Equality Analysis

Amendments to the Medical Profession (Responsible Officers) Regulations 2010 required due to changes to the health architecture, including proposals for ensuring the language competence of doctors.

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Amendments to the Medical Profession (Responsible Officers) Regulations 2010 required due to changes to the health architecture, including proposals for ensuring the language competence of doctors.

Prepared by the Clinical Governance and Professional Standards Business Units

Introduction

This document is the Equality Analysis on the amendments to the Medical Profession (Responsible Officers) Regulations 2010 required due to changes to the health architecture. The document also includes proposed changes for ensuring the language competence of doctors.

Where necessary, it updates the original Equality Impact Assessment (EqIA) that was completed for the Medical Profession (Responsible Officer) Regulations 2010 ("the Regulations") and prepared when the policy was developed. It also considers the equality and diversity issues relating to the proposals for language checking for doctors.

Amendments to the Regulations are required to enable the Regulations to continue to operate as intended as a result of changes to health structures arising from the Health and Social Care Act 2012 ("the 2012 Act"). As these changes are consequential, resulting from the 2012 Act, this analysis does not assess these changes. We are of the view that consequential changes are covered by the assessments conducted in respect of the 2012 Act itself and that, as we are not making substantive changes to policy (subject to language checking, see below), that the equality analysis prepared for the original 2010 Regulations sufficiently assesses any impact on equality and diversity.

Further amendments to the regulations include proposed additions to the list of designated bodies and clarification of existing regulations. We do not think that there is any change in policy, as they merely reflect requests by certain bodies for status as a designated body. We have made a change to address concerns raised in responses to the consultation that relate to possible conflicts of interest or appearance of bias that senior responsible officers in the NHS Commissioning Board (NHS CB) may encounter.

We have, however, conducted a further analysis in respect of proposed changes to the 2010 Regulations concerning language checking. This document therefore primarily concerns this issue.

Equality analysis

Title: For amending the Medical Profession (Responsible Officers) Regulations 2010 to reflect changes to the new health architecture, including proposals for ensuring the language competence of doctors.

Relevant line in DH Business Plan 2011-2015**:**

Responsible officers in the new health architecture

Amendments to the Responsible Officers Regulations relate to the DH Business Plan on implementing new structures:

Amend regulations that are applicable to the new structure in place. Doctors will still be able to relate to responsible officers who provide leadership during transition. Responsible officers have a key role in the revalidation of doctors due to commence in late 2012. The structure will be in place for the successful implementation of revalidation**.**

Responsible officers and language checking proposals

Develop options, in collaboration with the General Medical Council (GMC) and European Commission, to strengthen the language competence checks of European Economic Area migrant doctors seeking to work in the NHS.

This relates to the coalition agreement that sets out the commitment to ensure that foreign healthcare professionals have the competence and language skills to ensure that patients in the NHS are not put at risk through an inability to communicate.

What are the intended outcomes of this work?

Responsible officers in the new health architecture
The EqIA published as part of the Impact Assessment for the Regulations set out primary objectives and strategic aims for the responsible officer policy that are focused on patient safety, delivering quality in healthcare and high professional standards among those who provide that care.

The Regulations came into force on 1 January 2011. They give responsible officers functions relating to the evaluation of doctors' fitness to practise in England, Wales and Scotland and to the monitoring of conduct and performance in England. The role of the responsible officer will support doctors to raise the already high standards of the overwhelming majority of professionals, whilst ensuring that the small number of staff who are not meeting required standards are swiftly identified and dealt with fairly and effectively.

The amendments being proposed do not change the role of responsible officers as set out in the original EqIA. The amendments will ensure that the Regulations that came into force in January 2011 are appropriate for the new structures. In doing so, patients will continue to be protected through the evaluation of fitness to practise and monitoring of conduct and performance of doctors.

Additional designated bodies
Additional amendments to the Regulations include supplementing the designated bodies already listed. The new bodies include the Pathology Delivery Board, Medical Defence Organisations and the

Faculty of Medical Leadership and Management, amongst others. These additional designations are being made at the request of the organisations concerned. This is only after having been satisfied that the designation is appropriate and the organisations have the systems and processes in place that will enable them to comply with statutory responsibilities. These additional designations extend the number of doctors that will have a connection to a designated body that has statutory duties to ensure that there is no conflict of interest or appearance of bias between a doctor and the person responsible for evaluating the doctor's fitness to practise and monitoring conduct and performance We do not think that the addition to the lists of desginated bodies affects the original EqIA.

By introducing further additional bodies we are further limiting the number of doctors who may be left without a clearly identifiable responsible officer. We are also increasing the number of bodies subject to the regulations. These bodies will, therefore, be required to have in place the required systems and processes. Further, there will be a number of additional ROs that will have to undertake training to allow them to fulfill the role and ensure that the role is completed to a satisfactory standard. The training includes consideration, for example, of equality issues. We are of the view that there is no adverse impact on equality as a result of this change and believe that equality is enhanced for doctors subject to the framework.

Managing conflicts of interest and the appearance of bias
The April consultation asked respondents whether conflicts of interest between ROs in the NHS CB could be most appropriately dealt with via the NHS mandate. In this context, the conflicts that we seek to address are between the doctors' role as an RO but also as a senior manager.

Respondents were in favour of addressing possible conflicts via the mandate. However, as further developments on the mandate have become clear, it has become increasingly evident that it is not the correct mechanism to deal with such conflicts. There were a number of respondents who provided comments to this question. Many of these comments were supportive of an independent body being introduced to manage possible conflicts.

The proposed amendments consider the concerns and comments. Our proposal suggests that the Medical Director and the Medical Director's deputies have a connection to the independent Faculty of Medical Leadership and Management. This will avoid altogether the possibility of conflicts of interest between the senior doctors in the NHS CB, whose ROs will be in a separate organisation. In collaboration with the Revalidation Support Team, we have developed training packages for responsible officers that include specific training on managing conflicts of interest or appearance of bias. We consider that, by reducing the possibility for conflicts of interest for the senior doctors in the NHS CB, there is a decreased likelihood of any adverse impact on any of the protected characteristics.

Otherwie, the current regulations already contain provisions for the management of possible conflicts of interest for doctors elsewhere in the system. For example, the Regulations require designated bodies to appoint a second RO in circumstances where there is a conflict of interest or appearance of bias. These provisions are to be maintained.

Responsible officers and language checking
Responsible officers will have an explicit duty to check the language competency of all doctors who have a connection to their designated body, irrespective of whether they are UK Nationals, EEA Nationals or Overseas Nationals.

Who will be affected?

Responsible officers in the new health architecture
The proposals directly affect doctors and their responsible officers affected by changes to the health structures in England.

Responsible officers in language checking
The policy builds on the existing role of responsible officers as part of their clinical governance function (under Part 3 of the Regulations) so that explicit duties are in place on language competency during recruitment. Doctors applying for posts in England will also be affected through being subject to proportionate vetting on language competency by responsible officers. Whilst the policy applies to all doctors applying for posts in England, the reality is that all doctors that do not speak English as a first language will be more greatly impacted on, and in particular, EEA migrants are more likely to be affected. This results from there already being an established process in place for non-EEA migrants, who are subject to language and competency checks including language tests prior to their registration with the GMC. It is difficult at this stage to ascertain the full impact on the different EEA nationalities involved. However, the aim of the policy is to prevent patients from being put at risk from inadequate language competency. Hence, EEA migrants overall are more likely to be impacted on, but this should be balanced by a proportionate approach determined by the individual's circumstances and the requirements of the role.

Evidence

Responsible officers in the new health architecture
The evidence relating to differences in the proportion of doctors who become involved in local central disciplinary processes were summarised in the 'Sources of Evidence' section of the original EqIA. We have revisited our analysis and there appear to be no changes.

The original evidence was based on the National Clinical Assessment Service (NCAS), which provides data covering the referral rates of practitioners to NCAS by age, ethnicity and gender (including transgender), disability and religion. The latest evidence shows no significant differences from the evidence used for the original EqIA and is available at: http://www.ncas-uk.org/publications/statistics/

Responsible officers and language checking
The policy applies to the assessment of language skills within the recruitment process and would need to be conducted in a proportionate way, taking into account the circumstances that the doctor would be working in, and the applicant's circumstances in terms of their qualifications, experience and general background. In some instances, such vetting would include the proportionate use of language tests.

In the Performers Lists Regulations, PCTs must satisfy themselves that applicants have sufficient language competence to perform NHS primary care services. How PCTs fulfil this requirement varies between PCTs. Of 88 responses to the April consultation, 20% of these identified themselves as commissioning organisations and included PCTs, clusters of PCTs or SHAs. None of these organisations identified any evidence of an impact on equality and diversity of the pre-existing requirement in the Performers List Regulations.

What evidence have you considered?
Responsible officers in the new health architecture See 'Sources of Evidence' in the original EqIA. **Responsible officers and language checking** Evidence considered has included data from the General Medical Council on overall numbers applying for entry on the register, including data on ethnicity and gender, however, the numbers provide base line information only at this stage for those likely to be impacted. In terms of published complaints/disciplinary data, this does not directly correlate to language competency. In addition, information has been considered from healthcare regulators submitted as part of evidence provided for the Health Select Committee, the House of Lords EU Select Committee Inquiries, and the responses received from these inquiries.
Disability There is no evidence to suggest that this group will be affected differently from the whole population.
Sex There is no evidence to suggest that this group will be affected differently from the whole population.
Race: **Responsible officers and language checking** The aim of the policy is to prevent patients from being put at risk from inadequate language competency. It is likely that the EEA migrants overall are more likely to be impacted on. However, this should be balanced by a proportionate approach determined by the individual's circumstances and the requirements of the role.
Age: There is no evidence to suggest that this group will be affected differently from the whole population.
Gender reassignment (including transgender): There is no evidence to suggest that this group will be affected differently from the whole population.
Sexual orientation: There is no evidence to suggest that this group will be affected differently from the whole population.
Religion or belief: There is no evidence to suggest that this group will be affected differently from the whole population.
Pregnancy and maternity: There is no evidence to suggest that this group will be affected differently from the whole population.
Carers: There is no evidence to suggest that this group will be affected differently from the whole population.
Other identified groups: There is no evidence to suggest that any other identified group will be affected differently from the whole population.

Engagement and involvement

Was this work subject to the requirements of the cross-government Code of Practice on Consultation? (Y/N)

No. This consultation is guided by the Cabinet Office's consultation principles. These principles superseded the Code of Practice in July 2012.

How have you engaged stakeholders in gathering evidence or testing the evidence available?

Responsible officers in the new health architecture
Yes, as part of the original EqIA.

Responsible officers and language checking
The GMC have been engaged with these proposals and also consideration of related extensions of their powers, both through discussion and also in writing. There has also been engagement with the House of Commons and House of Lords through Select Committee Inquiries.

How have you engaged stakeholders in testing the policy or programme proposals?

Responsible officers in the new health architecture
Proposals were initially agreed with the SHA Medical Directors. Subsequently, we tested the proposals with the BMA, RCGP, and those establishing the new organisations. We also tested the proposals at responsible officer training events organised in each SHA area. We have conducted a public consultation on the proposed change in policy that concluded in July 2012. The response to this consultation is being published at the same time as the consultation on the amending regulations. In particular, we are hoping to receive further views from those that responded, including patient groups, to the April 2012 consultation and the consultation on the original Regulations.

Responsible officers and language checking
The Department has worked closely with the professional regulators, the European Commission and the devolved administrations in considering the policy. Specifically, we have engaged the GMC fully in the proposals concerning responsible officers, which links into proposed wider changes to GMC powers. Strengthening the language checking system has received widespread support by the GMC, Parliament and the public.

For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs:

Responsible officers in the new health architecture

- An initial paper and discussions with SHA Medical Directors.
- Presentations to and group discussions with, responsible officers, medical directors and HR specialists.
- Full public consultation April 2012 – July 2012.

Responsible officers and language checking

- An outline proposal has been agreed with the GMC, and further related work is currently being

undertaken.
- Consultation document and questions for the wider consultation.

Summary of Analysis

Responsible officers and language checking
The aim of the proposal is to ensure that all doctors undergo a language assessment and, if need be, a test as to their language and communication skills, whilst ensuring that the UK remains compliant with the Recognition of Professional Qualifications Directive (2005/36/EC). Responsible Officers will check all doctors irrespective of their country of origin; however, doctors from non-English speaking countries are more likely to have to undergo an actual language knowledge test.

The policy is likely to affect EEA Nationals more than others since non-EEA migrant doctors already undergo consideration as to their competency and language abilities prior to registration by the GMC (PLAB and IELTS tests).

Whilst EEA nationals are more likely to be subjected to language tests, such tests should be undertaken on a proportionate basis (existing case law of the European Court of Justice provides safeguards in that language testing of EEA migrants must be proportionate and must not be undertaken on a systematic basis), and in consideration of the requirements of the specific role and the individual's circumstances. It is envisaged that joint guidance will be issued by the GMC and the NHS CB, which will include directions on proportionality, so that responsible officers should ask migrants to provide evidence of their English Language skills before they require tests to be undertaken. Examples of acceptable evidence would be evidence of a qualification obtained at an English speaking University or a previous period of working in an English speaking country.

EEA migrants will also have the right of appeal against any adverse decision, and could also make a formal complaint to the European Commission that the UK has failed to comply with European Law as set out in the Directive and by the European Court of Justice.

Eliminate discrimination, harassment and victimisation:

Responsible officers and language checking
In order to facilitate freedom of movement, EU law (Directive 2005/36/EC) provides benefits to EEA migrants who move to other EEA Member States. EEA migrants are entitled to automatic recognition of their qualifications, and in practice for doctor's entry onto the GMC register. These benefits are not enjoyed by UK Nationals (unless they move to another Member State) or overseas doctors (subject to vetting prior to entry on the register). However, UK Nationals or overseas doctors cannot make a claim for discrimination as European law permits the distinction.

Advance equality of opportunity:

Responsible officers and language checking
Responsible officers having an explicit and mandatory role to check the language competency of all doctors combined with strengthened communication requirements with the GMC. This will help to create a more cohesive system of checks, address current inconsistencies in requirements, and ensure more effective handling of language vetting and clearer processes for doctors with unsatisfactory communication skills. By strengthening the system at the local level this permits individual circumstances being taken into consideration and the individual requirements of the specific

role.

Promote good relations between groups:

Responsible officers and language checking
Having a responsible officer with a clear and mandatory duty to check the language skills of doctors during recruitment will ensure that doctors have satisfactory skills for the post appointed to, and better management of inadequate language competency through improved identification to the GMC. By providing explicit responsibility and guidance to responsible officers, we will expect to increase the level of consistency in approach. This should result in only doctors that have suitable communication skills being employed and better patient care. Public awareness of this action should result in greater public confidence while all doctors will be subject to equal expectations in terms of language competency, and consequently equal treatment.

What is the overall impact?

Responsible officers and language checking
Overall, all doctors should be subject to the same expectations in terms of having the appropriate level of English language ability for the role they are employed for.

Addressing the impact on equalities:

Responsible officers and language checking
It is envisaged that joint guidance will be issued by the NHS CB and the GMC to responsible officers with the aim to ensure consistency of treatment of all doctors by all responsible officers. There will be a clear appeals process in place for those doctors who allege they have been subject to unfair treatment relating to language ability requirements.

Action planning for improvement

Responsible officers in the new health architecture, and
Responsible officers and language checking

As outlined in our original EqIA, we will continue:

- exploring those factors which may influence the impact of this policy across organisations who employ and contract with doctors; and
- the development of a support framework for responsible officers and to ensure that the medical appraisal guidance includes an understanding of equality and diversity issues. This aspect has already been built into the responsible officer training.

Please give an outline of your next steps based on the challenges and opportunities you have identified:

Responsible officers in the new health architecture
The Guidance for responsible officers and will continue to explicitly address issues relating to conflicts

of interest and appearance of bias. There will also be a focus on these issues in the ongoing training to responsible officers.

Responsible officers and language checking
In addition, that guidance is supportive of a consistent and fair approach to the language checking and the use of language tests.

For the record

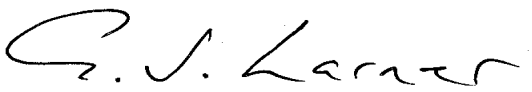
Name of person who carried out this assessment:

Michael Wright (Responsible officers in the new health architecture)
Deborah Peters (Responsible officers and language checking)

Date assessment completed: 13/11/2012

Name of responsible Director/Director General:

Gavin Larner, Director of Professional Standards



Date assessment was signed:

Thursday, 29th November 2012

Action plan template

Category	Actions	Target date	Person responsible and their Directorate
Involvement and consultation	**Responsible officers in the new health architecture, and Responsible officers and language checking.** We will continue to engage with our key stakeholders, Responsible Officers and other organisations who have interests under the responsible officer regulations and policy.	On going	Michael Wright NHS Medical Directorate Deborah Peters Workforce Directorate
Data collection and evidencing	**Responsible officers in the new health architecture, and Responsible officers and language checking** The GMC are developing systems for quality assuring the recommendations of responsible officers that will consider whether there is any evidence of bias towards any particular equality group.	Summer 2012	Michael Wright NHS Medical Directorate Deborah Peters Workforce Directorate
Analysis of evidence and assessment	**Responsible officers in the new health architecture, and Responsible officers and language checking** An analysis of responses of the public consultations will be carried out.	Summer 2012	Michael Wright / Blessing Chukwunyere NHS Medical Directorate Deborah Peters Workforce Directorate
Monitoring, evaluating and reviewing	**Responsible officers in the new health architecture** The policy will be evaluated as part of a wider evaluation of revalidation (part of the Professional Standards Programme). The review date is currently subject the introduction of revalidation planned for late 2012. **Responsible officers and language checking** The policy will be subject to evaluation following implementation.	To be decided following the introduction of revalidation To be decided following implementation of the policy	Gavin Larner Workforce Directorate, Professional Standards Deborah Peters / Matthew Fagg Workforce Directorate
Transparency (including publication)	**Responsible officers in the new health architecture, and Responsible officers and language checking** An analysis of responses of the public consultation will be published and website updated.	Late 2012	Michael Wright/Chris Petch NHS Medical Directorate Deborah Peters Workforce Directorate

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