



Department
of Health

Language Controls for Doctors – Proposed Changes to the Medical Act 1983

Consultation Report

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Foreword

In May 2010, the Coalition Agreement set out that it would “seek to stop foreign healthcare professionals working in the NHS unless they have passed robust language and competence tests”¹ in order to assure patient safety and quality of care in the UK.

The Department of Health is still firmly committed to preventing healthcare professionals who do not have sufficient knowledge of English from working in the UK. This is why we have recently consulted on proposed amendments to the Medical Act 1983 which will allow the General Medical Council (GMC) to apply proportionate language controls where there is a concern. We have focused initially on arrangements for doctors because this is where we believe risks are most acute. However, we are committed to ensuring all healthcare professionals coming to work in the UK can speak English well enough to communicate with patients effectively.

The Department consulted on a UK wide basis and the consultation document was available on the Gov.uk website and Department of Health’s Citizen Space website. Comments were invited over a 12 week period between 7th September 2013 and 2nd December 2013. In total we received 54 responses to the consultation.

This report sets out the findings and our conclusions following analysis of these responses and sets out the Department’s proposed way forward.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

Executive Summary

The Department would like to thank all those who responded to this consultation and is grateful to them for their input.

The consultation asked for views on our proposals to strengthen the GMC's powers in terms of language controls for doctors and the consultation responses have reconfirmed how important communication is in ensuring a successful patient pathway including building trust between the patient and practitioner relationship.

The majority of responses were supportive (for example, around 80% of respondents agreed with the proposed changes in relation to registration and licence to practise, and in relation to fitness to practise) of the proposals.

The Department's view is that the proposed legislative changes will be an effective way of enabling the GMC to ensure the language competence of applicants from the EU whilst still remaining within the confines of European law. We therefore plan to continue with the changes as set out in the consultation document to ensure that the GMC can begin using the new powers as soon as possible, subject to parliamentary approval.

In terms of other healthcare professionals, the Department remains committed to ensuring that all healthcare professionals working in the UK have the necessary knowledge of English to do their jobs well. To this end, the Department has commissioned a review of professional regulation, including the issue of English language skills and will be continuing to engage with the healthcare regulators to implement any necessary changes at the earliest opportunity.

Introduction

In May 2010, the Coalition Agreement set out the Government's intention to "seek to stop foreign healthcare professionals working in the NHS unless they have passed robust language and competence tests"² in order to ensure patient safety and quality of care in the UK.

We have focused initially on arrangements for doctors because this is where we believe risks are most acute. In February 2013, the Department of Health published its response to the December 2012 Health Select Committee Report on the 'Accountability hearing with the GMC'³. In the response, the Department again confirmed its intention to strengthen the current arrangements further to ensure that all doctors who practise in the UK have sufficient knowledge of English.

There has been increasing concern from the GMC that patients may be put at risk of harm through the inadequate English language capability of a minority of European doctors. There are currently around 5000 applications each year from European doctors to register with the GMC. Due to the application of European law, in particular the Mutual Recognition of Professional Qualification (MRPQ) Directive, enshrined in the Medical Act 1983, the GMC cannot require evidence of a European doctor's language competence prior to registration, even where there is cause for concern regarding their English language capability.

The GMC provided the Department with figures which show that, in 2012 there were ten fitness to practise cases concluded by the GMC which included concerns about language skills, of doctors from within the EU. In addition, a survey of Responsible Officers by the England Revalidation Support Team (RST) in 2011, which covered just over half of all doctors, indicated that there were 66 cases where Responsible Officers have dealt with linguistic concerns about a doctor. The Department believes that there is clear evidence that there is a need to give the GMC additional powers in relation to language competence.

The Department has worked with the GMC and other stakeholders to look at the best way to ensure that the language capability of all doctors working in the UK is sufficient, whilst at the same time ensuring compliance with European Law. Following the development of proposals we consulted on the following changes:

- a. To give the GMC the power to require evidence of English language capability as part of the licencing process where concerns about language have been identified during the registration process; this will enable the GMC to apply language controls (where there are concerns) on applicants following registration, but before issuing of the licence, and;

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

³ <http://www.official-documents.gov.uk/document/cm85/8520/8520.pdf>

- b. To create a new category of impairment relating to the necessary knowledge of English which will strengthen the GMC's ability to take fitness to practise action where concerns about language competence are identified.

Consultation process

The Department believes that the additional powers outlined will enable the GMC to carry out proportionate checks on doctors where there is concern around their English language capability. The Department consulted on these proposals on a UK wide basis and the consultation document was available on the Gov.uk website and Department of Health's Citizen Space website. Comments were invited over a 12 week period between 7th September 2013 and 2nd December 2013. The Department alerted major stakeholders to the consultation such as the medical Royal Colleges, the healthcare regulatory bodies and the Devolved Administrations.

As part of the consultation we were keen to seek further evidence around any potential administrative burdens and/or impact of the proposals and any possible equality considerations other than those already mentioned in the consultation document. All additional information we received has been reviewed and, where appropriate, taken into consideration in this report.

We received 54 responses to the consultation in a number of formats including via citizen space, email and through the post. The responses came both from individuals and on behalf of organisations.

In addition to the Department of Health's consultation, the GMC have also conducted their own consultation *'Making sure all licensed doctors have the necessary knowledge of English to practise safely in the UK'* which closed on the 10th December 2013. The GMC needed to consult as, in order for the proposed amendments to the Medical Act to take effect, the GMC would need to amend their rules and regulations to implement the changes. The GMC's consultation was therefore focused on the detailed changes required to the GMC's rules and regulations, and implementation of those changes, for example how the process might work in practice.

The two consultations have been run concurrently to ensure that the proposals, which we believe will improve quality of care and reduce the risk to patient safety, can be put in place as soon as possible, subject to consultation and parliamentary approval.

Overview and key themes

Overview

The consultation set out what amendments we propose to make to the Medical Act to give the GMC additional powers in terms of language controls. The consultation questions focused on whether the proposed amendments to the Medical Act are the most effective way of strengthening language controls for doctors in order to improve quality of care and patient safety and whether there are likely to be any impacts or costs which had not already been considered.

In total, 54 responses were received; 28 from individuals (mainly identifying themselves as healthcare professionals) and 26 from organisations including healthcare regulators, medical Royal Colleges and trade unions.

The majority of responses were supportive (for example, around 80% of respondents agreed with the proposed changes in relation to registration and licence to practise, and in relation to fitness to practise) of the proposals in general with many giving additional supportive comments. A number of respondents argued that the proposals do not go far enough and are not rigorous enough. However, the Department believes that the proposals set out in the consultation document will be an effective means of allowing the GMC to ensure that all doctors wanting to work in the UK have the necessary knowledge of English whilst complying with the constraints of European law.

A high level summary of the consultation responses received including key themes and the Department's position is set out in the following pages.

Key themes

There were a number of comments that came up systematically throughout the responses. We have therefore brought together and responded to these comments under key themes which are discussed below.

1. The role of employers and existing checks in the system

A small number of respondents commented that it should be, and is, the employer's responsibility to ensure that the doctors they employ are able to do the job, including ensuring they have the necessary language competence.

The Department agrees that employers do have a responsibility to ensure that any individual they employ or contract with is fit to work. However the GMC have provided evidence which suggests that language concerns cannot always be adequately addressed by employers. In 2012, there were ten fitness to practise cases which involved concerns about the language skills of doctors from within the EU.

In their response to this consultation, NHS Employers also provided information that, when surveyed, a number of employers said they were aware of incidents and more reported 'near misses' where a patient could have been harmed, due to insufficient language capability, if it wasn't for the intervention of other staff.

Responsible officers in England have a duty to ensure that the doctors they employ are able to have the necessary knowledge of English to work in a safe and competent manner. However, not every doctor has a responsible officer or employer. Many doctors are self-employed and responsible officers for doctors living outside of England are not required in legislation to check a doctor's language capability before they take up a position.

The Department believes that giving additional powers to the GMC will help to strengthen the responsibility already on employers and responsible officers to ensure that patients are not put at risk of harm from doctors who do not have the necessary knowledge of English language. By enabling the possibility of a language check at the point of licencing the GMC can, at the outset, reduce the likelihood of a doctor, without the necessary knowledge of English, from practising and treating patients in the UK.

A doctor would not be required to undertake a language test at both national and local level. If a doctor did not demonstrate the required knowledge of English they would not be given a licence to practise by the GMC and therefore would not be able to apply for jobs in the UK.

2. Consistency of approach and evidence of English language capability

A number of respondents, whilst being supportive of the Department's proposals, argued that EU applicants should be required to take the same type and level of tests (such as the International English Language Testing System (IELTs)) as international medical graduates currently face. The Department agrees that where there are concerns following registration robust checks need to be put in place to ensure consistency of approach and patient safety, however, any such checks must be proportionate to be compliant with EU law.

The Department's proposals enable the GMC to require applicants to provide evidence of their English language capability where concerns about language have been identified during the registration process. The detail in respect of the evidence which may be required is for the GMC to determine. However, to ensure transparency and consistency of approach, the Government's proposals require the GMC to publish statutory guidance relating to the evidence, information or documents to be provided by a doctor for the purposes of demonstrating that they have the necessary knowledge of English. The licencing authority will be required to have regard to that guidance when determining whether a doctor has demonstrated the necessary knowledge of English. The GMC have recently consulted on how the proposals would be implemented and have identified certain pieces of evidence and/or tests which could be used as confirmation of English language capability. The GMC will be publishing the outcome of their consultation in early 2014.

3. Proportionality under EU law

A number of responses suggested that the proposals do not go far enough and that a more systematic approach to language controls for EU doctors should be applied in order to ensure patient safety.

As discussed above, this needs to be balanced with the requirements of European law. Under the Mutual Recognition of Professional Qualifications (MRPQ) Directive, European doctors seeking employment in the UK are entitled to have their medical qualifications automatically recognised. In addition, as part of its membership of the European Union the UK has a duty to play its part in the furthering of the UK's wider aims in Europe such as freedom of movement. To these ends we are keen to ensure that highly skilled professionals do not face unnecessary barriers when moving to the UK.

The MRPQ Directive has recently gone through a revision which has been formally agreed by the European Commission. Part of the revision of the Directive was to clarify the arrangements in terms of when language controls could be applied by the competent authorities (such as the GMC). The revised Directive clarifies that language controls can be applied for professions with patient safety implications but only following the recognition of the professional's qualification and subject to the controls being proportionate to the activity to be pursued. This is consistent with case law from the European Court of Justice which states that language controls should not be carried out systematically.

Therefore, in developing the proposals we have been mindful of our European obligations, seeking to balance the requirement of improving the quality of care and patient safety whilst ensuring that the mechanism for achieving that aim is necessary and proportionate.

Analysis by question

PROPOSALS OVERALL

Q1. Do you agree that strengthening language checks as proposed will improve quality of care and patient safety?

Option	Total	Percentage of all
Agree	50	93%
Disagree	3	6%
Unsure	0	0%
Not answered	1	2%

The vast majority of respondents (93%) agreed with this question and comments were in general supportive including those from the BMA, healthcare regulators and medical royal colleges.

Specific comments

- One healthcare regulator commented that;

It goes without saying that clinical information and advice must be communicated clearly and accurately to patients, other healthcare professionals and carers so that patient safety and high quality care can be assured. From a patient perspective, communication is key to building trust in the patient-practitioner relationship

- As part of their consultation response, NHS Employers reported that 96% of respondents to their online survey agreed that patient care and safety would be improved through strengthening language checks as proposed.
- A number of consultation responses highlighted concerns that the proposals could lead to an increase in the GMC's annual fee for registrants. However, the Department has been assured by the GMC that any costs they will incur as part of the implementation or ongoing running of the new powers will be absorbed within the current budget of the GMC. The GMC have recently consulted on proposals that all costs involved in taking a specific language test (such as IELTS) will be borne by the individual doctor taking the test.
- A number of other comments were made under this question which are covered under key themes.

LICENCE TO PRACTISE

The Department's proposal is to amend the Medical Act so that, where doubts about the applicant's knowledge of language arise during the registration process, the GMC will be able to request evidence of the applicant's English language capability for the purposes of determining whether they have the necessary knowledge of English to hold a licence to practise.

It is the licence to practise that enables doctors to undertake functions which by law are restricted to registered medical practitioners⁴, such as treating patients, prescribing medicines and signing death certificates. While registration with the GMC demonstrates that a doctor's qualification has been recognised by the regulator and that the doctor is in 'good standing' with the GMC, it confers none of the powers and privileges associated with the licence to practise.

Q2. Do you agree with the proposed changes for applicants in relation to registration and licence to practise in terms of language competency?

Option	Total	Percentage of all
Agree	44	81%
Disagree	2	4%
Unsure	1	2%
Not answered	7	13%

The vast majority of respondents (81%) agreed with this question and additional comments were in general supportive

Specific comments

- One respondent questioned how these proposals would work in terms of doctors who are only appointed by an employer for specifically treating one section of society. It was highlighted that these doctors would be able to treat patients safely without having to speak English as that would not be the spoken language. The Department is of the view that it is essential that all doctors working in the UK are able to communicate successfully in English. This is because, all medical practitioners need to be able to refer patients to hospitals and communicate with other healthcare professionals across the healthcare system successfully to ensure that the patient care pathway is not compromised.
- However, although it is essential that all doctors are able to communicate in English the GMC will only require evidence of English language competence where they have a cause for concern. There may be some doctors, such as doctors travelling with their national sports team, where a cause for concern is unlikely to arise in the same way as a permanent registrant treating patients at large.

⁴ 'Registered Medical Practitioner' is defined in Schedule 1 of the Interpretation Act 1978 as meaning a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act.

- One respondent raised the concern that the revised MRPQ Directive may mean that the Department’s proposals are now unnecessarily complex. The Department does not believe this is the case and the changes to the MRPQ directive and how this affects what we can do in terms of language controls is discussed in detail under the key theme ‘proportionality under EU law’.
- There were a number of comments around the need to ensure that there was consistency to the evidence requested by the GMC and how this will be decided. The evidence that will be required and how this will be implemented is discussed in more detail under key theme ‘Consistency of approach and evidence of English language capability’.

FITNESS TO PRACTISE

The Department is proposing to create a new category of impairment by reason of not having the necessary knowledge of English. This will make it clearer for everyone to understand the nature of concerns and the rationale for steps taken to protect the public in such cases.

In addition, at present, the GMC cannot require a doctor to undergo an assessment of their knowledge of English during a fitness to practise investigation. This means it can be very difficult to gather sufficient objective evidence to support the need to take action on a doctor’s registration to prevent harm. We are proposing to strengthen the GMC’s ability to protect the public by giving it powers to require registered doctors to undertake a language assessment where concerns arise.

Q3. Do you agree with the proposed changes for doctors in relation to fitness to practise in terms of language competency?

Option	Total	Percentage of all
Agree	43	80%
Disagree	3	6%
Unsure	0	0%
Not answered	8	15%

The majority of respondents (80%) agreed with the proposed changes in terms of fitness to practise although a number of respondents did not respond specifically to this question.

Specific comments

- One respondent supported the proposal as it gave a clear underpinning to the requirement and will ensure that doctors treat the language requirement as seriously as their other professional requirements. Many other comments were supportive of the proposal as it will help to ensure that doctors already working in the UK have the necessary knowledge of English to practise safely as well as those seeking work.
- There were a small number of responses that indicated concerns about the proposal arguing that it wasn't needed as the powers already exist, that it will be difficult to apply the rules and that there is the possibility that the powers would not be used appropriately. Finding of impairment in relation to serious complaints about a doctor's communication skills is currently only possible where such a failure is connected to other performance concerns such as prescribing or record keeping. However, the introduction of a new category of impairment around language, and strengthened powers to support this new category, will improve the GMC's ability to take robust action to protect patients where a doctor lacks the necessary language skills. The GMC have also advised that they will produce guidance for decision makers to ensure powers are used appropriately and proportionately

CHANGES IN LEGISLATION

Q4. Do you agree that changes to the Medical Act, as set out in this consultation document, will strengthen the language competence of doctors in the UK?

Option	Total	Percentage of all
Agree	36	67%
Disagree	2	4%
Unsure	8	15%
Not answered	8	15%

The majority of respondents (67%) agreed that changes to the Medical Act will strengthen the language competence of doctors in the UK. However, there was also a large proportion that were unsure or did not answer this specific question. It is possible that respondents did not answer this question as they had covered any comments they had in their response to earlier questions.

The majority of the remaining comments made under this question have been covered in the key themes section of this report.

Q5. Do you agree that changes to legislation are necessary to strengthen the language competence of doctors in the UK or is there an alternative that does not require a change to legislation?

Option	Total	Percentage of all
Agree	41	76%
Disagree	0	0%
Unsure	5	9%
Not answered	8	15%

The majority of respondents (76%) agreed that changes to legislation were necessary.

Specific comments

- A number of respondents commented that there was no alternative to changing legislation and one suggested that that this would be an important part of underpinning trust and communication between patients and the NHS. The BMA argued that 'legislative changes are necessary to ensure fairness to all doctors already working in the UK and those who are seeking to do so'.

COSTS AND BENEFITS

During the development of our proposals we looked at the possible impact they might have. We believe that the changes will have a relatively small monetary impact and the costs are likely to fall to the GMC in terms of additional administration relating to requiring evidence of English language capability for some doctors. The GMC have requested these changes and are fully aware of the cost implications for themselves.

The cost of any required language tests will be borne by the individual doctor (who are likely to be doctors from the EU).

The benefit of making these changes will be a reduced risk of any doctor being able to treat patients in the UK without the necessary knowledge of English to do the job well and safely.

Q6. Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes?

Option	Total	Percentage of all
Yes	19	35%
No	16	30%
Unsure	8	15%
Not answered	11	20%

There was a fairly even split between those respondents who had views or evidence as to the likely effect on costs or administrative burden and those that didn't.

Specific comments

- The majority of comments highlighted possible costs that the Department has already identified and considered as part of the development of the proposals. These included the administrative cost to the GMC, the cost of taking an English language test to an individual doctor.
- The Professional Standards Authority for Health and Social Care (PSA) highlighted that the proposed amendments may also address the potential risk of non-EEA qualified doctors entering the EEA mutual recognition system via a country with less stringent requirements and then being able to practise in other EU countries without having passed language tests. A potential benefit of the changes therefore would be that should one of these doctors have inadequate language capability they would be picked up by the new arrangements.
- Other comments focused around the possibility of reducing litigation cases where things have gone wrong but also the possibility of an increase in complaints from doctors who are refused a licence to practise.
- The majority of respondents who identified a possible cost agreed that this was outweighed by the improvement in quality of care and the reduction in risk to patients.

Q7. Do you think there are any benefits that are not already discussed relating to the proposed changes?

Option	Total	Percentage of all
Yes	13	24%
No	20	37%
Unsure	8	15%
Not answered	13	24%

37% of respondents did not think there were any other benefits other than those already discussed in the consultation document.

Specific comments

- A number of respondents made the comment that the proposals would ensure; a better patient journey, reassurance and enhanced confidence in the profession.

Q8. Do you have any evidence of harm caused to patients due to the language proficiency of a doctor?

Option	Total	Percentage of all
Yes	20	37%
No	12	22%
Unsure	12	22%
Not answered	10	19%

37% of respondents said yes when asked if they had any evidence of harm caused due the language proficiency of a doctor.

Specific comments

- Many of the respondents who answered yes to this question had witnessed incidents which show that there is a clear risk of harm when doctors working in the UK do not have the necessary knowledge of English. Examples included concerning incidents such as;
 - a medical secretary having to correct audio dictations around drug doses
 - patients feeling vulnerable and uncomfortable when being treated by doctors who they were not able to understand
 - consultants not understanding an EU consultant’s report which posed a clinical risk to patients.
- Other respondents had anecdotal examples or said they were aware of examples but did not give further details.
- One respondent commented that it was difficult to evidence such harm and believed that a pro-active stance was required.
- NHS Employers asked their employers in a survey whether they were aware of any incidents in their trusts where patients have come to harm. A number of employers said they were aware of incidents and more reported ‘near misses’ where a patient could have been harmed if it wasn’t for the intervention of other staff.
- The evidence, much of it anecdotal, provided by respondents is concerning and adds weight to the Department’s proposals to ensure that all doctors working in the NHS have the necessary knowledge of English to do their jobs safely.

EQUALITY ANALYSIS

As mentioned in the consultation document, the Department of Health is covered by the Equality Act 2010 and, specifically, the Public Sector Equality Duty.

The Duty covers the following protected characteristics: age; disability; gender; reassignment; pregnancy and maternity; race (includes ethnic or national origins, colour or nationality); religion or belief (includes lack of belief); sex and sexual orientation.

There are three parts to the Duty and public bodies must, in exercising their functions, have due regard to all of them. They are:

- the need to eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between people who share a protected characteristic and people who do not; and
- promote good relations between people who share a protected characteristic and those who do not.

As part of the consultation we asked two questions around equalities; whether respondents were aware of any particular groups, other than European doctors, who might be affected by the proposals and whether there were any groups that the proposals could have a detrimental effect on.

Q9. Are you aware of any particular groups who will be affected by this legislation, other than European doctors?

Option	Total	Percentage of all
Yes	6	11%
No	28	52%
Unsure	8	15%
Not answered	12	22%

Q10. Are you aware of any groups for whom the proposed policy could have a detrimental effect?

Option	Total	Percentage of all
Yes	9	17%
No	28	52%
Unsure	7	13%
Not answered	10	19%

The majority (52%) of respondents were not aware of any other groups, covered by the equality duty, that would be affected or that the proposals would have a detrimental effect on.

Specific comments on questions 9 and 10

- The overall consensus from the majority of respondents who commented on these questions was that the only people affected by these proposals would be those from European countries on the basis that English is not their first language, but it was recognised that this potential impact was necessary and justified in terms of consumer care and patient safety.
- It is unlikely that International Medical Graduates (IMGs) will be affected in the same way because they are already required to demonstrate the necessary knowledge of English as a condition of registration with the GMC.
- It must be remembered that the amendments to legislation will not require every single EU applicant to undertake a language test. This would be subject to legal challenge by the European Commission for being systematic and in breach of the principle of proportionality. Therefore, only those applicants who raise a cause for concern in terms of language competence following registration will be required to provide additional evidence and ultimately may be required to undertake a language test if they are unable to demonstrate their language ability by other means.
- Both the BMA and the Professional Standards Authority for Health and Social Care (PSA) raised concerns that the proposals may have unintended consequences for doctors with a speech or hearing impairment and that reasonable adjustments should be made during the registration process and where there are fitness to practise concerns. As a public authority the GMC must have due regard to the public sector equality duty in the exercise of their functions. The GMC have advised us that they make reasonable adjustments where appropriate in the registration process, and will ensure that any language assessment provider makes reasonable adjustments where appropriate. In addition, IELTS test centres have policies in place to make appropriate provision for reasonable adjustments and disabled access and allow doctors to retake at no cost where there is evidence of stress/ill health on the day of a test.