Draft Order in Council laid before Parliament under section 62(9) of the Health Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

HEALTH CARE AND ASSOCIATED PROFESSIONS

DOCTORS

The Medical Act 1983 (Amendment) (Knowledge of English) Order 2014

Made - - - -

Coming into force in accordance with article 1(1)

At the Court at Buckingham Palace, the day of

Present,

The Queen's Most Excellent Majesty in Council

This Order in Council is made in exercise of the powers conferred by sections 60 and 62(4) of, and Schedule 3 to, the Health Act 1999(**1**).

The Secretary of State published a draft Order and invited representations as required by paragraph 9(1) of Schedule 3 to that Act.

The period of three months mentioned in paragraph 9(2) of that Schedule expired before a draft of this Order in Council was laid before Parliament.

A draft of this Order in Council has been approved by resolution of each House of Parliament in accordance with section 62(9) of that Act.

(**1**) 1999 c. 8; Section 60 was amended by paragraph 16 of Schedule 5 to the Nursing and Midwifery Order (2001) (S.I. 2002/253); section 26(9) of the National Health Service Act 2002 (c. 17); paragraph 1 of Schedule 8 to the Health and Social Care Act 2008 (c. 14); sections 209, 210 and 213 of, and paragraphs 60 and 72 to, Schedule 15 of the Health and Social Care Act 2012 (c. 7); paragraph 7 of Schedule 4 to the Pharmacy Order 2010 (S.I. 2010/231); paragraph 43 of schedule 34 to the Human Medicines Regulations 2012 (S.I. 2012/1916). Section 62 was amended by paragraph 1 of Schedule 4 to the National Health Service (Consequential Provisions) Act 2006 (c. 43); and paragraph 2 of Schedule 8 to the Health and Social Care Act 2008. Section 62(4) was substituted by section 62(4) and (4A) by paragraph 11 of Schedule 10 to the Health and Social Care Act 2008. Schedule 3 was amended by section 26(10) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17); paragraph 8(b) of Schedule 4 to the Health and Social Work Professions Order 2002 (S.I. 2002/254); paragraph 67 of Schedule 11, and paragraph 1 of Schedule 14, to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43); paragraphs 4 to 9 of Schedule 8, and paragraph 1 of Schedule 15, to the Health and Social Care Act 2008; section 211 of, and paragraphs 61 and 72 of Schedule 15 to, the Health and Social Care Act 2012.

Accordingly, Her Majesty is pleased, by and with the advice of Her Privy Council, to make the following Order in Council:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Medical Act 1983 (Amendment) (Knowledge of English) Order 2014 and shall come into force on the day after the day on which this Order is made.

(2) In this Order, "the Act" means the Medical Act 1983(**2**).

PART 1

Registration

Amendment to section 2 of the Act

2.—(1) Section 2 of the Act (registration of medical practitioners)(**3**) is amended in accordance with this article.

(2) After subsection (3) insert—

"(4) Section 35C(2)(da) (the necessary knowledge of English) shall not apply in determining whether a person's fitness to practise is impaired for the purposes of registration under this Act.".

PART 2

Licence to Practise

Amendments to section 29B of the Act

3.—(1) Section 29B of the Act (grant, refusal and withdrawal of licence)(**4**) is amended in accordance with this article.

(2) In subsection (1) after 'shall' insert 'subject to subsection (1A),'.

(3) After subsection (1) insert—

"(1A) Regulations under section 29A may include provision for a licensing authority to refuse to grant a licence to practise for a medical practitioner in any case where the person has not demonstrated the necessary knowledge of English to the authority (notwithstanding the medical practitioner's registration under Part 2 or 3).

(1B) Regulations under section 29A which include provision under subsection (1A) must also include provision requiring the licensing authority, when determining whether a medical practitioner has demonstrated the necessary knowledge of English, to have regard to guidance published under section 29G(2A).".

(**2**) 1983 c. 54.
(**3**) Section 2 has been amended by S.I. 2002/3135 (commencement as notified in the London Gazette dated July 1, 2003); S.I. 2006/1914 (commencement as notified in the London Gazette dated July 19, 2006 and July 20, 2007); S.I. 2007/3101 and S.I. 2008/1774.
(**4**) Section 29B was added by S.I. 2002/3135 (commencement as notified in the London Gazette dated August 21, 2009), and amended by S.I. 2006/1914; and S.I. 2008/3131 (date to be appointed); there are other amending instruments but none are relevant.

(4) After subsection (2C) insert—

"(2D) Regulations under section 29A may include provision requiring a licensing authority to take account, in particular, of such evidence as a medical practitioner provides of his knowledge of English.".

Amendments to section 29G of the Act

4.—(1) Section 29G of the Act (guidance)(**5**) is amended in accordance with this article.

(2) After subsection (2) insert—

"(2A) The General Council must publish guidance relating to the evidence, information or documents to be provided for the purposes of demonstrating that a medical practitioner has the necessary knowledge of English.".

Amendments to section 29J of the Act

5.—(1) Section 29J of the Act (miscellaneous)(**6**) is amended in accordance with this article.

(2) After subsection (2D) insert—

"(2E) Regulations under section 29A may make provision in connection with determining whether a medical practitioner has demonstrated the necessary knowledge of English; and the regulations may in particular—

(a) provide for the licensing authority to require a person to undertake an assessment to demonstrate whether the person has the necessary knowledge of English;

(b) require a person to provide any evidence, information or document which the licensing authority may reasonably request for the purpose of demonstrating whether the person has the necessary knowledge of English but the regulations may not require, or enable the licensing authority to request, evidence or information demonstrating that the practitioner's knowledge of English exceeds the necessary knowledge of English;

(c) provide for the powers of the licensing authority in section 29E(1)(a) and (b) to be exercisable in relation to a person in connection with any refusal or failure by the person to provide the licensing authority with such information;

(d) make provision equivalent to section 29E(5) to (9) as to the disclosure of such information to the licensing authority (with appropriate modifications).".

PART 3

Fitness to Practise

Amendment to section 35C of the Act

6.—(1) Section 35C of the Act (functions of the investigation committee)(**7**) is amended in accordance with this article.

(**5**) Section 29G was added by S.I. 2002/3135 (commencement as notified in the London Gazette on August 21, 2009), and amended by S.I. 2008/3131 and S.I. 2010/234.

(**6**) Section 29J was added by S.I. 2002/3135 (commencement as notified in the London Gazette on August 21, 2009, and December 3, 2012), and amended by S.I. 2008/3131 as commenced by S.I. 2009/2200.

(**7**) Section 35C was added by S.I. 2002/3135 (commencement as notified in the London Gazette dated October 8, 2004), and amended by S.I. 2006/1914 (commencement as notified in the London Gazette on July 20, 2007) and S.I. 2008/3131. Section 35C, 35D, 35E and Schedule 4 were amended by sections 98-110 of, and Schedule 6 and 7 to, the Health and Social Care Act

(2) After subsection (2)(d) insert—

"(da) not having the necessary knowledge of English (but see section 2(4));".

Amendment to section 35D of the Act

7.—(1) Section 35D (functions of a fitness to practise panel)(**8**) is amended in accordance with this article.

(2) In subsection (2)(a) after "except in a health case" insert "or language case".

(3) In subsection (5)(b) after "except in a health case" insert "or language case".

(4) In subsection (6) after "In a health case" insert "or language case".

(5) In subsection (10)(a) after "except in a health case" insert "or language case".

(6) In subsection (12)(a) after "except in a health case" insert "or language case".

Amendment to section 35E of the Act

8.—(1) Section 35E (provisions supplementary to section 35D)(**9**) is amended in accordance with this article.

(2) At the end of paragraph (b) of subsection (4) insert "other than paragraph (da)".

(3) After subsection (4) insert—

"(5) In section 35D, "language case" means any case in which a Fitness to Practise Panel has determined that—

(a) a person's fitness to practise is impaired by reason of a matter falling within paragraph (da) of subsection (2) of section 35C, but

(b) that person's fitness to practise is not impaired by any matter falling within any other paragraph of that subsection other than paragraph (d).".

Amendment to Schedule 4 to the Act

9.—(1) Schedule 4 to the Act (proceedings before the investigation committee, interim orders panels and fitness to practise panels)(**10**) is amended in accordance with this article.

(2) After paragraph 5A(9) (professional performance assessments) insert—

"(10) In this paragraph a reference to the standard of a registered person's professional performance includes the standard of the person's knowledge of English and, in particular, whether the person has the necessary knowledge of English.

(11) But an assessment carried out by virtue of this paragraph must not be limited to an assessment of whether a person has the necessary knowledge of English.

(12) Where an assessment is required to be undertaken by virtue of paragraph 5C below, that assessment shall not be carried out by an Assessment Team.".

(3) After paragraph 5B insert—

2008 (c. 14) but these amendments were not commenced and have now been repealed by section 231 of the Health and Social Care Act 2012 (c. 7) as commenced by S.I. 2012/1319. There are other amending instruments but none are relevant.

(**8**) Section 35D was added by S.I. 2002/3135 (commencement as notified in the London Gazette dated October 8, 2004).

(**9**) Section 35E was added by S.I. 2002/3135 (commencement as notified in the London Gazette dated October 8, 2004), as amended by S.I. 2006/1914 (commencement notified in the London Gazette dated September 8, 2006).

(**10**) Schedule 4 was substituted by S.I. 2002/3131 (commencement as notified in the London Gazette dated July 2, 2004), subject to savings provisions specified in S.I. 2004/1731 and S.I. 2004/2610; and was amended by Schedule 7 to, the Health and Social Care Act 2008 (c. 14) but these amendments were not commenced and have now been repealed by section 231 of the Health and Social Care Act 2012 (c. 7) as commenced by S.I. 2012/1319.