



Department
of Health

Language controls for nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians - proposed changes to the Dentists Act 1984, the Nursing and Midwifery Order 2001, the Pharmacy Order 2010 and the Pharmacy (Northern Ireland) Order 1976.

A joint four-country wide paper for consultation

November 2014

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Proposed Changes to the Dentists Act
1984, the Nursing and Midwifery Order
2001, the Pharmacy Order 2010 and the
Pharmacy (Northern Ireland) Order 1976
a joint four-country wide consultation

A paper for consultation

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Foreword

Ministers from the four UK Health Departments are firmly committed to improving public protection by ensuring that only healthcare professionals who have a sufficient knowledge of the English language are able to work in the UK.

Language controls have already been introduced¹, where appropriate, for European Economic Area (EEA) doctors wishing to practise in the UK.

The four UK Health Departments are now proposing to amend UK legislation to enable the Nursing and Midwifery Council (NMC), the General Dental Council (GDC), the General Pharmaceutical Council (GPhC) and the Pharmaceutical Society of Northern Ireland (PSNI) to apply language controls, where appropriate, for EEA nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians². This will ensure that healthcare professionals on their registers have a sufficient knowledge of the English language to enable them to practise safely in the UK.

In addition, we propose to create a new category of impairment for these regulatory bodies to strengthen their powers to take fitness to practise action where concerns about the English language competence of a practising professional are identified.

It is the Government's intention to seek approval of the proposed legislation from both Houses of the UK Parliament by the end of this UK Parliament. As the draft Order includes provision within the legislative competence of the Scottish Parliament (concerning certain professions, the regulation of which is not reserved to the UK Parliament) the Scottish Government will also seek approval of this Order through the Scottish Parliament.

We plan to go out to public consultation in 2015 on giving similar powers to the Health and Care Professions Council, the General Optical Council, the General Osteopathic Council and the General Chiropractic Council. Due to the scale of the task, it was not possible to include all of the regulatory bodies in this current Parliamentary session. In choosing the professional regulators we did, we considered a range of factors such as the complexity of the legislative changes involved and the type and number of registrants affected.

¹ See the Medical Act 1983 (Amendment)(Knowledge of English) Order 2014/1101

² Throughout this document, the reference to pharmacy technicians means pharmacy technicians in Great Britain who are required to be registered with the GPhC, and not to pharmacy technicians in Northern Ireland who are not required to be registered there

Executive summary

- This consultation is being taken forward in accordance with the requirements of Section 60 of the Health Act 1999. The regulation-making power in Section 60 permits modifications to the legislation governing the regulation of healthcare professions by means of an Order in Council (a form of secondary legislation). The UK and Scottish Governments must consult on draft Orders prior to their introduction into the UK and Scottish Parliaments. The draft Order is attached as a separate Annex (Annex C) to this consultation document.
- In May 2010 the Coalition Agreement stated that ‘we will seek to stop foreign healthcare professionals working in the NHS unless they have passed robust language and competence tests’³ in order to assure patient safety and quality of care in the UK.
- Proposals for the implementation of these English language controls must be taken forward in accordance with European law and in particular the Mutual Recognition of Professional Qualifications (MRPQ) Directive⁴. The recently revised MRPQ Directive prevents regulatory bodies from imposing English language controls prior to recognising European⁵ healthcare professionals’ qualifications. It also requires any language control to be fair and proportionate.
- We have worked with the regulatory bodies to achieve a compliant proposal that strengthens English language controls for nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians wishing to practise in the UK.
- Discussions have concluded on the following proposals:
 - to amend the Nursing and Midwifery Order 2001 to strengthen the NMC’s powers around English language controls for nurses and midwives in the UK;
 - to amend the Dentists Act 1984 to strengthen the GDC’s powers around English language controls for dentists and dental care professionals in the UK;
 - to amend the Pharmacy Order 2010 to strengthen the GPhC’s powers around English language controls for pharmacists and pharmacy technicians in Great Britain; and

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

⁴2005/36/EC.

⁵ In this document, the term ‘European’ in reference to a healthcare professional means a healthcare professional who is:

- a national of a relevant European state (this means a national of a member state of the European Economic Area or Switzerland other than the UK), or
- not a national of a relevant European state, but is entitled to be treated no less favourably for these purposes because he or she benefits under the Citizenship Directive from an enforceable Community right.

- to amend the Pharmacy (Northern Ireland) Order 1976 to strengthen the PSNI's powers around English language controls for pharmaceutical chemists in Northern Ireland (pharmacy technicians are not regulated in NI).
- This consultation document seeks views on proposed amendments to the relevant legislation, through an Order in Council which aims to prevent patients from being put at risk by nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians who do not have sufficient knowledge of the English language to safely practise their profession.
- This consultation is issued on behalf of the four UK Health Departments. As the draft Order applies to professions whose regulation is devolved in Scotland, it must be laid before the Scottish Parliament as well as the UK Parliament. Whilst there is no legislative requirement for the draft Order to be laid before either the Northern Ireland Assembly or the National Assembly for Wales, the policy proposals have the support of the Ministers in Northern Ireland and Wales. The outcome of the consultation will be reported to all UK health Ministers.
- There is currently a restriction on orders made under section 60 of the Health Act 1999 amending the Pharmacy (Northern Ireland) Order 1976 (see paragraph 12 of Schedule 3 to that Act). This restriction was repealed by the Health and Social Care Act 2008, and although that repeal is not yet in force, we plan to bring it into force as soon as is practicable. This consultation therefore proceeds on the basis that there is no obstacle to amending the 1976 Order in this way.
- If the proposed amendments become law the NMC, GDC, GPhC and the PSNI will consult at a later date on how they will implement these strengthened powers.

Introduction

Background

1. 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" in order to ensure patient safety and quality of care in the UK. This is an issue that the Government remains firmly committed to and a view that is supported by all four health departments.
2. Current legislation does not allow regulatory bodies to require evidence of a European applicant's knowledge of the English language prior to registration even where the regulatory body has cause for concern. The NMC, GDC, GPhC and PSNI are however, already able to carry out language controls on non-European applicants who wish to practise in the UK.
3. Recent changes negotiated by the UK to the MRPQ Directive have clarified the ability of national authorities to carry out language controls on European applicants where the profession has patient safety implications. Any language controls must be fair and proportionate, for example, there cannot be automatic testing for all European applicants and any controls must not take place until the applicant's qualification has been recognised by the regulatory body.
4. We have been working with the NMC, GDC, GPhC and PSNI to ensure that they have powers to assess the knowledge of the English language of nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians seeking to work in the UK, in a way which is compliant with European law and does not impair free movement of healthcare professionals.
5. This consultation document sets out the Government's proposals to amend the Nursing and Midwifery Order 2001, the Dentists Act 1984, the Pharmacy Order 2010 and the Pharmacy (Northern Ireland) Order 1976 to strengthen the relevant regulatory body's powers to introduce proportionate controls and require European applicants to provide evidence of their knowledge of the English language following recognition of their qualification, but before registration and admission onto the register. We also propose corresponding amendments to the fitness to practise powers of the NMC, GDC, GPhC and PSNI, so that they can take fitness to practise proceedings in cases where a health care professional's knowledge of the English language may pose a serious risk to patient safety.

What is the current system?

6. The current system does not ensure that all healthcare professionals have the necessary knowledge of the English language to practise safely before they are registered with a regulatory body. If a European nurse, midwife, dentist, dental care professional, pharmacist or pharmacy technician applies to register in the UK, the NMC, GDC, GPhC and PSNI do not at present have the powers to require evidence of the applicant's knowledge of the English language, prior to registration, even if concerns are identified at that point. The application of European law, in particular the MRPQ Directive entitles

these applicants to recognition of their qualifications in the UK. Most of the governing legislation explicitly prevents English language controls being applied to this group of applicants.

7. Recognition for the purposes of the MRPQ Directive may be “automatic” for nurses responsible for general care, midwives, dentists and pharmacists holding the qualifications listed in the Directive, or they may have “acquired rights” by virtue of having qualified in certain European countries, for example, a qualification obtained in an EU country prior to it becoming an EU member.
8. Dental care professionals, pharmacy technicians and certain other nurses, midwives, dentists and pharmacists may benefit from recognition under the “general system”, under which qualifications have to be recognised if they are judged to be equivalent to UK qualifications, or additional training or experience (“compensation measures”) may be required. European applicants with qualifications from non-EEA states may also benefit from recognition in the UK if their qualification has already been recognised in another EEA member state and the applicant has three years’ relevant experience.
9. Because registration with the NMC, GDC, GPhC and PSNI performs the dual function of recognition of qualifications and granting access to practise the profession, the approach to date has been to exclude English language controls at the point of considering applications for registration, in order to guarantee the right to recognition of qualifications. This approach has enabled European healthcare professionals to gain access to the profession in the UK without any validation of them having the necessary knowledge of the English language.

What are the proposals?

10. Following the amendments made to the MRPQ Directive referred to above, the Department has worked with the regulatory bodies to achieve a compliant proposal that enables regulatory bodies to impose English language controls prior to registration of European healthcare professionals wishing to practise in the UK, whilst at the same time protecting their right to recognition of their qualifications.

11. The main policy aims we seek to achieve are as follows:

- the removal of any current restrictions on a regulatory body imposing English language controls on European applicants for registration (provision one);
- the introduction of a new registration requirement for all applicants, including those who are UK nationals, of having the necessary knowledge of English⁶ (provision two);
- including a new definition of the “necessary knowledge of English” (provision three);
- requiring regulatory bodies to publish information about the evidence, information and documents which will demonstrate the necessary knowledge of English (provision four);

⁶ “Necessary knowledge of English” means a knowledge of English, which in the interests of the healthcare professional and the healthcare professional’s patients, is necessary for the practice of that health care profession in the UK.

- imposing requirements as to the English language controls that the regulatory bodies can impose on European applicants for registration, so that the regulatory bodies must first request and consider any available evidence before requiring a test (provision five);
- requiring the regulatory bodies to issue a letter recognising the qualifications of European applicants in cases where registration cannot proceed because the language knowledge of such an applicant need to be investigated further (provision six);
- amending certain time limits in relation to giving a decision on an application by a European healthcare professional for registration, so that it is clear as to how the time limits will operate when further investigations as to language knowledge need to be carried out (provision seven);
- ensuring that there is a right of appeal where appropriate against certain decisions that can be made in respect of applicants as regards language controls (provision eight);
- adding a new ground for fitness to practise proceedings of not having the necessary knowledge of English (provision nine);
- providing for knowledge of English assessments in connection with fitness to practise proceedings, and certain restoration cases which are being considered by a fitness to practise panel or committee (provision ten);
- when applying for restoration to the register, applicants will have to demonstrate that they meet the requirements for original registration which will include in future having the necessary knowledge of English (provision eleven); and
- the requirement to ensure that language controls are compliant with the MRPQ Directive in order to act as a competent authority (provision twelve).

Proposed Registration Process

12. For European applicants seeking registration, recognition of qualifications and admission onto the register could be considered as two distinct steps in cases where the registrar of the regulatory body concerned is not satisfied with the applicant's knowledge of the English language from the material supplied by the applicant at the initial stage.
13. European applicants have the option (but would not be required) to supply evidence of English language knowledge with their application for registration. If this is sufficient, then the applicant would be assessed for registration in the usual way.
14. If the applicant has not supplied evidence of their knowledge of the English language, or if this does not sufficiently demonstrate an applicant's English language knowledge, the regulatory body would consider the applicant's professional qualifications. If these are acceptable, the regulatory body would write a letter to the applicant recognising them as entitling the applicant to registration, subject to meeting the other registration requirements. The regulatory body could request further evidence in relation to English language knowledge at that point. The regulatory body would set out in advance the criteria as to what evidence would be appropriate to demonstrate an acceptable level of English language knowledge. The criteria must be flexible.
15. If evidence cannot be supplied, the applicant could be requested by the regulatory body to undergo an appropriate English language test. It is up to each regulatory body to decide

which English language test(s) they will accept. Further details of which test or evidence of language they would accept will be published by each regulatory body.

16. If the applicant supplies sufficient additional evidence or passes the test, the applicant will be assessed against the other registration requirements i.e. character, health and financial standing/indemnity and then be admitted onto the register, subject to having satisfied those other requirements. The applicant might be given more than one opportunity to pass a test but multiple failures would eventually lead to the application for registration being rejected.
17. People applying for registration under the general system referred to above may be required by the regulatory body to undergo adaptation periods before they can be recognised as having sufficient qualifications for registration in the UK. This usually involves a period of time working under the supervision of a registered professional, in order to obtain the required skills. It is only after the successful completion of the adaptation period that an applicant would have a right to recognition of their qualifications under the MRPQ Directive. This would be done either through registration (where the applicant can demonstrate the necessary knowledge of English language) or through the issuing of a recognition letter where further English language controls appear necessary before registration can take place.
18. Neither the MRPQ Directive nor the changes proposed in this consultation document would prevent English language controls from being carried out by regulatory bodies prior to adaptation periods being undertaken where this is necessary to protect the public, for example where the applicant has access to patients, albeit in a supervised capacity. However, the changes proposed in this document do not attempt to introduce or to regulate such controls, as adaptation periods are dealt with in separate legislation which implements the MRPQ Directive more generally across all professions and allows the regulatory bodies to set out the rules governing adaptation periods⁷.
19. We believe that the proposed powers will improve quality of care and patient safety and will help prevent patients from being put at risk of harm from nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians who do not have the necessary knowledge of the English language.
20. Annex A provides a process flow chart of how the registration process would work.

⁷ See the European Communities (Recognition of Professional Qualifications) Regulations 2007/2781.

Content of the draft Order

21. The enabling legislation for each of the regulators concerned with these proposals is different. Therefore, delivery of the proposals will require amendments to each relevant piece of legislation. The attached draft Health Care and Associated Professions (Knowledge of English) Order (the draft Order) would deliver these changes. However, the intention of the proposals is to introduce consistent powers across the NMC, GDC, GPhC and PSNI in respect of language controls, drawing on the changes which were introduced for doctors by the Medical Act (Amendment)(Knowledge of English) Order 2014 (SI 2014/1101).
22. Consequently, this consultation has been framed so that respondents can provide their general views on the proposals or in relation to the impact of the proposals on specific health regulatory bodies or professions. The consultation response document that accompanies this consultation allows this detail to be included. Below is a description of each provision to assist respondents in understanding the reason and purpose behind the relevant provisions of the draft Order. Annex B allows respondents to isolate which parts of the draft Order implement the provisions below for each of the NMC, GDC, GPhC and PSNI.
23. **Provision One (removal of current restrictions):** removes current restrictions on the regulatory body from imposing language controls on European applicants. The existing legislation (with the exception of the Pharmacy (Northern Ireland) Order 1976) requires applicants whose qualifications were obtained outside of the UK to possess the necessary knowledge of English, but only where the applicant is not a European applicant. It is proposed that this limitation be omitted.
24. **Provision Two (new registration requirement):** introduces a new requirement for all applicants for registration to have the necessary knowledge of English, in addition to meeting the other requirements for registration. The application of this requirement to **all** applicants, including those qualified in the UK, is to ensure equal treatment of European applicants, so that they are not subjected to more onerous requirements than “home” applicants. For graduates of UK universities, however, the fact that the registrar will be able to rely on the information supplied by applicants with their registration application should mean that a registrar should be able to be satisfied about the English language ability of UK qualified applicants with no additional procedural burden.
25. **Provision Three (definition of “necessary knowledge of English”):** introduces a new definition of the necessary knowledge of English. In relation to the GDC, this term is already defined in the relevant sections of the Dentists Act 1984, but because the term will appear in more sections, a global definition is inserted into the definitions section (section 53). The content of the definition is unchanged for the purposes of the Dentists Act 1984, and is very similar to the definition for the purposes of assessing doctors’ language ability in the Medical Act 1983 (i.e. a knowledge of English which, in the interests of the professional and their patients, is necessary for the practice of the profession in the UK).
26. In relation to the NMC, GPhC and PSNI, there is currently no global definition of “the necessary knowledge of English” that applies in relation to all applications for registration.

A new definition which follows what is currently in place for doctors and dentists is proposed.

27. **Provision Four (publication of guidance about English language evidence):** requires each regulatory body to publish guidance as to what evidence, information and documents are likely to demonstrate that an applicant has the necessary knowledge of English. The registrar will be under a duty to have regard to this guidance when considering applications.
28. It is intended that the guidance on this area should apply in relation to all applicants. Because regulatory bodies may wish to treat other overseas applicants differently to European applicants (for example by routinely requiring language tests of other overseas applicants without having to first request and consider the available evidence), the rules or guidance will be able to accommodate this. In relation to European applicants, the guidance on this area must not be too rigid and inflexible. It is for the regulatory bodies to set out what evidence would be acceptable.
29. The registrar of each regulatory body will be able to rely on the evidence, information or documents supplied by all applicants with their applications for registration in order to be satisfied that the applicant has the necessary knowledge of English. This would mean that where an application includes, or is accompanied by sufficient, clear evidence of English competence, the application can proceed to registration in the normal way, without any delays being caused by language controls. For example, applicants who have qualified in the UK could be treated no differently than under current procedures. We anticipate that the regulatory bodies would encourage applicants to supply any evidence of English ability with their application, even though this could not be required until after the European applicant's qualification has been recognised (see provision six).
30. **Provision Five (regulation of language controls for European applicants):** this regulates the language controls which may be imposed in respect of European applicants after qualifications have been recognised (see provision six). If the regulatory bodies are not satisfied of English language ability from the material supplied as part of, or with, an application for registration by a European applicant, registrars may request that the applicant supplies further information or evidence within a certain period of time. If the registrar is still not satisfied, either because the applicant cannot supply any additional evidence, or because the evidence supplied is not sufficient, the registrar may require the applicant to undergo an examination or other assessment of their English ability, and for the registrar to be notified of the results of this. Again, the registrar can specify that this must be done within a certain time period. This is to ensure that a registrar can refuse applications after applicants have been given an opportunity to sit the test a reasonable number of times. It would be helpful if the published guidance gives indications to applicants as to what this is likely to be.
31. This two stage process is considered to be necessary in order to ensure that the controls are proportionate, in other words that they are no more stringent than is necessary to meet the policy aim of ensuring patient safety. Requiring all European applicants to sit a test, regardless of whether they are able to demonstrate their English ability through other means, would be disproportionate and contrary to European law.
32. **Provision Six (duty to recognise qualification in cases of language controls):** this imposes a requirement on a registrar of a regulatory body to issue a letter to European applicants recognising that they have qualifications which entitle them to practise in the

UK, subject to meeting any other requirements for registration which they have yet to demonstrate or which the regulatory body has yet to examine. The duty to recognise the qualification only arises in the following circumstances:

- the applicant is a European applicant;
- the registrar is satisfied about the applicant's qualifications; and
- the registrar is not satisfied that the applicant has the necessary knowledge of English and has decided to request some evidence of this.

33. We do not think that it is appropriate to impose a time limit within which this letter is to be issued because it is not always a straightforward matter for regulatory bodies to assess the adequacy of qualifications in cases falling under the general system, i.e. where there is no automatic recognition. Registrars are already under a duty to make a decision on applications for registration within certain time limits (see provision seven), so they will need to decide in a timely manner whether language controls are needed or not.

34. The duty to issue a recognition letter does not apply to all European applicants – it only applies in relation to those European applicants who fall within the ambit of the MRPQ Directive. It would not apply in certain cases, for example, a European applicant who had qualified in a country outside of the EEA and who was applying for first recognition of that qualification in the UK, or to a non-UK EEA national who had qualified in the UK and who sought recognition in the UK. The amendments made by the draft Order limit the duty to issue a recognition letter prior to carrying out language controls to those applicants who benefit from the rights in the MRPQ Directive.

35. Provision Seven (suspension of time limits in cases of language controls): this provision deals with the fact that article 51 of the MRPQ Directive sets certain time limits within which registration applications must be dealt with by registrars of regulatory bodies. With the exception of dental care professionals, these time limits are included in the legislation governing the regulation of each profession. The time limits are three months (for automatic recognition cases) and four months (for general systems cases).

36. Language controls can only be applied after regulatory bodies have recognised a European applicant's qualifications. The process of recognition would take place at the start of the three or four month time limit for processing registration applications. However, control of that time limit is out of the hands of the regulatory body once language controls are applied. To address this, we propose that the three or four month time period should be suspended during any period of time when a European applicant has been requested to supply evidence, information or documents about English ability, or when an applicant has been asked to sit a test and provide evidence about the results of it. The time period would start running again once the evidence or test results are provided by the applicant.

37. The time limits outlined above begin when a "complete" application is received by the registrar – a complete application is one which includes all the documents listed in Annex VII to the MRPQ Directive. These do not include documents demonstrating English language ability. Provision seven prevents an application from being regarded as "incomplete" if it is only missing English language evidence. This is to ensure that the time limit starts to run as soon as the regulatory body has the other documents and information necessary to process the application, with breaks in the time limit where appropriate to enable language checks to take place.

38. No change is suggested to the Pharmacy (Northern Ireland) Order 1976 in this regard, because the time limits are set out in the Registration of Pharmaceutical Chemists (Exempt Persons) Regulations (NI) 2008 (S.R. 2008 No. 193). Any suspension of the time limits could be addressed through amendments to those regulations by the Department of Health, Social Services and Public Safety in Northern Ireland.
39. **Provision Eight (appeal rights):** this provision adds to the list of decisions which may be appealed against, to include the decision to require a person to undergo an English language test (see provision five) and the decision that an applicant does not have a qualification which entitles the person to recognition of the qualification prior to language checks (see provision six). A failure by the registrar to notify a decision that the applicant's qualification does not require recognition is also appealable, although the draft Order ensures that the registrar of the GDC is not treated as having made such a decision by default in a case where the registrar has in fact recognised the qualification.
40. A decision to refuse registration on the grounds that an applicant does not have the necessary knowledge of English language would already be covered by the existing legislation which already provides for appeals against a refusal to register or restore an applicant.
41. In relation to the Pharmacy Order, an amendment is made to article 39 to ensure that a person applying for restoration to the register could appeal a refusal by the registrar where the reason for the refusal was on English language grounds alone.
42. No change is suggested to the Pharmacy (Northern Ireland) Order 1976 in this regard, because article 11(2) of that Order is already sufficiently wide to allow a person to appeal a decision of the registrar to require a person to undertake a language assessment or to refuse registration on the grounds of not having the necessary knowledge of English language.
43. **Provision Nine (English language ability a new ground of fitness to practise):** this provision would insert a new ground on which all professionals' fitness to practise could be impaired. We do not consider that the NMC, GDC, GPhC or PSNI currently have power to take fitness to practise action where there are serious complaints that a registered professional working in the UK lacks the necessary knowledge of English to provide safe care to patients, but where this has not yet given rise to deficient performance in practice. We therefore propose to take a similar approach to that which was taken in relation to doctors, and add this as an additional ground, to enable the regulatory bodies to take pre-emptive action of this kind.
44. This provision would apply to all professionals, regardless of nationality, place of qualification or whether they were required to provide evidence of English language ability when they applied for registration.
45. In relation to doctors, language controls are imposed at the licence to practise stage, and registration performs the function of recognition of European doctors' qualifications for the purposes of the MRPQ Directive. Doctors cannot therefore be removed from the register on language grounds alone, even though their licence to practise may have been withdrawn on that basis. In relation to nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians, we consider that removal on language grounds alone should be a possibility in extreme cases where training has not

had the desired effect of improving the registered professional's English ability. This reflects the proposal that it should be possible for registrars to refuse registration in certain cases where a reasonable number of attempts to pass an English language test have been allowed without success.

46. In relation to the Dentists Act 1984, the draft Order also includes a consequential amendment to sections 27A and 36O, which is necessary to ensure that fitness to practise cases based on allegations of inadequate English language ability are dealt with in the same way as deficient professional performance cases. This will result in English language cases being referred to the professional performance committee and any English language cases involving several grounds of complaint being dealt with in the same way as a deficient professional performance case involving several grounds of complaint.
47. In relation to the Nursing and Midwifery Order, we have included provision to ensure that language cases are treated in the same way as lack of competence and health cases, so that striking off on language grounds will not be allowed until the person has been suspended from the register, or conditionally registered, for two years.
48. **Provision Ten (knowledge of English assessments):** the Medical Act 1983 (Amendment)(Knowledge of English) Order 2014 provided for knowledge of English assessments in fitness to practise proceedings taken in relation to doctors. These are an alternative to the existing provision in the Medical Act for doctors facing fitness to practise proceedings to undergo professional performance assessments. Knowledge of English assessments enable a different process to be followed where the only allegation in relation to the doctor concerns their English language ability. Instead of having to appoint an assessment team, a knowledge of English assessment can require the doctor to undergo an English language assessment and report back the results.
49. We propose to include powers for the regulatory bodies included in this consultation to direct that a registrant undertakes an assessment of their knowledge of English, and to report back on the results of that assessment, in fitness to practise proceedings where an allegation has been received in relation to their English language competence. There is currently differing provision as between those regulatory bodies in relation to powers to carry out professional performance assessments, and the proposed amendments attempt to align with the current powers as far as possible.
50. The intention in relation to this provision is to provide a way in which a registered professional's English language ability can be assessed, to decide whether further fitness to practise proceedings are appropriate. A power to direct that a registered professional must undertake an assessment of their knowledge of English is proposed to be given to fitness to practise committees, investigatory committees (where appropriate) and any other person specified in rules (which might include case examiners, for example).
51. This provision requires rules to set out the procedures to be followed when directing this kind of assessment and that the person must provide information about the assessment (in other words, notify the result). It also sets out what might happen if the registered professional fails to take the test or fails to provide the required result. This can result in referral of the matter to a fitness to practise committee, which may draw inferences from the failure.
52. Included in the draft Order is an equivalent of paragraph 5C(1)(b) of Schedule 4 to Medical Act 1983, which enables regulatory bodies' rules about fitness to practise to

specify circumstances in which an assessment of a person's knowledge of English may be undertaken otherwise than in accordance with a direction of a fitness to practise committee or other body. However, we welcome views as to whether there would be any circumstances in which this would be appropriate, and in the absence of any examples, we propose to omit this provision from the final order.

53. The draft amendments to the Dentists Act 1984 also allow for knowledge of English assessments in one kind of restoration case, which is where a professional conduct committee is considering an application for restoration to the register of a dentist or dental care practitioner whose name has been erased from the register on the grounds that it was fraudulently procured. This type of case has been included to ensure that the committee in such a case could direct that a knowledge of English assessment be undertaken. In other restoration cases considered by the GDC, and indeed in all restoration cases considered by the NMC, GPhC and PSNI, it is clear that the fitness to practise committee could already require evidence of an English language assessment as part of the process, or that the registrar has to be satisfied that the applicant meets the conditions for first registration, so language could be assessed as part of that check.
54. In relation to the Pharmacy (Northern Ireland) Order 1976, detailed provision is not proposed, to reflect the existing legislation dealing with regulations about fitness to practise matters.
55. **Provision Eleven (restoration to the register and renewal):** when a registered professional applies for restoration to the register, having been removed or erased from it for one reason or another, they generally have to demonstrate that they meet the requirements for original registration. These will in future include having the necessary knowledge of English, so only minor amendments are generally required in relation to language ability.
56. In relation to the NMC, the Nursing and Midwifery Order 2001 makes express and separate provision for renewal of registration, which has been consequentially amended in the draft Order to ensure that the Registrar can take into account whether a person has the necessary knowledge of English at the renewal stage, in addition to consideration of whether the other existing requirements for registration are met.
57. **Provision Twelve (designated competent authority):** with the exception of the Pharmacy (Northern Ireland) Order 1976, the legislation governing the regulation of the professions with which we are concerned includes a schedule listing the functions which each regulatory body must carry out in particular in order to act as the competent authority for the purposes of MRPQ Directive. This provision adds the function of ensuring that language controls are compliant with the MRPQ Directive.

Provisions specific to the GDC only

58. **GDC and temporary registration of overseas dentists:** section 17 of the Dentists Act 1984 deals with a particular group of dentists who are qualified overseas in non-EEA countries and who come to the UK to work in specific posts in specific institutions on a temporary basis. Although this group may include European dentists, they would not benefit from the rights in the MRPQ Directive. A European dentist who has qualified in a non-EEA country and who has not had their qualification recognised in another Member State, or who has had the qualification recognised but does not have the relevant three

years' experience, would not be entitled to recognition of the qualification under the MRPQ Directive. A European dentist with an overseas diploma which has been previously recognised in another European State, and who has three years relevant experience, would be entitled to recognition of their diploma in accordance with the MRPQ Directive. However, a European dentist in this position who wished to apply for temporary registration would be considered under Schedule 4 to the Dentists Act, because this is where the provisions on temporary establishment for dentists with rights under the MRPQ directive are set out.

59. We therefore propose to omit the restriction on language testing of European dentists in section 17 (this reflects provision one for this group). The amendments to this section also apply part of provisions four and five to this group. This is because European dentists being considered for registration under this section, although not benefitting from the rights in the MRPQ Directive, will still benefit from the right to equal treatment and no barriers to their free movement or their freedom of establishment and to provide services. This would mean that the GDC could rely on the information in the application, and if that was not enough to demonstrate English ability, they could then request evidence from a European dentist. Only then could they require a test – they could not request this at the outset. See article 14 of the draft Order.
60. **GDC and scrutiny fees:** currently the NMC, GPhC and PSNI are able to charge an additional fee for examining applications for registration from certain European (and other) applicants. This is because the powers to make rules providing for such fees in their enabling legislation are sufficiently wide to enable them to do so. For European applicants, such fees must be no more than is necessary to recoup the cost to the regulator of the activity for which the fee is imposed. The GDC is currently unable to charge a fee in relation to the examination of applications (as opposed to fees in relation to registration itself). To ensure that the GDC is able to do so in the future, we propose amendments to both section 19 and section 36F of the Dentists Act 1984 to broaden the regulation-making powers of the GDC in this respect. See articles 15 and 23 of the draft Order.

Procedural provisions of the draft Order

61. Provision has been made for the substantive provisions of the draft Order to come into force on such days as the Privy Council appoints. Provision has also been made for any transitional, transitory and saving provisions that are necessary in connection with the coming into force of the Order to be made by Privy Council Order. Any power of the Privy Council to make an Order to bring into force particular provisions, or make transitional, transitory or saving provisions, is exercisable by statutory instrument, and provision is made for such statutory instruments to be subject to the negative procedure.

The Policy

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

Strongly agree	Agree	Neither /nor	Disagree	Strongly disagree

Add text:

Q2 Do you agree with the proposed changes for applicants in relation to registration and entry onto the Register in terms of knowledge of the English language?

Strongly agree	Agree	Neither /nor	Disagree	Strongly disagree

Add text:

Q3 Do you agree with the proposed additional powers to take fitness to practise action where there are concerns that a nurse, midwife, dentist, dental care professional, pharmacist or pharmacy technician has insufficient knowledge of the English language?

Strongly agree	Agree	Neither /nor	Disagree	Strongly disagree

Add text:

Q4 Do you think that the powers that are already in legislation are sufficient to secure that healthcare professionals have the necessary knowledge of the English language?

Yes	No

Add text:

Q5 Do you agree that the proposed changes to the relevant legislation, as set out in the draft Order, will strengthen the knowledge of the English language of nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians in the UK?

Strongly agree	Agree	Neither /nor	Disagree	Strongly disagree
Add text:				

Q6 Do you think that there is there an alternative to these proposals that does not require a change to legislation?	
Yes	No
Add text:	

Costs and benefits and equality analysis

Impact

62. During the development of our proposals we have looked at the costs and benefits and the possible impact they might have. We believe that the changes will have an overall relatively small monetary impact. The costs are likely to fall to the Regulatory Bodies covered by this Order in terms of additional administration relating to requiring evidence of English language capability for some nurses, midwives, dentists, dental care practitioners, pharmacists and pharmacy technicians. The cost of any required language tests will be borne by the individual applicant.

63. We intend to gather further evidence on any potential issues and impact of this policy as part of this consultation.

Q7 Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes?	
Yes	No
Add text:	

Q8 Do you think there are any benefits that are not already discussed relating to the proposed changes?	
Yes	No
Add text:	

Q9 Do you have any evidence of harm caused to patients due to the lack of English language proficiency of a nurse, midwife, dentist, dental care professional, pharmacist or pharmacy technician?	
Yes	No
Add text:	

Equality

64. The Department of Health, the Scottish Government, the Welsh Government and the NMC, GDC and GPhC and are covered by the Equality Act 2010, and specifically, the Public Sector Equality Duty.
65. 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.
66. 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.
67. We are aware that the proposal to enable the NMC, GDC and GPhC to require evidence of knowledge of English language, by having two distinct steps in the registration process (recognition of qualifications and authorisation to practise through registration) is likely to affect European healthcare professionals. However the Department is of the view that these proposals will address the current disparity between the existing controls of these regulatory bodies in terms of language competence of European healthcare professionals and those from outside of the EEA.

Q10 Do you agree with the Department's assessment that these proposals will address the current disparity between the existing controls in terms of language competence of European healthcare professionals and those from outside of the EEA?

Yes

No

Add text:

68. We intend to carry out equality analysis on this policy which will include information received as part of this consultation. We plan to publish this analysis as part of the Department's response to the consultation.

69. We are also interested to hear whether there could be any impacts resulting from the policy on different socio-economic groups, area inequality, income, resident status (migrants) and other groups experiencing disadvantage and barriers to access to health and care services.

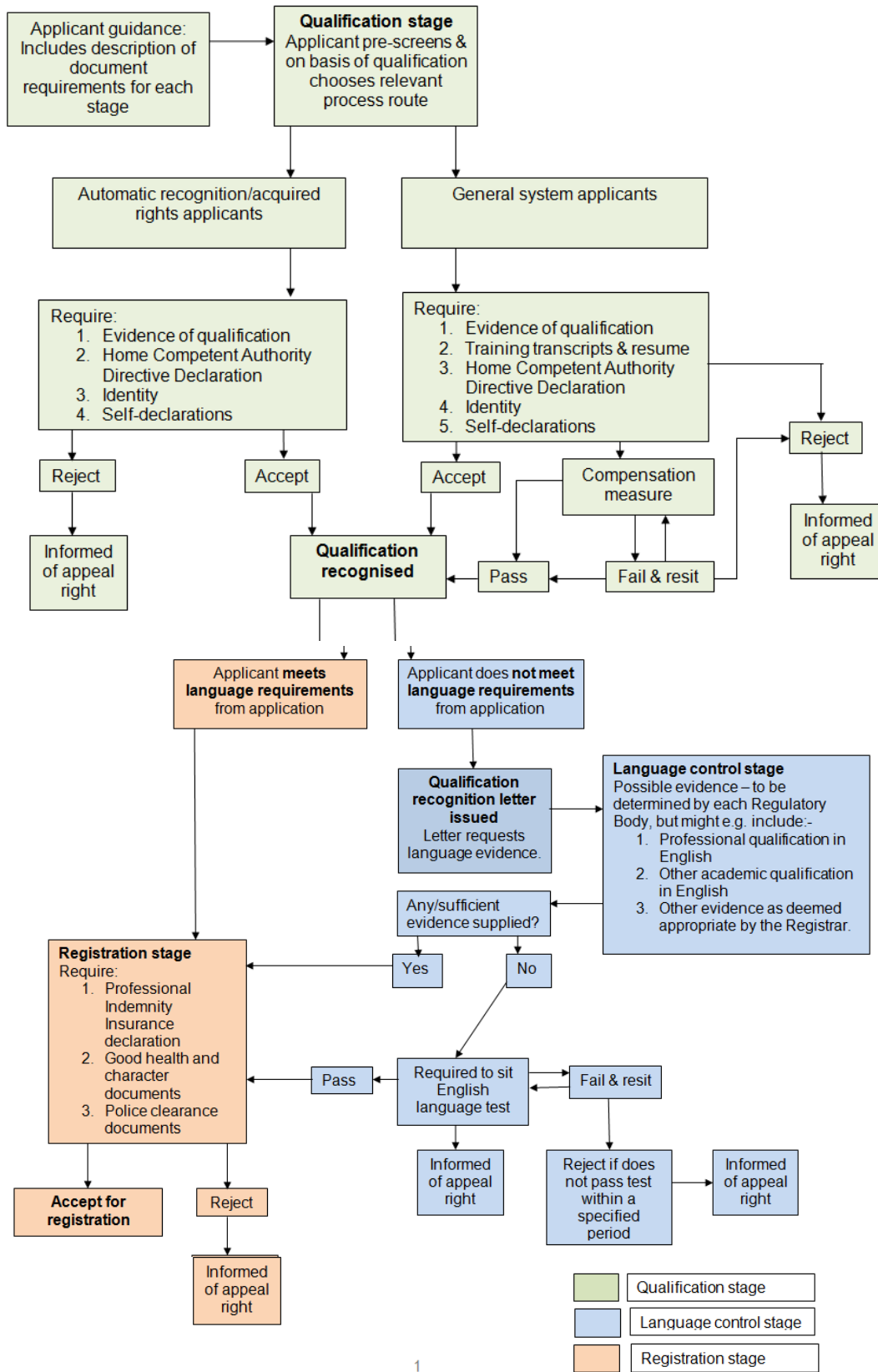
Q11 Are you aware of any particular groups who will be affected by this legislation, other than European nurses, midwives, dentists, dental care professional, pharmacists and pharmacy technicians?

Yes

No

Add text:

European Healthcare Professionals – how the process might look



Title: “European Healthcare Professionals – how the process might look”

1. **Qualification Stage.** Applicant pre-screens and on basis of qualification chooses relevant process route – which is either -
 - a. “Automatic recognition/acquired rights applicants”
 - b. “General systems applicants”
2. If “Yes” to 1a above then the regulatory body will “Require” the applicant to provide:
 - i. Evidence of qualification
 - ii. Home Competent Authority Directive Declaration
 - iii. Identity
 - iv. Self-declarations”
3. If the requirements under point 2 are not met then “Reject” and applicant is “informed of appeal right”
4. If the requirements under point 2 are met then “Accept” and “**Qualification Recognised**”
5. If “Yes” to 1b above then the regulatory body will “Require” the applicant to provide:
 - i. Evidence of qualification
 - ii. Training transcripts and resume
 - iii. Home Competent Authority Directive Declaration
 - iv. Identity
 - v. Self-declarations”
6. If the requirements under point 5 are not met then “Reject” and applicant is “informed of appeal right”
7. If the requirements under point 5 are met then “Accept” and “**Qualification Recognised**”
8. If the requirements under point 5 are not fully met then the regulatory body can request applicant to undertake a “compensation measure” e.g. an aptitude test.
 - a. If applicant “passes” then “**Qualification Recognised**”
 - b. If applicant “fails” the test then applicant has the opportunity to “resit” the test. If the applicant “fails” the test again then application is “rejected” and the applicant is “informed of appeal right”

Once the applicant’s qualification is recognised then the Registrar may look at whether the applicant meets the necessary language requirements.

9. **Registration Stage.** If “Applicant meets language requirements from application” then at the “Registration Stage” the applicant will “Require” to provide:
 - i. Professional indemnity insurance declaration
 - ii. Good health and character
 - iii. Police clearance documents”

10. If the requirements under point 8 are not met then “Reject” and applicant is “informed of appeal right”
11. If the requirements under point 8 are met then “Accept” and applicant is “**Accepted for Registration**”
12. **Language Control Stage.** If “Applicant does not meet language requirements from application” then at the “Language Control Stage”
- a. “Letter issued to applicant requesting language evidence”. Possible evidence to be determined by each Regulatory Body, but might include e.g.
 - i. Professional qualification in English
 - ii. Other academic qualification in English
 - iii. Other evidence as deemed appropriate by the Registrar
 - b. Is “Any/sufficient evidence supplied”
 - c. If “Yes” to 12 b then proceed to point 9 “Registration Stage” above
 - d. If “No” to 12 b then applicant is “Required to sit English language test” and is “informed of appeal right”
 - e. If applicant “passes” English language test then proceed to point 9 “Registration Stage” above
 - f. If applicant “fails” English language test then applicant has the opportunity to “resit” the test.
 - g. If applicant resits test and fails then “Reject if does not pass test within a specified period” and applicant is “Informed of appeal right”
 - h. If applicant resits test and passes then proceed to point 9 “Registration Stage” above

Provisions of the draft Order relevant to each regulator

Regulatory body	Relevant provision of the draft Order
Pharmaceutical Society of Northern Ireland	Part 2
	Provision 1 – N/A
	Provision 2 – article 6
	Provision 3 – article 5
	Provision 4 – article 8 (inserting new article 8AB(1), (2) and (8))
	Provision 5 – article 8 (inserting new article 8AB(3) to (7))
	Provision 6 – article 9
	Provision 7 – N/A
	Provision 8 – N/A
	Provision 9 – article 10 (inserting paragraph 4(1)(ca) of Schedule 3)
	Provision 10 – article 10 (inserting paragraph 15(3)(ia) of Schedule 3)
	Provision 11 – N/A
Provision 12 – N/A	
General Dental Council	Part 3
	Provision 1 – article 11(2) and (3), 14(2) and (3) and 20(2)
	Provision 2 – article 12(2) and (3), 14(2) and 20(3)
	Provision 3 – article 12(4), 14(3), 20(2) and 28
	Provision 4 – article 13 (inserting new section 15A(1), (2) and (8)) and article 21 (inserting new section 36CA(1), (2) and (9))
Provision 5 – article 13 (inserting new section 15A(3) to (7)) and	

article 21 (inserting new section 15A(3) to (7))

Provision 6 – article 16 (inserting new section 21A(2A) and (2B))
and article 20(4) (inserting new section 36C(6A) and (6B))

Provision 7 – article 16 (inserting new section 21A(3A) and (5))
and article 21 (inserting new section 36CA(8))

Provision 8 – articles 29 and 31

Provision 9 – articles 17 and 18, 24 and 25

Provision 10 – articles 19, 26 and 27

Provision 11 – N/A

Provision 12 – article 30

**Nursing and Midwifery
Council**

Part 4

Provision 1 – article 36

Provision 2 – article 34(2)

Provision 3 – article 43

Provision 4 – article 33 (inserting new article 5A(1), (2), (8))

Provision 5 – article 33 (inserting new article 5A(3) to (7))

Provision 6 – article 34 (inserting new article 9(3B) and (3C))

Provision 7 – article 34 (inserting new article 9(5ZA) and (5B))

Provision 8 – article 41

Provision 9 – article 37 and 39

Provision 10 – article 38

Provision 11 – article 35 and 40

Provision 12 – article 42

**General Pharmaceutical
Council**

Part 5

Provision 1 – article 47 and 48

Provision 2 – article 46

Provision 3 – article 45

Provision 4 – article 49 (inserting new article 23A(1), (2) and (8))

Provision 5 – article 49 (inserting new article 23A(3) to (7))

Provision 6 – article 50 (inserting new article 24(2A) and (2B))

Provision 7 – article 50(4), (5) and (6) (inserting new article 24(5A) and (12))

Provision 8 – article 50(3), 51 and 52

Provision 9 – article 53

Provision 10 – article 54, 55 and 56

Provision 11 – N/A

Provision 12 – article 57

Summary of questions

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

Q2 Do you agree with the proposed changes for applicants in relation to registration and entry onto the Register in terms of knowledge of the English language?

Q3 Do you agree with the proposed additional powers to take fitness to practise action where there are concerns that a nurse, midwife, dentist, dental care professional, pharmacist or pharmacy technician has insufficient knowledge of the English language?

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Q7 Do you have views or evidence as to the likely effect on costs or the administrative burden of the proposed changes?

Q8 Do you think there are any benefits that are not already discussed relating to the proposed changes?

Q9 Do you have any evidence of harm caused to patients due to the lack of English language proficiency of a nurse, midwife, dentist, dental care professional, pharmacist or pharmacy technician?

Q10 Do you agree with the Department's assessment that these proposals will address the current disparity between the existing controls in terms of language competence of European healthcare professionals and those from outside of the EEA?

Q11 Are you aware of any particular groups who will be affected by this legislation, other than European nurses, midwives, dentists, dental care practitioners, pharmacists and pharmacy technicians?

Responding to this consultation

Consultation process

The consultation is being run, as far as is practical, in accordance with the Cabinet Office Code of Practice on Consultations (reproduced below). The closing date for the consultation is Monday 15 December 2014.

There is a questionnaire on the GOV.UK website which can be printed and sent by post to: **Language controls for nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians, Professional Standards, Room 2N09, Department of Health, Quarry House, Quarry Hill, Leeds, LS2 7UE**

Completed questionnaires can also be sent electronically by e-mail to: **HRDlistening@dh.gsi.gov.uk**

Alternatively you may also complete the online consultation response document at: **<http://consultations.dh.gov.uk>**

It will help us to analyse the responses if respondents fill in the online consultation response document but responses that do not follow the structure of the questionnaire will be considered equally. It would also help if responses were sent in Word format, rather than in pdf format.

Criteria for consultation

This consultation follows the Government Code of Practice, in particular we aim to:

- formally consult at a stage where there is scope to influence the policy outcome;
- consult for a sufficient period;
- be clear about the consultations process in the consultation documents, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- ensure the consultation exercise is designed to be accessible to, and clearly targeted at, those people it is intended to reach;
- keep the burden of consultation to a minimum to ensure consultations are effective and to obtain consultees 'buy-in' to the process;
- analyse responses carefully and give clear feedback to participants following the consultation; and
- ensure officials running consultations are guided in how to run an effective consultation exercise and share what they learn from the experience.

The full text of the code of practice is on the Better Regulation website at: www.bis.gov.uk/policies/better-regulation/consultation-guidance

Comments on the consultation process itself

If you have any concerns or comments which you would like to make relating specifically to the consultation process itself please contact:

Consultations Coordinator, Department of Health, 2E08, Quarry House, Quarry Hill, Leeds, LS2 7UE.

Please do not send consultation responses to this address.

Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter (www.dh.gov.uk/en/FreedomOfInformation/DH_088010).

Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

Summary of consultation responses

A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the GOV.UK website (www.gov.uk/dh).