



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 four country consultation report

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**Author:**

Strategy & External Relations Directorate / Professional Standards / SER-Q-PS / 13730

**Document Purpose:** Consultation

**Publication date:** January 2015

**Target audience:**

Healthcare professionals, healthcare regulatory bodies, royal colleges, unions, patients

**Contact details:**

2N09, Quarry House  
Quarry Hill  
Leeds  
West Yorkshire  
LS2 7UE

**Email:** [HRDlistening@dh.gsi.gov.uk](mailto:HRDlistening@dh.gsi.gov.uk)

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**Sharon Corner**

**Professional Standards Division**

January 2015

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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 introduced<sup>1</sup>, where appropriate, for European<sup>2</sup> doctors wishing to practise in the UK.

This is why we have recently consulted on proposed amendments to the Nursing and Midwifery Order 2001, the Dentists Act 1984, the Pharmacy Order 2010 and the Pharmacy (Northern Ireland) Order 1976 which will allow 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, to European nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians<sup>3</sup>. These language controls will ensure that all healthcare professionals seeking entry to their registers have a sufficient knowledge of the English language to enable them to practise safely in the UK.

At the next available legislative opportunity, and subject to Parliamentary approval, we plan to give similar powers to the Health and Care Professions Council (HCPC), the General Optical Council (GOC), the General Osteopathic Council (GOsC) and the General Chiropractic Council (GCC). 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.

The Department consulted on a UK wide basis, on behalf of the four UK Health Departments. The consultation document was available on the gov.uk website and the Department of Health's Citizen Space website and comments were invited over a six week period between 3 November and 15 December 2014. We received 71 responses to the consultation.

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

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<sup>1</sup> <http://www.legislation.gov.uk/ukdsi/2014/9780111108932>

<sup>2</sup> 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.

<sup>3</sup> 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

# Introduction

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 UK Health Departments.
2. Current legislation does not allow the NMC, GDC, GPhC and PSNI 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. They 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 Mutual Recognition of Professional Qualifications (MRPQ) Directive<sup>4</sup> have clarified the ability of national authorities to carry out language controls on European applicants where the profession has patient safety implications.<sup>5</sup> 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. The consultation document set 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 proposed 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 healthcare professional's knowledge of the English language may pose a serious risk to patient safety.
6. More specifically, the main policy aims we are seeking to achieve are as follows:
  - a. the removal of any current restrictions on a regulatory body imposing English language controls on European applicants for registration;
  - b. the introduction of new registration requirement for all applicants, including those who are UK nationals, of having the necessary knowledge of English;
  - c. including a new definition of the 'necessary knowledge of English' requiring regulatory bodies to publish information about the evidence information and documents which will demonstrate the necessary knowledge of English;

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<sup>4</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005L0036-20140117&from=EN>

<sup>5</sup> Article 53, Directive 2005/36/EC

- d. 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;
  - e. 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 needs to be investigated further;
  - f. 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;
  - g. 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;
  - h. adding a new ground for fitness to practise proceedings of not having the necessary knowledge of English;
  - i. 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;
  - j. 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; and
  - k. the requirement to ensure that language controls are compliant with the MRPQ Directive in order to act as a competent authority.
7. The Department believes that the additional powers outlined above will enable proportionate checks to be carried out on nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians where there is concern around their English language capability, therefore providing an improved level of public protection and confidence in regulation. The consultation has confirmed this view.

## Consultation process

8. The recent UK wide consultation set out the detail of the Government's proposals and was conducted on behalf of the four UK Health Departments.
9. The consultation document was made available on the gov.uk website and the Department of Health's Citizens Space website. Comments were invited over a six week period between 3 November and 15 December 2014.
10. We received 71 responses to the consultation in a number of formats, which included Citizen Space, by email and through the post. The responses came both from individuals and on behalf of organisations.
11. The consultation sought general views on the proposals and also set out the detail of the enabling legislation and indicated which parts would apply to each regulator. As part of the consultation we were also keen to seek further evidence around potential administrative burdens, the impact of the proposals and any possible equality considerations other than those already mentioned in the consultation document. Subsequently, all additional information we received has been reviewed and taken into consideration in this report, and other assessments, where appropriate.
12. The Department has been advised by the NMC, GDC, GPhC and PSNI that they plan to consult on the proposed changes to their guidance and rules, which this Section 60 Order will, subject to Parliamentary approval, provide the statutory framework for, and will allow the regulators to begin using the new language control powers in due course.

# Overview of consultation responses and key themes

## Overview

13. The consultation was made available for comment as described in the preceding chapters. The Department alerted major stakeholders, for example the Royal Colleges, the healthcare professional regulatory bodies and the Devolved Administrations, to the consultation and 71 responses were received in total.
14. The consultation set out the amendments we propose to make to 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 bodies powers to carry out proportionate controls by requiring 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. The consultation also detailed 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 healthcare professional's knowledge of the English language may pose a serious risk to patient safety.
15. The consultation questions focused on whether the proposed amendments were the most effective way of strengthening language controls for those regulated professions captured by this draft Order and whether there were likely to be any impacts or costs which had not already been considered.
16. When analysing the responses, in a large number of cases, it was not clear if the respondent was responding just in relation to one specific profession or in relation to all professions covered by the proposals. Therefore, where it has not been specified, it has been assumed that the response relates to all of the professions covered by the consultation. Where appropriate, we have taken into account any additional comments made.
17. The majority of responses were supportive of the proposals, with many providing additional supportive comments. The Department believes that the proposals will be an effective means, within the constraints of European law, of allowing the NMC, GDC, GPhC and PSNI to ensure that all nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians wanting to work in the UK have the necessary knowledge of the English language, and that the proposals would work to improve patient protection and the standards of care delivered.
18. Overall, the main concerns around the proposals were the need for the criteria to be consistent across the regulatory bodies and concerns around how necessary the proposed additional ground of impairment in relation to fitness to practise is. These concerns have been addressed in this report.



## **Brief overview of responses received from the affected regulatory bodies**

The Department has engaged with the regulatory bodies affected by the proposals in the run up to the consultation and has tried to ensure that all of their comments have been considered in the drafting of the Order.

### *The Nursing and Midwifery Council (NMC)*

- The NMC are generally supportive of the proposal to give them powers to introduce proportionate language controls as the proposals will improve patient safety and quality of care.
- It has however raised concerns around the additional ground of impairment in relation to fitness to practise (which gives the NMC the power to take fitness to practise action on the grounds that a professional does not have the necessary knowledge of the English language) and whether it is needed.
- It is the view of the Department that the NMC is currently able to take fitness to practise action on the grounds that a professional has a lack of competence, where this is caused by a lack of knowledge of the English language and where this has not resulted in poor performance in practice. Thus the power is needed to enable the NMC to take pre-emptive fitness to practise action in cases where the professional's lack of English language ability poses a risk to patients.
- In the NMC's response they also raised a number of other issues that have resulted in an amendment to the draft Order. These are set out in the following chapter.
- The NMC (and the GDC) has asked for a power to seek evidence of language competence before a nurse or midwife begins a compensation measure (for example an aptitude test or a period of further training to ensure they are up to the standards of training in the UK). Although the MRPQ Directive states that language controls can only be applied after the recognition of an individual's qualification, and compensation measures are undertaken before an individual's qualification is recognised by the regulatory body, we believe that there is scope for language checks to be carried out prior to a professional undertaking a compensation measure where this is necessary in the interests of patient safety. It is not possible to make any amendments in this draft sector-specific Order to address this issue. However, we have advised the NMC that we will discuss the issue further with BIS, which is the Government Department responsible for the more generally applicable legislation which implements the MRPQ Directive and which deals with compensation measures.

### *The General Dental Council (GDC)*

- The GDC are supportive of the proposals for language controls. However, they raised concerns about the additional ground for fitness to practise action.
- The GDC consider that their current powers permit them to take fitness to practise action where there are concerns about the communication skills of a registrant, including their English language competence. However, they stated that they do not object to having additional powers to take fitness to practise action in these cases. We agree that the

GDC is currently able to take fitness to practise action on the grounds that a professional is alleged to have shown deficient professional performance, we do not think this would enable pre-emptive action where a lack of English language ability has not yet caused a problem in practice. By making lack of English language ability a ground of impairment in itself, initial evidence is sufficient to raise concerns around language so that a test could then be carried out which could then form the basis for impairment, without further evidence of deficient performance, in order to prevent something serious happening in practice.

- The GDC has also stated that if there were a complaint made on language grounds, it would always be under a duty to require the registrant to undergo a knowledge of English assessment. We do not agree with this assessment. The knowledge of English assessment provisions simply provide a power to direct the registrant to sit a language test, but this would not be automatic - if the initial enquires show that the allegation was unfounded, no further action might be appropriate.
- The GDC has concerns that it would have to pay for the language test in fitness to practise cases. This is correct, and is currently the case for the GMC. However, we do not expect this to be a significant burden, but consider that it would be prudent for the GDC to monitor this in the first year of operation.

#### *The General Pharmaceutical Council (GPhC)*

- The GPhC are supportive of the proposals and agree that the proposals will enable them to require European pharmacy professionals to demonstrate that they have the necessary knowledge of the English language for safe and effective practice.
- The GPhC have requested one change to the draft Order around the definition of “necessary knowledge of English”. They state that the specific wording of the definition in paragraph 43 (a) and (b) of the draft Order states that necessary knowledge of English is “in the interest of the person and the person’s patients”. Given that not all of the GPhC’s registrants carry out their role in a clinical environment the Department agrees that the text needs to be amended. These amendments are set out in the next chapter.
- The GPhC have one further concern around language skills and temporary service providers (the NMC also raised this in their response), who are not required to provide the same level of detail to the GPhC as an individual applying for establishment in the UK. The additional fitness to practise category of impairment will give the GPhC some reassurance that they are able to bring proceedings against temporary workers if concerns are raised.
- The GPhC are aware of anecdotal evidence that language competence is an issue for a number of EU applicants and, as part of a limited review of fitness to practise cases between 2008 and 2011, they identified two cases where their inability to refuse registration on grounds of a lack of English language proficiency potentially posed a risk to patients.

### *The Pharmaceutical Society of Northern Ireland (PSNI)*

- The Pharmaceutical Society of Northern Ireland (the Society) are supportive of the proposals for proportionate language controls. However, the Society believes there are two outstanding issues with regard to its appeals process.
- Firstly, the Society does not believe the powers currently held by it in relation to registration appeals are sufficiently wide to allow a registrant to appeal a decision for non-admittance to the register due to a lack of English language competence.
- The Department of Health, Social Services and Public Safety in NI (DHSSPS) and DH do not share these concerns and believe the current appeals process is sufficient to provide an appeal against a requirement to undergo a language test or a refusal to register a person on language grounds.
- DHSSPS has informed the Society that, in light of the consistent legal advice from both DH legal and NI solicitors, DHSSPS will not pursue DH for any further change to the Order in this regard. The Society has acknowledged the response.
- Whilst they do not agree with the joint DHSSPS and DH view on this, the Society has conceded that the only way to test this is if there is a legal challenge on the appeal powers.
- Secondly, the Society has stated that its Council is not best equipped to deal with these appeals. However, DHSSPS has suggested that the Council may be able to delegate such of its functions to committees or sub committees as it thinks fit. This suggestion may warrant future consideration.

### *The Professional Standards Authority for Health and Social Care (PSA)*

- The PSA are supportive of the power to enable the NMC, GDC, GPhC and PSNI to carry out language controls on EEA applicants, but are not supportive of the power to enable concerns around language competence to become a fitness to practise issue in its own right.
- The PSA have also stated that it is not clear why the professions that are regulated by these four bodies have been selected to be subject to these new measures, out of the 31 health and care professions that are statutorily regulated. The decision to put the NMC, GDC, GPhC and PSNI in this Order and not extend it immediately to the other regulatory bodies (except the General Medical Council, as language controls have already been introduced for doctors) was based on a number of factors, including the parliamentary timetable, the desire on the part of the regulatory body to have the power, the complexity of the legislative changes involved and the type and number of registrants affected.
- The PSA have raised concerns around the equality impact of introducing this new category of impairment as it could lead to an over-representation in the fitness to practise process of foreign registrants and of those with speech and language difficulties. Whilst we agree there could be some impact, it should be noted that these provisions will apply

to all applicants, including those from the UK. The policy is therefore not directly discriminatory against nationals of particular countries.

- The Department is also of the view that the policy has been designed so that there is a proportionate approach to language controls, as the two stage process which is proposed (i.e. consideration of any available evidence followed by a language test if that is not sufficient) is no more stringent than is necessary to meet the policy aim of ensuring patient safety.
- We do agree, however, that some of the proposed mitigating factors suggested by the PSA should be considered by the regulators. For example, providing clear guidance to Committees and monitoring the impact the measures will have. An equality analysis has been carried out by the Department.

# Proposed changes to the draft Order following consultation

Following analysis of the consultation responses we have made a number of changes to the draft Order to reflect comments made. These are set out below.

- a. We have added a duty to consult for GDC, GPhC and PSNI in relation to the guidance setting out the evidence, information or documents to be provided by an applicant for the purpose of satisfying the Registrar that the applicant has the necessary knowledge of English and the process by which the Registrar is to determine whether he is satisfied. It is not necessary to add this duty to the NMC Order as they already have a general duty to consult on all their statutory guidance so no change has been made for it in this respect
- b. In relation to the NMC Order we have changed the language controls provisions at the renewal stage so that the NMC can set out in its rules how language controls may apply at the renewal of registration stage (see article 35).
- c. We have amended the definitions of “necessary knowledge of English” for the NMC, GPhC, and PSNI. The NMC raised concerns about the definition of necessary knowledge of English for the professions they regulate, in particular that the concept of “patient” was very limiting given that, for example, midwives do not see the users of some of their services as “patients”. We thought similar arguments apply to the services provide by pharmacists, pharmacy technicians and pharmaceutical chemists in NI and so we have similarly amended the definitions of “necessary knowledge of English” in their legislation (see articles 5, 43 and 45).
- d. As anticipated in the consultation, in relation to knowledge of English assessments, we suggested that we would remove the draft provision in the Order that provided “rules may specify circumstances in which an examination or assessment of whether a person has the necessary knowledge of English may be undergone otherwise than in accordance with a direction.” This applied to the NMC, GDC and GPhC provisions only (it was not in the PSNI provisions to begin with as their knowledge of English assessments are broad enabling powers). We have received no responses in favour of this provision and whilst it was contained in the GMC language Order, as we have not had any comments on how or when it might be used, we have removed it.

## **Key themes**

There were a number of comments that appeared throughout the consultation responses. We have grouped these comments together under general themes which are discussed below.

### **The GMC should also be given these powers**

A number of respondents mentioned that it is important that doctors are also subject to language controls.

The Department agrees with this which is why similar legislative changes have already been made to give the GMC the power to introduce language controls for EEA doctors. Changes have also been made to enable the GMC to instigate fitness to practise proceedings based on serious concerns around an individual's English language capability and to also require a language test to be taken as part of the fitness to practise process where appropriate as proposed in this consultation for other healthcare regulators.

### **Employer's duties**

A number of respondents made comments relating to language checks at employer level. Comments stressed the importance of reminding employers of their responsibilities in relation to induction and the need to ensure that a robust assessment is undertaken to establish whether a prospective employee can communicate effectively in the role to which they may be appointed. It was also highlighted that employers need to be vigilant, both at initial recruitment and as part of ongoing supervision.

Other respondents commented that placing the onus for assuring the language capability of employees on the employer represents a burden to businesses, which may not have the necessary expertise.

The Department is clear that it is the individual employer's responsibility to ensure that the healthcare professionals they employ are able to do the job, including ensuring they have the necessary English language capability. However, the Department believes that giving additional powers to the NMC, GDC, GPhC and PSNI will help to strengthen the duty already on employers to ensure that patients are not put at risk of harm from healthcare professionals who do not have the necessary knowledge of the English language. By enabling the possibility of language controls being applied following recognition of a professional's qualification but before they are registered and admitted onto the register will reduce the likelihood of a healthcare professional, without the necessary knowledge of English, from treating patients in the UK.

### **Importance of patient-centred care**

A recurring theme throughout the consultation responses was around the importance of patient-centred care and putting patient safety first and how a professional having the necessary knowledge of language is a key component in ensuring this.

The Department fully supports this view. We agree that by ensuring healthcare professionals have the necessary levels of English language capability to communicate effectively with patients this will mean that risks to patient safety are reduced and that quality of care will be improved. This will also help to improve patient and public confidence in the professionals that

treat them. It will also have a positive impact on the reputation of healthcare professionals and will ensure that individuals using the services provided by those affected by these proposals will have a better patient experience.

### **Consistency of evidence of English language capability**

A number of respondents have highlighted that it would be desirable that the criteria used for determining whether an applicant has the necessary knowledge of the English language are consistent at a national level. Further detail was also requested about how applicants will be assessed. One respondent suggested that the regulators need to ensure they do not make subjective, ad hoc decisions.

The changes contained in the draft Order give the NMC, GDC, GPhC and PSNI, as bodies independent of Government, the power to strengthen language controls. As part of these changes, the regulators have a duty to produce guidance on the evidence, information or documents to be provided in order to satisfy the Registrar as to knowledge of the English language and they will also be required to consult on this guidance. As independent bodies who have differences in the standards they require for registration, it is important that each of the regulators is able to develop criteria that are suitable for the professionals that they regulate. However, the Department is keen to encourage the regulatory bodies concerned to work together, where appropriate, when developing their criteria and guidance.

We would expect any guidance that the regulators produce to be clear when setting out the requirements and made easily accessible to potential applicants, so as to ensure that the process of registration is not delayed unnecessarily.

# Analysis by question

There were a very small number of responses that, due to the format of them, we were unable to include in the quantitative analysis. However the comments made in these responses have been incorporated into the qualitative analysis.

[**Note:** Although we received 71 responses to the consultation, only 67 were included in the quantitative analysis of questions due to the format of the responses. Please also note that totals may not total 100% due to rounding.]

## **OVERVIEW**

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

<b>Option</b>	<b>Total</b>	<b>Percent of All</b>
Strongly Agree	54	81%
Agree	12	18%
Neither / Nor	1	1%
Strongly Disagree	0	0%
Disagree	0	0%
Not Answered	0	0%
<b>Total</b>	<b>67</b>	<b>100%</b>

The vast majority of respondents (99%) either agreed or strongly agreed that strengthening language controls as proposed will improve quality of care and patient safety. Where additional comments were provided, these were also generally supportive of the proposals.

### **A sample of comments made under question 1**

- A number of respondents highlighted the importance of verbal communication, as well as written communication, being assessed at registration. The Department agrees it is essential that professionals have both effective written and verbal skills to be able to provide safe patient care. However, as mentioned in the key themes section, it will be for the healthcare regulators as independent bodies, to decide what the most appropriate assessment of language for the professionals they regulate should be. The Department agrees that while some documents showing written English skills could be required as evidence it is likely that other evidence, for example working in an English-speaking setting or similar, could be accepted as evidence and would show that the applicant had good verbal English language skills. Where there are serious doubts around the



evidence supplied by an individual the regulatory bodies will have to power to request further evidence.

- One respondent provided anecdotal evidence that professionals who have undertaken an English language test before beginning work were able to integrate much faster than some European professionals whose language had not been checked before employment.
- Other comments made under this question have been covered under the Overview and key themes chapter.

## **REGISTRATION AND ENTRY ONTO THE REGISTER**

The Department's first overarching proposal is to amend the relevant legislation so that where doubts about the applicant's knowledge of language arise during the registration process, the regulatory body can request evidence of the European applicant's English language capability after they have recognised their qualification, but before admission onto the register.

European applicants would have the option (but would not be required) to supply evidence of their English language knowledge with their initial application for registration. If this is sufficient, then the applicant would be assessed for registration in the usual way.

If the applicant has not supplied evidence of their knowledge of the English language, or if the evidence does not sufficiently demonstrate an applicant's English language capability, the regulatory body would continue to consider the applicant's professional qualifications. If these are acceptable, the regulatory body would write a letter to the applicant recognising the qualifications as entitling the applicant to registration, subject to meeting the remaining registration requirements. As part of the remaining registration requirements the regulatory body would then be able to request further evidence in relation to an applicant's English language knowledge. The regulatory body will be required to set out in advance the criteria around what evidence would be appropriate in order to demonstrate an acceptable level of English language capability.

If evidence cannot be supplied, the applicant could be asked by the regulatory body to undergo an appropriate English language test. It is the decision of each regulatory body, as bodies independent of Government, to decide which language test(s) they will accept.

If the applicant supplies sufficient additional evidence or passes an appropriate test, the individual will then be assessed against the other registration requirements i.e. character, health and financial standing/indemnity. They will then be admitted onto the register, subject to having satisfied those other requirements. The applicant may be given more than one opportunity to pass a test but multiple failures would eventually lead to the individual's application for registration being rejected.

**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?**

Option	Total	Percent of All
Strongly Agree	48	72%
Agree	19	28%
Neither / Nor	0	0%
Strongly Disagree	0	0%
Disagree	0	0%
Not Answered	0	0%
<b>Total</b>	<b>67</b>	<b>100%</b>

All of the respondents who answered this question either agreed (72%) or strongly agreed (28%) with the proposals around registration and entry onto the Register in terms of knowledge of English language. Again, the vast majority of additional comments were supportive.

**A sample of comments made under question 2**

- The majority of comments under this section reiterated the importance of being able to communicate effectively to ensure safe patient care.
- There were a number of comments focussing on the need for the regulators to provide clear guidance on the types of evidence that would be accepted and for this guidance to be consistent across the regulators. These comments have been discussed in more detail in the Overview and key themes Chapter.
- The Royal College of Nursing (RCN) recognised that the constraints of European law mean that, in the case of the NMC, the regulator cannot refuse to recognise a general nurse's qualification if it meets the criteria set out in the MRPQ Directive. Therefore, the introduction of the two stage process set out in the consultation document will give the regulator the opportunity to require additional evidence of English language capability where there is cause for concern, before registering a professional.
- One respondent commented, specifically in relation to nursing, that the NMC's register of professionals was there to protect patients and one way that they do this is by ensuring that only suitable individuals are on the register. In addition it was highlighted that the proposals will also help to protect the reputation and standard of the profession.

## **FITNESS TO PRACTISE**

The Department's second overarching proposal is to add a new ground of impairment for fitness to practise proceedings of not having the necessary knowledge of English. As the consultation document set out, we propose to introduce this provision as we do not consider that the NMC, GDC, GPhC or PSNI currently have the power to take fitness to practise action where there are serious concerns or complaints that a registered professional working in the UK lacks the necessary knowledge of the English language to provide safe care to patients, but where this has not yet given rise to deficient performance in practice.

In addition, at present, the rules allowing the fitness to practise panels of the NMC, GDC, GPhC and PSNI to direct or commission assessments of professional performance do not clearly enable the panels to direct that a professional whose English language ability is in doubt, goes and sits a language test and report back the results during a fitness to practise investigation. The proposed new provisions around knowledge of English assessments will enable sufficient objective evidence around language deficiency to be obtained as efficiently as possible, to support the need to take action to prevent harm.

The new provisions around fitness to practise would apply to all professionals regulated by one of the above mentioned healthcare regulators regardless of nationality, place of qualification or whether they were required to provide evidence of their English language capability when they initially applied for registration.

**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?**

<b>Option</b>	<b>Total</b>	<b>Percent of All</b>
Strongly Agree	43	64%
Agree	20	30%
Neither / Nor	2	3%
Strongly Disagree	0	0%
Disagree	2	3%
Not Answered	0	0%
<b>Total</b>	<b>67</b>	<b>100%</b>

The vast majority of respondents who completed this question (94%) either agreed or strongly agreed with this proposal. A small number of respondents selected neither/nor, or disagreed.

### A sample of comments made under question 3

- The RCN commented that the NMC Code requires that, once registered, all nurses should be able to communicate clearly and effectively in the English language therefore they have argued that the introduction of a new fitness to practise category around language is not required or desirable.
- As set out in the overview of regulators responses (pages 8-11 of this report), the PSA, NMC and GDC are all of the view that the additional fitness to practise power is not needed, whilst the GPhC supports and has requested the additional power. As explained above, the Department does 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 the English language 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 taken in relation to doctors, and add this as an additional ground to enable the regulatory bodies to take pre-emptive action to prevent harm to patients. There is no evidence that this power would lead to vexatious complaints and we are of the view that without it regulatory bodies are not able to take the necessary action needed where language competence is a cause for concern but there is no deficient performance in practice.
- In its response, the PSA suggested a number of actions that the regulators should take in to account in order to mitigate the impact the proposals may have including, the regulators ensuring that their take care in communicating the English language requirements, provide clear guidance and training for staff and committees and monitor the impact of the new legislation. We think these suggestions are sensible.
- There were also a number of further comments around the type of evidence that will be required in fitness to practise complaints where there has been no deficient performance in practice. The responses state that it is important the provision is not excessively used and that employer action would be more appropriate. The NMC, GDC, GPhC and PSNI have all confirmed that they plan to consult on any changes to their rules and regulations and a duty has now been put on the regulators, where they did not already have one, to consult on any guidance they produce about English language evidence. Whilst the Department would not want to see the power used unnecessarily by the regulatory bodies, we are keen that where there may be a cause for concern about an individual's language capability, complaints are appropriately actioned.

## **CHANGES BEING MADE IN LEGISLATION**

Page 12 onwards of the consultation document sets out the content of the draft Order and details of the legislative changes.

**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?**

<b>Option</b>	<b>Total</b>	<b>Percent of All</b>
Yes	2	3%
No	64	96%
Not Answered	1	1%
<b>Total</b>	<b>67</b>	<b>100%</b>

### **A sample of comments made under question 4**

- The majority of respondents (96%) did not think that current legislation was sufficient to ensure that healthcare professionals have the necessary knowledge of the English language.
- One respondent commented that currently the legislation does not allow for language controls to be carried out in relation to all overseas healthcare professions. Currently the healthcare regulators are only able to carry out language tests on international applicants not those from within the EU due to the application of EU law. In addition, most of the current legislation specifically sets out restrictions around the use of language controls on EEA applicants which is why it is necessary for the Department to make changes in legislation.

**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?**

<b>Option</b>	<b>Total</b>	<b>Percent of All</b>
Strongly Agree	29	43%
Agree	26	39%
Neither / Nor	8	12%
Strongly Disagree	0	0%

Disagree	2	3%
Not Answered	0	0%
<b>Total</b>	<b>67</b>	<b>97%</b>

82% of respondents either agreed or strongly agreed that the proposed changes to the relevant legislation will strengthen the knowledge of the English language of the professionals concerned.

### **A sample of comments made under question 5**

- The Royal College of Anaesthetists commented that they have some concerns that there might be loopholes in the new legislation that would still allow healthcare workers to work in the UK with insufficient knowledge of the English language, and that better defined standards and tests need to be agreed and adopted by all the regulators. However, they did not elaborate on where these loopholes might be. A number of amendments have been made to the draft Order in light of some of the responses we have received. The Department is content that following these changes to the draft legislation, no regulatory gaps will exist in this regard, upon introduction of these proposed measures
- 15% of respondents answered neither/nor, or disagreed, with this question. One respondent commented that whilst it is important that language can be checked at registration by the regulatory bodies, employers still have a role in relation to induction and development of staff. The Department agrees that employers still have a responsibility to ensure that the professionals that they employ have the necessary skills, including language capability, to do the job well.
- A number of respondents, including the NMC, highlighted that it isn't clear whether the amendments to the legislation will improve the English language skills of healthcare professionals, but noted that it will ensure that European applicants will be able to demonstrate that they have the necessary knowledge of English to practise in the UK. The Department believes that the proposals will improve the language skills of the workforce overall in the long term as those who are unable to demonstrate an adequate knowledge of English will be unable to practise, and in order to do so will need to improve their skills.

**Q6. Do you think that there is an alternative to these proposals that does not require a change to legislation?**

Option	Total	Percent of All
Yes	2	3%
No	65	97%
Not Answered	0	0%
<b>Total</b>	<b>67</b>	<b>100%</b>

The vast majority of respondents (97%) did not think that there was an alternative to the proposals that does not require a change to legislation.

**A sample of comments made under question 6**

- The PSA answered yes in response to this question and commented that they do not believe that the current legislation is inadequate for the purpose of addressing language issues in fitness to practise. The Department does not agree and we have set out our reasons why within our response under question 3.

**COSTS AND BENEFITS**

During the development of our proposals we looked at the potential costs and benefits and the impact they might have. We believe that overall the changes will have a relatively small monetary impact. The costs are likely to fall to either the regulatory bodies covered by these amendments, in terms of additional administration, or the individual EEA applicant, in terms of the cost of any language tests.

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

Option	Total	Percent of All
Yes	23	34%
No	44	66%
Not Answered	0	0%
<b>Total</b>	<b>67</b>	<b>100%</b>

66% of respondents did not have views or evidence as to the likely effect on costs or the administrative burden of the changes while 34% answered yes, that the costs or burdens would increase.

### A sample of comments made under question 7

- A number of consultation responses highlighted concerns that the proposals could lead to an increase in the annual fee for UK registrants. Each of the regulatory bodies, in consultation with the public, are responsible for setting the annual retention fees for the professions they regulate and these are designed to cover the costs of regulation. The Department does not have a role in the setting of the fees.
- 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 regulators concerned and the cost of taking an English language test to an individual health professional covered by this Order.
- Other comments focused on the possibility of reducing litigation cases where things have gone wrong as a result of a lack of English language competence. But also the possibility of an increase in complaints from healthcare professionals who are asked to provide further evidence of their English language capability.
- In its response, the RCN have stated that it would expect the NMC to carry out an impact assessment around any additional costs and who would be expected to cover them. All of the regulatory bodies concerned would be expected to analyse the potential impact of any changes they make to their rules and regulations regarding the introduction of language controls.

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

Option	Total	Percent of All
Yes	16	24%
No	51	76%
Not Answered	0	0%
<b>Total</b>	<b>67</b>	<b>100%</b>

76% of respondents did not think there were any other benefits other than those already discussed in the consultation document.



### A sample of comments under question 8

- Of those respondents that thought there were additional benefits that had not already been mentioned comments included: a potential reduction in complaints by patients and better patient experience; and possible reductions in the cost of litigation.
- The PSA have highlighted that the changes in relation to registration may address the problem of non-European qualified professionals entering the European mutual recognition system via a country with less stringent requirements than those of the other countries, so that they may be eligible to practise in those other countries without having to comply with these stricter requirements.

**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?**

Option	Total	Percent of All
Yes	22	33%
No	45	67%
Not Answered	0	0%
<b>Total</b>	<b>67</b>	<b>100%</b>

While 67% of respondents answered no when asked if they had any evidence of harm caused due the language proficiency of a nurse, midwife, dentist, dental care professional, pharmacist or pharmacy technician, 33% answered yes.

### A sample of comments made under question 9

- Comments relating to evidence of harm tended to be anecdotal. However, these were still concerning. They included examples where distress has been caused to patients and misunderstandings have taken place between professionals.
- One Royal College (Faculty of Dental Surgery at the Royal College of Surgeons) noted that they had anecdotal evidence of referrals into secondary care for either second opinions or treatment that are directly related to poor English language communications by dental practitioners.
- The PSA also mention that through their Section 29 scrutiny (footnote?) of final fitness to practise decisions they know that a number of cases have involved allegations relating to English language proficiency.

## **EQUALITY ANALYSIS**

As mentioned in the consultation document, the Department of Health, the Scottish Government, the Welsh Government and the NMC, GDC and GPhC are 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.

The Department is aware that the proposal to enable the NMC, GDC and GPhC to require evidence of knowledge of the 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?**

<b>Option</b>	<b>Total</b>	<b>Percent of All</b>
Yes	63	94%
No	4	6%
Not Answered	0	0%
<b>Total</b>	<b>67</b>	<b>100%</b>

The majority (94%) of respondents agreed that these proposals will address the current disparity between the existing controls of the NMC, GDC, GPhC and PSNI in terms of language competence of European healthcare professionals and those from outside the EEA.

## A sample of comments made under question 10

- The majority of comments reiterated that the proposals would address the disparity between European healthcare professionals and those from outside the EEA in terms of language controls. This was welcomed as it would provide more consistency of approach and would bring improvements to patient safety. The Department agrees and believes that this will also increase patient confidence in the healthcare system if the healthcare professional that is treating them, regardless of which country they are from, has the necessary knowledge of the English language to work in the UK.
- A number of respondents commented that the disparity would only be totally addressed if there was a standard approach taken to language testing and set standards across the professions. Whilst we agree that the disparity needs to be addressed we need to adhere to the constraints of the system in which we are working in relation to language controls, which means that systematic testing cannot be introduced across the board. Having a set of standards in terms of language testing is discussed in more detail in the Overview and key themes Chapter.

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

Option	Total	Percent of All
Yes	12	18%
No	55	82%
Not Answered	0	0%
<b>Total</b>	<b>67</b>	<b>100%</b>

The majority (82%) 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.

## A sample of comments made under question 11

- One respondent commented that if the cost of the English language test was passed on to the applicant or be too high then this could reduce the number of healthcare workers wanting to work in the UK.
- The PSA has advised that it has equality concerns around the new fitness to practise impairment criteria relating to knowledge of English language. These concerns have been discussed further under question 3.
- The NMC confirmed in their response that they do not have any evidence that the new legislation will affect other groups.

- The Royal Pharmaceutical Society commented that Welsh has equal legal status to English in Wales. The MRPQ Directive states that Member States are only able to introduce language controls in relation to one language per Member State therefore English is the most appropriate for the UK.
- The British Dental Association commented that we need to consider how a disability would be treated under the new requirements. Whilst we fully agree that it is important that this is properly considered we think it should be noted that the regulators, when determining an individual's fitness to practise currently take into account a number of factors when deciding whether an individual should be registered, including the impact of a health condition. This process will not change upon the introduction of these measures.
- The Law Society in Scotland raised the following concerns on the proposals:-
 

*“We are concerned that the proposals may give rise to issues of direct race discrimination, which cannot be legitimised through the principle of proportionality. If the proposed tests are to be applied to healthcare workers from abroad, whose appearance would suggest ‘non UK national’ or on race, then our concern is that these tests would be based on stereotypical assumptions of the language skills of these groups. We believe that it may be the case that UK nationals themselves may lack the necessary language skills, be less articulate or have lower literacy skills than those who come from abroad, and yet there appears to be no concern regarding this group.*

*We note that the proposals suggest that those who hold a qualification from a UK institution may be ‘passported’ through any language skills test. However, we suggest that such UK institutions may not necessarily be concerned with language and literacy skills, and completing a course of study within the UK does not necessarily demonstrate a proficient use of the English language necessary for the healthcare role in question.”*
- The Department does not agree with the analysis that the proposals are directly discriminatory. We are satisfied that the proposals would not give rise to conditions which could lead to any individual group sharing a protected characteristic or both the characteristics being unlawfully discriminated against, or suffering any other conduct prohibited by the Equality Act. UK nationals would still have to demonstrate that they have the necessary knowledge of English, and it is for the regulatory bodies concerned to consider whether a UK qualification is sufficient evidence of language competence to practise in the UK. UK nationals who have qualified abroad would be subject to the same controls as other overseas applicants.

The Department has carefully considered all of the responses which made reference to equality issues in its own equality analysis.

# Conclusion

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

The consultation asked for views on our proposals to strengthen the NMC, GDC, GPhC and PSNI's powers around language controls for nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians. The consultation responses we received have reconfirmed our belief around the importance of English language skills in ensuring a successful patient pathway including building trust between the patient and the practitioner.

The Department's view is that the proposed changes to legislation will be an effective way of allowing the NMC, GDC, GPhC and PSNI to ensure the language competence of European applicants whilst still remaining within the confines of European law.

We therefore plan to proceed, subject to parliamentary approval, to ensure that the NMC, GDC, GPhC and PSNI are able to amend their rules and regulations in order to introduce language controls as soon as possible.

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. Therefore, at the next available legislative opportunity we plan, subject to Parliamentary approval, to give similar powers to the Health and Care Professions Council (HCPC), the General Optical Council (GOC), the General Osteopathic Council (GOsC) and the General Chiropractic Council (GCC).