in relation to P, means the relevant European State in which P is lawfully established as a social worker.”.

### **Amendment of section 66**

**240.** In section 66 (visitors for certain social work courses), in subsection (3)(b), for “part for social workers” substitute “principal part”.

### **Amendment of section 68**

**241.** In section 68 (appeals to the Tribunal), after subsection (1) insert—

“(1A) An appeal shall lie to the Tribunal against a decision of a Council under Part 3 of the General Systems Regulations in respect of an aptitude test, or period of adaptation, in connection with a person’s becoming permitted, by virtue of that Part of those Regulations, to have access to, and to pursue, the profession of social worker in the United Kingdom.”.

### **Amendment of section 71**

**242.** In section 71 (rules)—

- (a) in subsection (2), after “functions” insert “, but subject to subsection (3A)”;
- (b) in subsection (3)(a), after “register” insert “, but subject to subsection (3A)”;
- (c) after subsection (3) insert—

“(3A) Rules made by a Council under this Part may not make provision for the payment of fees in connection with registration in the visiting European part of the register.”.

## PART 19

### SOCIAL WORKERS: HEALTH AND PERSONAL SOCIAL SERVICES ACT (NORTHERN IRELAND) 2001

#### **Amendment of the Health and Personal Social Services Act (Northern Ireland) 2001**

**243.** The Health and Personal Social Services Act (Northern Ireland) 2001(a) shall be amended in accordance with this Part.

#### **Amendment of section 2**

**244.** In section 2 (“social care worker”, etc), after subsection (4) insert—

“(5) “The General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781).

(6) “Relevant European State” means an EEA State or Switzerland.

(7) “Exempt person” means—

- (a) a national of a relevant European State other than the United Kingdom,
- (b) a national of the United Kingdom who is seeking to engage in relevant social work by virtue of an enforceable Community right, or
- (c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, as regards the right to engage in relevant social work, no less favourably than a national of a relevant European State;

and in this subsection, “national”, in relation to a relevant European State, means the same as in the Community Treaties, but does not include a person who by virtue of Article 2 of Protocol No. 3 (Channel Islands and the Isle of Man) to the Treaty of Accession is not to benefit from Community provisions relating to the free movement of persons and services.”.

#### **Amendment of section 3**

**245.** In section 3 (the register)—

(a) in subsection (1), omit “and” at the end of paragraph (a), and after paragraph (b) insert—  
“; and

(c) visiting social workers from relevant European States.”; and

(b) for subsection (2) substitute—

“(2) There shall be a separate part of the register for—

- (a) social workers;
- (b) each description of social care workers specified pursuant to subsection (1)(b); and
- (c) visiting social workers from relevant European States.

(2A) For the purposes of this Part—

- (a) the part mentioned in subsection (2)(a) is the “principal part” of the register;
- (b) a part mentioned in subsection (2)(b) is an “added part” of the register;
- (c) the part mentioned in subsection (2)(c) is the “visiting European part” of the register.”.

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(a) 2001 c.3 (N.I.).

#### **Amendment of section 4**

246. In section 4 (applications for registration) in subsection (1), for “under this Part” substitute “in the principal part, or an added part, of the register maintained by the Council”.

#### **Amendment of section 5**

247. In section 5 (grant or refusal of registration), in subsection (1), for “If the Council” substitute “In the case of an application under section 4(1), if the Council”.

#### **Insertion of section 5A**

248. After section 5 insert—

##### **“Visiting social workers from relevant European States**

5A.—(1) This section applies to an exempt person (“V”) who is lawfully established as a social worker in a relevant European State other than the United Kingdom.

(2) Subsection (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of services as a social worker in the United Kingdom on a temporary and occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of services as a social worker).

(3) V is entitled to be registered in the visiting European part of the register maintained by the Council; and the Council shall give effect to the entitlement.

(4) If V is entitled under subsection (3) to be registered in the visiting European part of the register but is not registered in that part, V shall be treated as being registered in that part.

(5) V’s entitlement under subsection (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of services as a social worker in the United Kingdom on a temporary and occasional basis.

(6) If—

(a) V’s entitlement under subsection (3) ceases by reason of the operation of subsection (5), and

(b) V is registered in the visiting European part of the register maintained by the Council,

the Council may remove V from that part.

(7) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in the visiting European part of the register maintained by the Council, of rules under section 6.”.

#### **Amendment of section 7**

249. In section 7 (rules about registration)—

(a) in paragraph (b), for “for registration or” substitute “under section 4(1) for registration or applying”; and

(b) in paragraph (c), after “removal from the register” insert “under section 5A(6) or”.

#### **Amendment of section 8**

250. In section 8 (registration - enforcement), in subsection (1)—

(a) after “relevant register,” insert “and is not registered as a visiting social worker from a relevant European State in any relevant register.”; and

(b) in paragraph (b), for “so registered”, in the first place those words appear, substitute “registered in either of those ways”.

### **Amendment of section 11**

**251.** In section 11 (qualifications gained outside Northern Ireland)—

(a) before subsection (1) insert—

“(A1) An applicant for registration in the principal part of the register maintained by the Council satisfies the requirements of this section if the applicant is an exempt person who by virtue of Part 3 of the General Systems Regulations is permitted to pursue the profession of social worker in the United Kingdom (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that the applicant may be required to undertake pursuant to that Part of those Regulations).”;

(b) in subsection (1)—

(i) for “as a social worker in” substitute “in the principal part of the register”, and

(ii) omit paragraph (a); and

(c) omit subsections (2) to (4).

### **Amendment of section 12**

**252.** In section 12 (post registration training), after subsection (2) insert—

“(2A) Subsections (1) and (2), so far as relating to a person (“P”) who is registered as a social worker only in the visiting European part of the register, have effect subject to, respectively, subsections (2B) and (2C).

(2B) Rules made under subsection (1)—

(a) may not impose requirements on P if P is required to undertake, in P’s home State, further training in relation to the profession of social worker; and

(b) where they impose requirements on P—

(i) shall take account of the fact that P is a fully qualified social worker in P’s home State, and

(ii) shall specify that training which P is required to undertake by the requirements may be undertaken outside the United Kingdom.

(2C) Where rules make provision such as is mentioned in subsection (2), the rules must secure that any sanction imposed in relation to P by or under that provision is appropriate and proportionate in view of P’s continued lawful establishment as a social worker in P’s home State.

(2D) In this section “home State”, in relation to P, means the relevant European State in which P is lawfully established as a social worker.”.

### **Amendment of section 13**

**253.** In section 13 (visitors for certain social work courses), in subsection (3)(b), for “as a social worker” substitute “in the principal part of the register”.

### **Amendment of section 15**

**254.** In section 15(a) (appeals to the Social Care Tribunal), after subsection (2) insert—

“(2A) An appeal shall lie to the Care Tribunal against a decision of the Council under Part 3 of the General Systems Regulations in respect of an aptitude test, or period of adaptation, in connection with a person’s becoming permitted, by virtue of that Part of those Regulations, to have access to, and to pursue, the profession of social worker in the United Kingdom.”.

### **Amendment of section 18**

**255.** In section 18 (rules)—

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(a) Section 15 was amended by S.I. 2003/431 (N.I. 9).

- (a) in subsection (1) after “functions” insert “, but subject to subsection (2A)”;
- (b) in subsection (2)(a), after “register” insert “, but subject to subsection (2A)”;
- (c) after subsection (2) insert—

“(2A) Rules made by the Council under this Part may not make provision for the payment of fees in connection with registration in the visiting European part of the register.”.

## PART 20

### SOCIAL WORKERS: REGULATION OF CARE (SCOTLAND) ACT 2001

#### **Amendment of the Regulation of Care (Scotland) Act 2001**

**256.** The Regulation of Care (Scotland) Act 2001(a) shall be amended in accordance with this Part.

#### **Amendment of section 44**

**257.** In section 44 (register of social workers and of other social service workers)—

- (a) in subsection (1), after paragraph (a) insert—

“(aa) visiting social workers from relevant European states;”;

- (b) for subsection (2) substitute—

“(2) There shall be a separate part of the register for—

- (a) social workers;
- (b) visiting social workers from relevant European States;
- (c) each description of social service workers prescribed by virtue of paragraph (b) of subsection (1) above; and
- (d) such persons as are mentioned in paragraph (c) of that subsection.

(2A) The part of the register for visiting social workers from relevant European States is referred to in this Part of this Act as “the visiting European part” of the register.”.

#### **Amendment of section 45**

**258.** In section 45 (applications for registration under Part 3)—

- (a) in subsection (1), after “Part” insert “, other than for registration in the visiting European part of the register;”;
- (b) after that subsection insert—

“(1A) An application is not required for registration in the visiting European part of the register.”.

#### **Amendment of section 46**

**259.** In section 46 (grant or refusal of registration under Part 3)—

- (a) in subsection (1), after “application” insert “under section 45(1) of this Act”;
- (b) in subsection (2)(c), for “subsection (4) below” substitute “section 46B of this Act”; and
- (c) omit subsections (4) to (7).

#### **Insertion of sections 46A and 46B**

**260.** After section 46 insert—

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(a) 2001 asp 8.



### **“Visiting social workers from relevant European States**

**46A.**—(1) This section applies to an exempt person (“V”) who is lawfully established as a social worker in a relevant European State other than the United Kingdom.

(2) Subsection (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of services as a social worker in the United Kingdom on a temporary or occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of services as a social worker).

(3) V is entitled to be registered in the visiting European part of the register; and the Council shall give effect to the entitlement.

(4) If V is entitled under subsection (3) to be registered in the visiting European part of the register but is not registered in that part, V shall be treated as being registered in that part.

(5) V’s entitlement under subsection (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of services as a social worker in the United Kingdom on a temporary and occasional basis.

(6) If—

(a) V’s entitlement under subsection (3) ceases by reason of the operation of subsection (5); and

(b) V is registered in the visiting European part of the register,

the Council may remove V from that part.

(7) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in the visiting European part of the register maintained by the Council, of rules under section 49.

### **46B. Qualifications gained outside Scotland**

This section applies where—

(a) in the case of an applicant for registration as a social worker, the applicant is an exempt person who by virtue of Part 3 of the General Systems Regulations is permitted to pursue the profession of social worker in the United Kingdom (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that the applicant may be required to undertake pursuant to that Part of those regulations); or

(b) the applicant has, outwith Scotland, undergone training which—

(i) is recognised by the Council as being to a standard sufficient for the applicant to be registered in the part of the register specified in the application; or

(ii) is not so recognised provided that the applicant has also undergone, in Scotland or elsewhere, such additional training as the Council may by rules require.”.

### **Amendment of section 47**

**261.** In section 47(1) (variation etc. of conditions in relation to registration under Part 3), after “Part” insert “, other than in the visiting European part of the register,”.

### **Amendment of section 50**

**262.** In section 50(1) (notice of Council’s decision), after “application” insert “under section 45(1) of this Act”.

### **Amendment of section 51**

**263.** In section 51(a) (appeal against decision of Council) for subsection (1) substitute—

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(a) Section 51 was amended by section 30(5) of the Smoking, Health and Social Care (Scotland) Act 2005, asp 13.

“(1) A person who—

- (a) has been given notice under subsection (2) of section 50 of this Act of a decision mentioned in that subsection; or
- (b) has been given notice of a decision of the Council under Part 3 of the General Systems Regulations in respect of an aptitude test, or period of adaptation, in connection with the person’s becoming permitted, by virtue of that Part of those Regulations, to have access to, and to pursue, the profession of social worker in the United Kingdom,

may, within fourteen days after that notice is given, appeal to the sheriff against the decision.”.

#### **Amendment of section 57**

**264.** In section 57 (power of Council to make rules), after subsection (2) insert—

“(2A) Rules made by the Council under subsection (2) may not make provision for the payment of fees in connection with registration in the visiting European part of the register.”.

#### **Amendment of section 77**

**265.** In section 77(1) (interpretation)—

- (a) at the appropriate places, insert the following definitions—

““exempt person” means—

- (a) a national of a relevant European State other than the United Kingdom;
- (b) a national of the United Kingdom who is seeking to engage in relevant social work by virtue of an enforceable community right; or
- (c) a person who is not a national of a relevant European State, but who is by virtue of an enforceable community right, entitled to be treated, as regards the right to engage in relevant social work, no less favourably than a national of a relevant European State;

and in paragraphs (a) to (c), “national”, in relation to a relevant European State, means the same as in the Community Treaties, but does not include a person who, by virtue of Article 2 of Protocol No.3 (Channel Islands and the Isle of Man) to the Treaty of Accession, is not to benefit from Community provisions relating to the free movement of persons and services;”;

““relevant European State” means an EEA State or Switzerland;”;

““the General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781);”;

““visiting social worker from a relevant European state” means a person entitled under section 46A of this Act to be registered in the part of the register maintained under section 44(1) of this Act for visiting social workers from relevant European States;”;

- (b) in the definition of “social service worker”—

- (i) in paragraph (a), for “subsection (4) of that section” substitute “section 46B of this Act”,

- (ii) after that paragraph insert—

- “(aa) is a visiting social worker from a relevant European State; or”;

- (iii) in paragraph (b), after “(a)” insert “or (aa)”.

## PART 21

### OTHER HEALTH PROFESSIONS: HEALTH PROFESSIONS ORDER 2001

#### Amendment of the Health Professions Order 2001

**266.** The Health Professions Order 2001(a) is amended in accordance with this Part.

#### Amendment of article 6

**267.** In article 6 (register), in paragraph (3), after sub-paragraph (a) insert—

“(aa) the register to include an annotation denoting that a registrant is a visiting health professional from a relevant European State;”.

#### Amendment of article 7

**268.** In article 7 (the register: supplemental provisions), after paragraph (3) add—

“(4) Rules under this article shall not provide for fees to be charged in respect of a person’s registration in exercise of entitlement under article 13A (visiting health professionals from relevant European States).”.

#### Amendment of article 8

**269.** In article 8 (access to register etc), in paragraph (5)—

- (a) for “EEA State” substitute “relevant European State”; and
- (b) for “the relevant Directive” substitute “the relevant provisions of Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications(b), as those provisions are amended from time to time”.

#### Amendment of article 9

**270.** In article 9 (registration)—

- (a) in paragraph (1), for “A person” substitute “Subject to paragraph (8), a person”;
- (b) in paragraph (5), for “the European Communities (Recognition of Professional Qualifications) Regulations” to the end substitute “the General Systems Regulations.”;
- (c) in paragraph (6), omit “under article 37”; and
- (d) after paragraph (7) add—

“(8) This article does not apply to a person who seeks registration in exercise of entitlement under article 13A (visiting health professionals from relevant European States).”.

#### Amendment of article 10

**271.** In article 10(c) (renewal of registration and readmission)—

- (a) in paragraph (1), for “Where a person” substitute “Subject to paragraph (6), where a person”; and
- (b) after paragraph (5) add—

“(6) This article does not apply to a visiting health professional from a relevant European State.”.

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(a) S.I. 2002/254.

(b) OJ No. L255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.

(c) Article 10 was amended by S.I. 2004/2033.

## **Amendment of article 12**

**272.** In article 12 (approved qualifications)—

(a) in paragraph (1)—

(i) for sub-paragraph (b) substitute—

“(b) he is an exempt person and has a right to practise a relevant profession in the United Kingdom by virtue of Part 3 of the General Systems Regulations (having, in particular, successfully completed any adaptation period, or passed any aptitude test, that he may be required to undertake pursuant to that Part of those Regulations); or”, and

(ii) in sub-paragraph (c), for paragraph (iii) substitute—

“(iii) (except where he is an exempt person) he satisfies prescribed requirements as to knowledge of English.”; and

(b) after paragraph (1) insert—

“(1A) In considering whether an exempt person to whom paragraph (1)(c) applies is to be regarded as having an approved qualification, the Council shall take into account—

(a) if the person holds a qualification in a relevant profession which—

(i) was granted otherwise than in relevant European State, but

(ii) has been accepted by a relevant European State, other than the United Kingdom, as qualifying him to practise that profession in that State,

the acceptance of that qualification; and

(b) all other qualifications, knowledge or experience, wherever acquired, which are relevant to the determination of the application.”.

## **Insertion of article 13A**

**273.** After article 13 insert—

### **“Visiting health professionals from relevant European States**

**13A.**—(1) This article applies to an exempt person (“V”) who is lawfully established, in a relevant European State other than the United Kingdom (“State A”), as a member of one of the relevant professions (“the established profession”).

(2) Paragraph (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of relevant services in the United Kingdom on a temporary and occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of relevant services).

(3) V is entitled to be registered in the part of the register relating to the established profession; and the Registrar shall give effect to the entitlement.

(4) If V is entitled under paragraph (3) to be registered, but is not registered in the part of the register relating to the established profession, V shall be treated as being registered in that part.

(5) V’s entitlement under paragraph (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of relevant services in the United Kingdom on a temporary and occasional basis.

(6) If—

(a) V’s entitlement under paragraph (3) ceases by reason of the operation of paragraph (5), and

(b) V is registered,

the Registrar may remove V’s name from the register.

(7) Paragraph (8) applies if—

- (a) V’s establishment in State A is subject to a condition relating to V’s practice of the established profession,
- (b) V’s name is registered in the part of the register relating to the established profession, and
- (c) for any of the purposes of this Order it falls to be decided whether V’s fitness to practise is or may be impaired on the ground of misconduct.

(8) The matters that may be counted as misconduct include (in particular) any act or omission by V during the course of the provision by V of relevant services in the United Kingdom on a temporary and occasional basis that is, or would be if the condition applied in relation to practice of the established profession outside State A, a breach of the condition.

(9) In paragraphs (7) and (8) “condition” includes limitation.

(10) Paragraphs (1) to (6) are not to be taken to prejudice the application, in relation to registrants, of any other provision of this Order under which a registrant’s name may be removed from the register or under which a registrant’s registration may be suspended.

(11) In this article “relevant services” means services provided in pursuit of the established profession.”.

### **Amendment of article 19**

**274.** In article 19 (post-registration training), after paragraph (2) insert—

“(2A) Paragraphs (1) and (2), so far as relating to a person (“P”)—

- (a) who is registered in the part of the register relating to a relevant profession (“the established profession”), and
- (b) whose entry in that part of the register includes an annotation denoting that P is a visiting health professional from a relevant European State,

have effect subject to, respectively, paragraphs (2B) and (2C).

(2B) Rules made under paragraph (1)—

- (a) may not impose requirements on P in connection with P’s pursuit of the established profession if P is required to undertake, in P’s home State, continuing professional development in relation to the established profession; and
- (b) where they impose requirements on P in connection with P’s pursuit of the established profession—
  - (i) shall take account of the fact that P is fully qualified to pursue the established profession in P’s home State, and
  - (ii) shall specify that continuing professional development which P is required to undertake by the requirements may be undertaken outside the United Kingdom.

(2C) Where rules make provision such as is mentioned in paragraph (2), the rules must secure that any sanction imposed in relation to P by or under that provision is appropriate and proportionate in view of P’s continued lawful establishment as a member of the established profession in P’s home State.

(2D) In paragraphs (2B) and (2C) “home State”, in relation to P, means the relevant European State in which P is lawfully established as a member of the established profession.”.

### **Amendment of article 37**

**275.** In article 37(a) (appeals against decisions of the Education and Training Committee), in paragraph (1), after sub-paragraph (a) insert—

“(aa) refuses to register a person under article 13A (visiting health professionals from relevant European States);”.

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(a) Article 37 was amended by S.I. 2004/2033.

### **Amendment of article 38**

**276.** In article 38(a) (appeals)—

- (a) in paragraph (1)(b), for “any decision of the Council under article 37” substitute “a decision of the Council mentioned in paragraph (1A)”; and
- (b) after paragraph (1) insert—
  - “(1A) The decisions referred to in paragraph (1)(b) are—
  - (a) any decision of the Council under article 37;
  - (b) a decision of the Council under Part 3 of the General Systems Regulations requiring an exempt person to complete an adaptation period, or pass an aptitude test, in connection with becoming entitled by virtue of that Part of those Regulations to have access to, and to pursue, a relevant profession in the United Kingdom.”.

### **Amendment of Schedule 3**

**277.** In Schedule 3(b) (interpretation), in paragraph 1—

- (a) omit the definitions of “EEA national” and “EEA State”;
- (b) for the definition of “exempt person” substitute—
  - ““exempt person” means—
  - (a) a national of a relevant European State other than the United Kingdom,
  - (b) a national of the United Kingdom who is seeking access to, or is pursuing, a relevant profession by virtue of an enforceable Community right; or
  - (c) a person who is not a national of a relevant European State but who is, by virtue of an enforceable Community right, entitled to be treated, for the purposes of access to and pursuit of a relevant profession, no less favourably than a national of a relevant European State;”;
- (c) after the definition of “exempt person” insert—
  - ““General Systems Regulations” means the European Communities (Recognition of Professional Qualifications) Regulations 2007(c);”;
- (d) in the definition of “national”, for “an EEA State” substitute “a relevant European State”;
- (e) after the definition of “Registrar” insert—
  - ““relevant European State” means an EEA State or Switzerland;”;
- (f) after the definition of “United Kingdom country” add—
  - ““visiting health professional from a relevant European State” means a person registered in exercise of entitlement under article 13A (visiting health professionals from relevant European States).”.

## **PART 22**

### **OTHER HEALTH PROFESSIONS: OTHER LEGISLATION**

#### **Amendment of the Health Professions (Parts of and Entries in the Register) Order of Council 2003**

**278.** In the Health Professions (Parts of and Entries in the Register) Order of Council 2003(d), after article 6(e) add—

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(a) Article 38 was amended by S.I. 2004/2033.  
(b) Schedule 3 was amended by S.I. 2003/3148 and 2004/1947 and 2033.  
(c) S.I. 2007/2781.  
(d) S.I. 2003/1571.  
(e) Article 6 was amended by S.I. 2006/1996.

### **“Annotations denoting visiting health professionals from relevant European States**

7. The entries in the register are to include such annotation as the Council considers appropriate to denote that a registrant is a visiting health professional from a relevant European State(a).”.

### **Amendment of the Health Professions Council (Registration and Fees) Rules 2003**

**279.**—(1) The Health Professions Council (Registration and Fees) Rules 2003(b) are amended as follows.

(2) In rule 2 (interpretation)—

(a) before the definition of “Committee” insert—

““attesting State”, in relation to an application, is—

(a) the relevant European State in which the applicant obtained his qualification in the profession to which his application relates; or

(b) (if different) the relevant European State from which the applicant comes to the United Kingdom;”;

(b) for the definition of “competent authority” substitute—

““competent authority”, in relation to an application, means any authority or body of a relevant European State designated by that State for the purposes of Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications(c), as competent to—

(a) receive or issue evidence of qualifications or other information or documents, or

(b) receive applications and take the decisions referred to in that Directive,

in connection with the practice of the profession to which the applicant’s application relates;”;

(c) omit the definition of “home relevant State”.

(3) After rule 2 insert—

### **“Application to visiting health professionals from relevant European States**

**2A.** These Rules shall not apply in relation to visiting health professionals from relevant European States or in respect of a person’s registration in exercise of entitlement under article 13A of the Order, except for rules 3 (the register), 9 (amendments to register), 11A (continuing professional development) and 12 (application for removal from the register).”.

(4) In rule 4 (applications for registration)—

(a) in paragraph (2)—

(i) in sub-paragraph (b), for “paragraphs (4)” substitute “paragraphs (3)”, and

(ii) in sub-paragraph (c)(ii), for “home relevant State” substitute “attesting State”;

(b) for paragraphs (3) and (4) substitute—

“(3) Where an applicant (“A”) is relying on article 12(1)(b) of the Order—

(a) he may provide, in place of the character reference referred to in paragraph (2)(a), a certificate of good character—

(i) to which either paragraph (3A) or (3B) applies, and

(ii) issued within the three months preceding the date of A’s application; and

(b) he shall provide, in place of the health reference referred to in paragraph (2)(b), a certificate of good health—

(i) to which either paragraph (4) or (4A) applies, and

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(a) “Visiting health professional from a relevant European State” is defined in the Order as meaning a person registered in the register in exercise of entitlement under article 13A of the Order.

(b) Scheduled to S.I. 2003/1572; relevant amendments were made to rule 4 by S.I. 2005/1625.

(c) OJ No. L255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.



(ii) issued within the three months preceding the date of A's application.

(3A) This paragraph applies to a certificate which—

- (a) attests to A's good character or good repute; and
- (b) is issued by a competent authority in A's attesting State.

(3B) If no such certificate is issued by a competent authority in A's attesting State, this paragraph applies to a certificate—

- (a) attesting to the authenticity of a declaration on oath made by A—
  - (i) before a competent judicial or administrative authority, notary or qualified professional body of A's attesting State, and
  - (ii) attesting to A's good character; and
- (b) issued by the authority, notary or body referred to in sub-paragraph (a)(i).

In this paragraph, "declaration on oath" includes a solemn declaration.

(4) This paragraph applies to a certificate which—

- (a) attests to A's good physical and mental health; and
- (b) is required of a person who wishes to practise the profession to which A's application relates in A's attesting State.

(4A) If no such certificate is required of persons who wish to practise the profession to which A's application relates in A's attesting State, this paragraph applies to a certificate which—

- (a) attests to A's good physical and mental health; and
- (b) is issued by a competent authority in A's attesting State.”; and

(c) in paragraph (5), omit “or (4)”.

(5) In rule 5 (other conditions of registration)—

- (a) in paragraph (1)(a), for “or (3)” substitute “, (3A) or (3B)”;
- (b) in paragraph (2)(a), after “(4)” insert “, (4A)”.

(6) In rule 7 (knowledge of the English language), omit “EEA national exercising an enforceable Community right or”.

Signed by authority of the Secretary of State for Health.

1st November 2007

*Ben Bradshaw*  
Minister of State,  
Department of Health

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which are made under powers contained in the European Communities Act 1972, implement, in part, Directive 2005/36/EC(a) (“the Directive”) which concerns the recognition of professional qualifications. The essential aim of the Directive is to facilitate the free movement of persons between member States of the European Community, by setting out principles and procedures which member States are to apply in determining the rights of migrants to pursue professions which require professional qualifications.

The Directive repeals and replaces a number of previous Directives dealing with the recognition of professional qualifications. The Directive restates the majority of the provisions contained in those repealed Directives, but adds significant new provisions and makes many other minor changes to the existing regimes. Accordingly, the Regulations make amendments to a large number of Acts and statutory instruments which implement the existing regimes, in order to reflect the changes and additions made by the Directive.

The Regulations implement the majority of the Directive in relation to a first group of health professions (the “sectoral professions”), namely, doctors (including specialists and general practitioners), pharmacists, dentists (including specialist dentists), nurses responsible for general care and midwives. (However the Regulations do not implement the Directive in relation to the pharmacy profession in Northern Ireland, where implementation is the responsibility of the Northern Ireland department).

The Regulations implement certain provisions of the Directive in relation to a second group of health and social care professions (the “general systems professions”), namely, opticians, osteopaths, chiropractors, social workers, professions complementary to dentistry, certain specialist nurses and those professions regulated by the Health Professions Council. The Directive is also implemented in relation to the profession of pharmacy technician from 1st April 2008, when it is expected that that profession will become subject to statutory regulation in Great Britain. These professions are not subject to the system of automatic mutual recognition of qualifications which applies in relation to the sectoral professions.

Those provisions of the Directive relating to health and social care professions which are not implemented by these Regulations are implemented by the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781) (“the General Systems Regulations”).

The Regulations apply in relation to the member States of the European Community and also in relation to the other EEA States, Iceland, Liechtenstein and Norway. The Regulations also apply in relation to Switzerland. The Regulations use the term “relevant European State” to describe the member States of the European Community plus Iceland, Liechtenstein, Norway and Switzerland.

The main changes to existing legislation made by the Regulations may be summarised as follows.

### **(1) Article 10 cases**

Article 10 of the Directive is a new provision which describes certain cases (“article 10 cases”) in which migrants wishing to establish themselves in the practice of a sectoral profession in a different relevant European State are subject to the recognition regime set out in the General Systems Regulations.

The details of that regime are implemented in Part 3 of the General Systems Regulations, and these Regulations implement article 10 by referring to persons who are entitled to practise their profession by virtue of that Part of the General Systems Regulations. See, for example in relation to doctors, regulations 8 and 14 (sections 14A and 19A Medical Act 1983).

### **(2) Provision of services on a temporary basis**

Title II of the Directive sets out a regime for the provision of professional services on a temporary basis in a host relevant European State by a migrant who is established in the practice of the relevant profession in a different relevant European State. Such a regime already exists for the professions of doctor, dentist, nurse and midwife. However it is new for the profession of pharmacist and for all the general systems professions. The

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(a) OJ No. L255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141.

Regulations make provision to implement the details of the regime set out in Title II of the Directive, whose key features are:

- the provision by the migrant of a declaration before provision of services in a host relevant European State;
- the provision by the migrant of accompanying documents proving nationality, qualifications and lawful establishment in another relevant European State;
- in the case of the general systems professions, and the sectoral professions in article 10 cases only, the possibility for the competent authority to require verification of the migrant's qualifications;
- automatic registration of the eligible service provider in the competent authority's register.

For an example of implementation of Title II of the Directive in relation to a sectoral profession, see, in relation to dentists, regulation 132 (Schedule 4 Dentists Act 1984).

In relation to the general systems professions, implementation is largely achieved by Part 2 of the General Systems Regulations, but certain provisions relating to registration in the regulatory body's register are included in these Regulations. For an example of implementation in relation to a general systems profession, see, in relation to osteopaths, regulation 207 (section 5A Osteopaths Act 1993).

### **(3) Training conditions for the sectoral professions**

The Directive harmonises training conditions for the sectoral professions, and there are few changes from the previous regime in this respect. However the mode of implementation has in some cases changed. Previously, in some cases, the training conditions were set out in full or in part in the domestic legislation. The Regulations make amendments so that the approach now adopted is to refer to the training conditions set out in the relevant provision of the Directive, and ambulatory references to the Directive ensure that any amendments to the training conditions in the future will be picked up.

See, for an example of implementation of the training conditions in relation to dentists (article 34 of the Directive), regulation 110 (section 12A Dentists Act 1984).

### **(4) Automatic recognition of qualifications and acquired rights for the sectoral professions**

The Directive makes some changes to the regime of automatic recognition of listed European qualifications for the sectoral professions, and to the acquired rights provisions in relation to those professions. In particular, a certificate is now required to accompany a listed qualification, where the Directive requires this (see, for example, in relation to doctors, regulation 11(3)(b) (section 17(1)(a) Medical Act 1983)).

More generally, the provisions of existing legislation relating to the sectoral professions which deal with listed European qualifications and acquired rights are substantially altered by the Regulations in order to update terminology and references. Notably, references are now made to the qualifications listed for each sectoral profession in Annex V of the Directive, and the Regulations, in many cases, repeal existing provisions which set out the listed qualifications in domestic legislation. This approach has been facilitated by the ambulatory references to the Directive which are included in the Regulations.

### **(5) Competent authority functions**

Article 56(3) of the Directive requires relevant European States to designate competent authorities which will deal with applications and the provision of certificates etc. under the Directive. For the sectoral professions, the Regulations make the required designations and set out, in a Table, various Directive functions conferred on the competent authority.

For an example of the implementation of article 56(3) and other relevant Directive provisions, see, in relation to nurses and midwives, regulations 170 and 172 (article 40 of, and Schedule 3 to, the Nursing and Midwifery Order 2001).

### **(6) Third-country qualifications meeting minimum training conditions**

Article 2(2) of the Directive requires that, where a migrant has a qualification obtained otherwise than in a relevant European State, and which has not previously been recognised by a relevant European State, the qualification may be given recognition only if it meets the minimum training conditions set out in the

Directive. This is a new provision. See, for example in relation to pharmacists, regulation 75 (article 12(1A) Pharmacists and Pharmacy Technicians Order 2007).

#### **(7) Documentation requirements**

Article 50(1) and Annex VII of the Directive specify documents which a competent authority may require where a migrant seeks to establish himself in a profession in a different relevant European State. Two new documents are described: firstly a proof of nationality, and secondly, in the case of the sectoral professions only, a certificate attesting to the conformity of the professional qualification with that listed in the Directive. Further changes are made to the existing regime, particularly in relation to the documents which may be required giving evidence of good character and good health.

For an example of implementation of these requirements, see, in relation to pharmacists, regulation 78 (article 17 of the Pharmacists and Pharmacy Technicians Order 2007) and regulation 107 (rule 6 of the Royal Pharmaceutical Society of Great Britain (Registration) Rules 2007).

#### **(8) Acknowledgement of applications and time-limits**

Article 51(1) of the Directive requires relevant European States to acknowledge receipt of applications within one month of receipt. There is also minor amendment to the time-limits within which competent authorities must deal with applications for establishment. See, for example in relation to nurses and midwives, regulation 159 (article 9 of the Nursing and Midwifery Order 2001).

#### **(9) Appeals**

The Regulations make certain changes in relation to appeals, notably relating to a specific right of appeal against a compensation measure imposed under the General Systems Regulations, and a right of appeal against a decision by a competent authority as to a migrant's entitlement to registration as a service provider.

For an example of implementation of these provisions, see, in relation to dentists, regulation 131 (Schedule 2A Dentists Act 1984), and in relation to professions complementary to dentistry, regulation 134 (Schedule 4A Dentists Act 1984).

#### **(10) Accession of Bulgaria and Romania**

The Directive has been amended by Council Directive 2006/100/EC(a), which makes amendments in connection with the accession of Bulgaria and Romania to the European Community. The Regulations implement the changes by making some amendments to the acquired rights provisions concerning certain professionals who qualified in those countries.

A transposition note is available from the Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE, and appears on the following website, <http://www.dh.gov.uk/en/Consultations/Responsestoconsultations>. The transposition note gives further information about the implementation of the Directive, in so far as it is implemented by these Regulations.

An impact assessment of the effect that this instrument will have on the costs of business is available from the same address, and on the same website, as the transposition note.

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(a) OJ No. L363 of 20.12.2006, p.141.

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