

This draft Statutory Instrument supercedes in part the draft of the Health Care and Associated Professions (Knowledge of English) Order 2015 which was laid before Parliament on 3rd February 2015 and the Scottish Parliament on 4th February 2015 and published with the number ISBN 9780111128558. It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Draft Order in Council laid before Parliament and the Scottish Parliament under section 62(10) of the Health Act 1999, for approval by resolution of each House of Parliament and the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.0000

HEALTH CARE AND ASSOCIATED PROFESSIONS

The Health Care and Associated Professions (Knowledge of English) Order 2015

Made - - - - *****

Coming into force in accordance with article 1(2) to (4)

At the Court at Buckingham Palace, the xx day of xx 2015

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) and (4A) of, and Schedule 3 to, the Health Act 1999(a).

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

The period of three months mentioned in paragraph 9(4) of that Schedule expired before a draft of this Order in Council, together with a report about the consultation, was laid before Parliament and the Scottish Parliament.

(a) 1999 c. 8. Section 60 has been amended by: the National Health Service Reform and Health Care Professions Act 2002 (c. 17) ("the 2002 Act"), section 26(9); the Health and Social Care Act 2008 (c. 14) ("the 2008 Act"), Schedule 8, paragraph 1, and Schedule 10, paragraph 10; the Health and Social Care Act 2012 (c. 7) ("the 2012 Act") sections 209, 210 and 213 and Schedule 15, Part 3 paragraphs 60 and 72, S.I. 2002/253, 2002/254, 2010/231 and 2012/1916. Section 62 has been amended by: the National Health Service (Consequential Provisions) Act 2006 (c. 43), Schedule 1, paragraphs 194 and 197, and Schedule 4, paragraph 1; and the 2008 Act, Schedule 8, paragraph 2, and Schedule 10, paragraph 11. Schedule 3 has been amended by: the 2002 Act, section 26(10); the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), Schedule 11, paragraph 67, and Schedule 14, Part 4; the Health Act 2006 (c. 28), section 33 and Schedule 9; the 2008 Act, Schedule 8, paragraphs 3 to 10; the 2012 Act, section 211 and Schedule 15, Part 3, paragraph 61 and Part 4, paragraph 72(4) and S.I. 2002/254.

A draft of this Order in Council has been approved by resolution of each House of Parliament and the Scottish Parliament, in accordance with section 62(10) of that Act.

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

PART 1

General

Citation, commencement and extent

1.—(1) This Order may be cited as the Health Care and Associated Professions (Knowledge of English) Order 2015.

(2) This Part comes into force on the day after the day on which this Order is made.

(3) Except as provided for in paragraph (2), this Order comes into force on such days as the Privy Council may by order appoint.

(4) Different days may be appointed under paragraph (3) for different purposes.

(5) Where this Order amends other legislation, those amendments have the same extent as the legislation being amended.

Transitional, transitory and saving provisions

2.—(1) In connection with the commencement of any provision of this Order, the Privy Council may by order make such transitional, transitory or saving provisions as it considers appropriate.

(2) The power to make an order under paragraph (1) may be exercised—

(a) so as to make different provision—

(i) with respect to different cases or different classes of cases, or

(ii) in respect of the same case or class of case for different purposes;

(b) in relation to all cases to which the power extends or in relation to those cases subject to specified exceptions; or

(c) so as to make any supplementary, incidental or consequential provisions which the Privy Council considers necessary or expedient.

Privy Council procedures and legislative procedures

3.—(1) Any power vested in the Privy Council to make an order under this Part may be exercised by any two or more members of the Privy Council.

(2) Any power of the Privy Council to make an order under this Part is exercisable by statutory instrument, and for the purposes of section 1 of the Statutory Instruments Act 1946(a) (definition of “Statutory Instrument”), any power of the Privy Council to make an order under this Part is to be taken to be conferred by an Act of Parliament.

(3) An order made (wholly or partly) under article 1 is subject to annulment by resolution of either House of Parliament.

(4) Before making an order under article 1(3) that brings into force measures relating to the regulation of health care professionals, the Privy Council must, in so far as those measures apply

(a) 1946 c. 36. Section 1(1A) was inserted by the Government of Wales Act 1998 (c. 38), Schedule 12, paragraph 2, and substituted by the Government of Wales Act 2006 (c. 32), Schedule 10, paragraph 2.

in Northern Ireland, obtain the agreement of the Department for Health, Social Services and Public Safety to the making of the order.

(5) Before making an order under this Part that brings into force measures relating to the regulation of dental care professionals or pharmacy technicians, the Privy Council must, in so far as those measures apply in Scotland, consult the Scottish Ministers.

(6) Any act of the Privy Council under this Part is sufficiently signified by an instrument signed by the Clerk of the Privy Council.

(7) Where an order of the Privy Council under this Part is signified by an instrument purporting to be signed by the Clerk of the Privy Council, that is evidence and in Scotland sufficient evidence of—

- (a) the fact that the order was duly made; and
- (b) the order's terms.

PART 2

The Pharmacy (Northern Ireland) Order 1976

4. The Pharmacy (Northern Ireland) Order 1976(a) is amended in accordance with articles 5 to 10.

Interpretation: “the necessary knowledge of English”

5. In article 2(2) (interpretation)(b), insert in the appropriate place—

““the necessary knowledge of English”, in relation to a person registered, or desirous of being registered, in the register of pharmaceutical chemists, means a knowledge of English which is necessary for the safe and effective practice as a pharmaceutical chemist in Northern Ireland;”.

Regulations

6.—(1) Article 5 (Regulations made by the Council: general) is amended as follows.

(2) In paragraph (1)(bb)(c), after “mental health”, insert “, the necessary knowledge of English”.

(3) After paragraph (1A)(d), insert—

“(1B) Regulations made by the Council under this Article must provide for a person desirous of being registered as a pharmaceutical chemist under this Order to satisfy the registrar that the person has the necessary knowledge of English.”.

Qualifications for registration as a pharmaceutical chemist in Northern Ireland

7. In article 8(2A) (qualifications for registration)(e), after “mental health” insert “, the necessary knowledge of English”.

Necessary knowledge of English: applicants for registration in the register of pharmaceutical chemists

8. After article 8A (registration by virtue of appropriate European diploma)(f) insert—

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- (a) S.I. 1976/1213 (N.I. 22).
 - (b) Amendments have been made to article 2(1) which are not relevant to this Order.
 - (c) Paragraph (1)(bb) of article 5 was inserted by S.I. 1994/429 (N.I. 2).
 - (d) Paragraph (1A) of article 5 was inserted by S.R. 2008/192.
 - (e) Paragraph (2A) was inserted by S.I. 1994/429 (N.I. 2).
 - (f) Article 8A was inserted by S.R. 1987/457.

“Supplementary provisions as to the necessary knowledge of English

8AA.—(1) The Society must publish guidance about—

- (a) the evidence, information or documents to be provided by an applicant for the purpose of satisfying the registrar under regulations made under Article 5(1) by virtue of Article 5(1B) that the applicant has the necessary knowledge of English; and
- (b) the process by which the registrar is to determine whether the registrar is satisfied as mentioned in sub-paragraph (a).

(2) The registrar must have regard to the guidance published under paragraph (1) in determining whether the registrar is satisfied as mentioned in paragraph (1)(a).

(3) Paragraphs (4) and (6) apply if, having considered any evidence, information or documents provided by the applicant in support of the applicant’s application, the registrar is not satisfied under Article 5(1B) that the applicant has the necessary knowledge of English.

(4) The registrar may request the applicant to provide further evidence, information or documents within such period as the registrar may specify.

(5) The registrar may not exercise any power under paragraph (4) unless the registrar has complied with any duty under Article 11ZA(2).

(6) The registrar may require the applicant—

- (a) to undergo an examination or other assessment; and
- (b) to provide information in respect of that examination or assessment,

within such period as the registrar may specify.

(7) In the case of an applicant who is an exempt person, the registrar may not exercise the power under paragraph (6) without having first—

- (a) exercised the power under paragraph (4); and
- (b) considered any further evidence, information or documents provided by the applicant.

(8) Guidance published under paragraph (1) may make different provision in relation to different cases or classes of case.

(9) Before issuing such guidance or varying or withdrawing it, the Society must consult such persons, or representatives of such persons, as it considers appropriate including, as it sees fit—

- (a) registered pharmaceutical chemists;
- (b) employers of registered pharmaceutical chemists;
- (c) users of services of registered pharmaceutical chemists; and
- (d) the Regional Health and Social Care Board.

(10) In this article, references to an applicant are to a person desirous of being registered as a pharmaceutical chemist under this Order.”.

Recognition of qualification of exempt persons

9. After article 11 (evidence of qualification to be registered)(a) insert—

“Recognition of qualification of exempt persons

11ZA.—(1) Paragraph (2) applies in relation to a person applying for registration as a pharmaceutical chemist under this Order (“A”) if—

(a) Article 11 has been amended by S.R. 2008/192 and S.R. 2012/308.

- (a) A has paid the prescribed fee for registration; and
- (b) the registrar is satisfied that A falls within Article 8(2)(c); but
- (c) the registrar decides to make a request under Article 8AA(4).

(2) The registrar must notify A that the registrar recognises that A, by virtue of falling within Article 8(2)(c), is entitled to be registered in the register of pharmaceutical chemists, subject to meeting any other requirements for registration.”.

Fitness to practise of pharmaceutical chemists in Northern Ireland

10.—(1) Schedule 3 (fitness to practise)(a) is amended as follows.

(2) After paragraph 4(1)(c) (impairment of fitness to practise) insert—

“(ca) the person not having the necessary knowledge of English;”.

(3) After paragraph 15(3)(i) (regulations in respect of proceedings), insert—

“(ia) enabling the Scrutiny Committee or the Statutory Committee during the course of proceedings, to direct the person concerned to undertake an examination or other assessment of the person’s knowledge of English;”.

PART 3

Dentists Act 1984

11. The Dentists Act 1984(b) is amended in accordance with articles 12 to 31.

Qualification for registration in the dentists register

12.—(1) Section 15 (qualification for registration in the dentists register)(c) is amended as follows.

(2) In subsection (3), after paragraph (b) insert—

“(ba) that he has the necessary knowledge of English;”.

(3) In subsection (4), for paragraph (d) substitute—

“(d) that he has the necessary knowledge of English; and”.

(4) Omit subsection (5).

Necessary knowledge of English: applicants for registration in dentists register

13. After section 15 insert—

“Supplementary provisions as to the necessary knowledge of English

15A.—(1) The Council must publish guidance about—

- (a) the evidence, information or documents to be provided by an applicant for the purpose of satisfying the registrar under section 15(3)(ba) or (4)(d) that the applicant has the necessary knowledge of English; and
- (b) the process by which the registrar is to determine whether the registrar is satisfied as mentioned in paragraph (a).

(2) The registrar must have regard to the guidance published under subsection (1) in determining whether the registrar is satisfied as mentioned in subsection (1)(a).

(a) Schedule 3 was substituted by S.R. 2012/308.

(b) 1984 c. 24.

(c) Section 15 has been amended by S.I. 1996/1496, 1998/811 and 2007/3101.

(3) Subsections (4) and (6) apply if, having considered any evidence, information or documents provided by the applicant in support of the applicant's application, the registrar is not satisfied under section 15(3)(ba) or (4)(d) that the applicant has the necessary knowledge of English.

(4) The registrar may request the applicant to provide further evidence, information or documents within such period as the registrar may specify.

(5) The registrar may not exercise any power under subsection (4) unless the registrar has complied with any duty under section 21A(2B).

(6) The registrar may require the applicant—

- (a) to undergo an examination or other assessment; and
- (b) to provide information in respect of that examination or assessment,

within such period as the registrar may specify.

(7) In the case of an applicant who is an exempt person, the registrar may not exercise the power under subsection (6) without having first—

- (a) exercised the power under subsection (4); and
- (b) considered any further evidence, information or documents provided by the applicant.

(8) Guidance published under subsection (1) may make different provision in relation to different cases or classes of case.

(9) The Council must keep guidance published under subsection (1) under review and may vary or withdraw it whenever they consider it appropriate to do so.

(10) If the Council vary any guidance published under subsection (1) they must publish the guidance as varied.

(11) Before publishing any guidance under subsection (1), or varying or withdrawing it, the Council must consult the persons and bodies mentioned in section 26B(5)(a) to (c).

(12) The Council may charge such fee as they consider reasonable for the provision of a copy of the guidance published under subsection (1) to any person.

(13) In this section—

- (a) references to an applicant are references to a person applying for registration in the dentists register, and
- (b) references to guidance published under subsection (1) include references to guidance published by virtue of subsection (10)."

Temporary registration in dentists register

14.—(1) Section 17 (temporary registration)(a) is amended as follows.

(2) In subsection (2), for paragraph (d) substitute—

“(d) that he has the necessary knowledge of English; and”.

(3) Omit subsection (3).

(4) After subsection (3A) insert—

“(3B) Section 15A (except subsection (5)) applies in relation to a person applying for registration under this section as if references to section 15(3)(ba) or (4)(d) were references to subsection (2)(d) of this section.”.

(a) Section 17 has been amended by 1998/811, 2003/3148 and 2007/3101.

Power to charge fees in connection with applications for registration in dentists register

15. In section 19(1) (regulations with respect to the register)(a)—

- (a) in paragraph (a), after “in the register” insert “or otherwise in connection with an application for registration”; and
- (b) in paragraph (d), for “in or restore to the register any entry” substitute “any entry in the register or take any other action in connection with an application for registration or restore any entry to the register”.

Notification of results of application for registration in dentists register

16.—(1) Section 21A (notification of results of application)(b) is amended as follows.

(2) After subsection (2) insert—

“(2A) Subsection (2B) applies if the registrar—

- (a) is satisfied that A falls within section 15(1)(b) or (ba); but
- (b) decides to make a request under section 15A(4).

(2B) The registrar must notify A that the registrar recognises that A, by virtue of falling within section 15(1)(b) or (ba) as the case may be, is entitled to be registered in the register, subject to meeting any other requirements for registration.”.

(3) After subsection (3) insert—

“(3A) In calculating any period of time for the purposes of subsection (3), the following are to be disregarded—

- (a) any period which begins on the date on which the registrar makes a request under section 15A(4) and ends on the date on which A complies with the request; or
- (b) any period which begins on the date on which the registrar requires A to undergo an examination or other assessment under section 15A(6)(a) and ends on the date on which A complies with the requirement under section 15A(6)(b).”.

(4) At the end insert—

“(5) A document which is requested or required under section 15A(4) or (6)(b) is not to be treated as missing for the purposes of this section.”.

Allegations against a registered dentist

17. In section 27 (allegations)(c), after subsection (2)(b) insert—

“(ba) the person not having the necessary knowledge of English;”.

The Investigating Committee: allegations against a registered dentist

18.—(1) Section 27A (the Investigating Committee)(d) is amended as follows.

(2) In subsection (4)(a)(i), after “performance)” insert “or section 27(2)(ba) (not having the necessary knowledge of English)”.

(3) In subsection (5), after paragraph (a) insert—

“(aa) an allegation based on the ground mentioned in section 27(2)(ba) and an allegation or allegations based on any other grounds mentioned in section 27(2);”.

(a) Section 19 has been previously amended by S.I. 2001/3926, 2005/2011 and 2007/3101.

(b) Section 21A was originally inserted by S.I. 1998/811 and substituted by S.I. 2007/3101.

(c) Section 27 was substituted by S.I. 2005/2011 and has been previously amended by the Health and Social Care Act 2008 (c. 14), section 127 and Schedule 10, paragraph 7, the Policing and Crime Act 2009 (c. 26), section 81(5) and S.I. 2009/1182.

(d) Section 27A was inserted S.I. 2005/2011.

Assessment of necessary knowledge of English

19. After section 27B(a) insert—

“Assessment of necessary knowledge of English

27BA.—(1) Subsection (2) applies where the Investigating Committee or a Practice Committee are considering an allegation under section 27.

(2) The Investigating Committee or Practice Committee (as the case may be) may direct the person against whom the allegation was made to undergo an examination or other assessment of whether the person has the necessary knowledge of English.

(3) Subsection (4) applies where the Professional Conduct Committee are determining an application referred to them under section 24(5).

(4) The Professional Conduct Committee may direct the person who made the application to undergo an examination or other assessment of whether the person has the necessary knowledge of English.

(5) A person of a description specified by rules may, in the circumstances specified by the rules, direct a person against whom an allegation under section 27 was made to undergo an examination or other assessment of whether the person has the necessary knowledge of English.

(6) An examination or other assessment under subsection (2) or (4), or by virtue of rules under subsection (5), must be made in accordance with rules.

(7) The rules must, in particular, provide for—

- (a) the procedures to be followed when directing a person to undergo an examination or other assessment;
- (b) the person undergoing an examination or other assessment to provide information in respect of the examination or assessment to such persons as may be prescribed by the rules;
- (c) for the information provided by virtue of paragraph (b) to be disclosed to such persons as may be prescribed by the rules.

(8) A Practice Committee may draw such inferences as seem appropriate to them if a person fails—

- (a) to undergo an examination or other assessment as directed under subsection (2) or (4) or by virtue of rules under subsection (5); or
- (b) to provide the information required by virtue of rules made under subsection (7)(b).”.

Qualifications for registration in the dental care professionals register

20.—(1) Section 36C (qualifications for registration in the dental care professionals register)(b) is amended as follows.

(2) In subsection (4)—

- (a) insert “and” at the end of paragraph (a); and
- (b) omit paragraph (c) and the “and” immediately preceding it.

(3) After subsection (6)(a) insert—

“(aa) that he has the necessary knowledge of English;”.

(4) After subsection (6) insert—

“(6A) Subsection (6B) applies if the registrar—

(a) Section 27B was inserted by S.I. 2005/2011.

(b) Section 36C was inserted by S.I. 2005/2011 and has been previously amended by S.I. 2006/1718 and 2007/3101.

- (a) is satisfied of matter B in relation to the applicant; but
- (b) decides to make a request under section 36CA(4).

(6B) The registrar must notify the applicant that the registrar recognises that the applicant, by virtue of satisfying the registrar of matter B, is entitled to be registered under a particular title in the dental care professionals register, subject to meeting any other requirements for registration.”.

Necessary knowledge of English: applicants for registration in dental care professionals register

21. After section 36C insert—

“Supplementary provisions as to necessary knowledge of English

36CA.—(1) The Council must publish guidance about—

- (a) the evidence, information or documents to be provided by an applicant for the purpose of satisfying the registrar under section 36C(6)(aa) that the applicant has the necessary knowledge of English; and
- (b) the process by which the registrar is to determine whether the registrar is satisfied as mentioned in paragraph (a).

(2) The registrar must have regard to the guidance published under subsection (1) in determining whether the registrar is satisfied as mentioned in subsection (1)(a).

(3) Subsections (4) and (6) apply if, having considered any evidence, information or documents provided by the applicant in support of the applicant’s application, the registrar is not satisfied under section 36C(6)(aa) that the applicant has the necessary knowledge of English.

(4) The registrar may request the applicant to provide further evidence, information or documents within such period as the registrar may specify.

(5) The registrar may not exercise any power under subsection (4) unless the registrar has complied with any duty under section 36C(6B).

(6) The registrar may require the applicant—

- (a) to undergo an examination or other assessment; and
- (b) to provide information in respect of that examination or assessment,

within such period as the registrar may specify.

(7) In the case of an applicant who is an exempt person, the registrar may not exercise the power under subsection (6) without having first—

- (a) exercised the power under subsection (4); and
- (b) considered any further evidence, information or documents provided by the applicant.

(8) When determining, for the purposes of article 51(2) of the Directive, any time limit for deciding whether a person is entitled to be registered under a title in the principal list of the dental care professionals register, the following are to be disregarded—

- (a) any period which begins on the date on which the registrar makes a request under subsection (4) and ends on the date on which the applicant complies with the request; or
- (b) any period which begins on the date on which the registrar requires an applicant to undergo an examination or other assessment under subsection (6)(a) and ends on the date on which the applicant complies with the requirement under subsection (6)(b).

(9) Guidance published under subsection (1) may make different provision in relation to different cases or classes of case, and in particular in relation to different descriptions of registered dental care professionals.

(10) The Council must keep guidance published under subsection (1) under review and may vary or withdraw it whenever they consider it appropriate to do so.

(11) If the Council vary any guidance published under subsection (1) they must publish the guidance as varied.

(12) Before publishing any guidance under subsection (1), or varying or withdrawing it, the Council must consult the persons and bodies mentioned in section 36M(5)(a) to (c).

(13) The Council may charge such fee as they consider reasonable for the provision of a copy of the guidance to any person.

(14) In this section—

- (a) references to an applicant are references to a person applying for registration under a title in the principal list of the dental care professionals register, and
- (b) references to guidance published under subsection (1) include references to guidance published by virtue of subsection (11)."

Rules relating to the dental care professional register

22. In section 36E (rules relating to the dental care professionals register)(a), at the end of paragraph (c) insert “(other than evidence and information falling within section 36CA(1))”.

Power to charge fees in connection with applications for registration in dental care professionals register

23.—(1) Section 36F(1) (regulations about fees payable by dental care professionals)(b) is amended as follows.

(2) In paragraph (a)—

- (a) in the opening words omit “to be charged on”;
- (b) in sub-paragraph (i)—
 - (i) at the beginning insert “to be charged on”; and
 - (ii) at the end insert “or to be charged otherwise in connection with an application for registration”; and
- (c) in sub-paragraphs (ii) and (iii), at the beginning insert “to be charged on”.

(3) In paragraph (d), for “in, or restore to, the dental care professionals register any entry” substitute “any entry in the dental care professionals register or take any other action in connection with an application for registration in that register or restore any entry to that register”.

Allegations in respect of dental care professionals

24. In section 36N (allegations)(c), after subsection (2)(b) insert—

“(ba) the person not having the necessary knowledge of English;”.

(a) Section 36E was inserted by S.I. 2005/2011 and has been previously amended by S.I. 2007/3101.

(b) Section 36F was inserted by S.I. 2005/2011 and has been previously amended by S.I. 2007/3101.

(c) Section 36N was inserted by S.I. 2005/2011 and has been previously amended by the Health and Social Care Act 2008 (c.14), section 127 and Schedule 10, paragraph 9, the Police and Crime Act 2009 (c.26), section 81(5) and S.I. 2009/1182.

The Investigating Committee: allegations against a registered dental care professional

25.—(1) Section 36O (the Investigating Committee)(a) is amended as follows.

(2) In subsection (4)(a)(i), after “performance)” insert “or section 36N(2)(ba) (not having the necessary knowledge of English)”.

(3) In subsection (5), after paragraph (a) insert—

“(aa) an allegation based on the ground mentioned in section 36N(2)(ba) and an allegation or allegations based on any other grounds mentioned in section 36N(2);”

Assessment of necessary knowledge of English

26. After section 36P(b) insert—

“Assessment of necessary knowledge of English

36PA.—(1) Subsection (2) applies where the Investigating Committee or a Practice Committee are considering an allegation under section 36N.

(2) The Investigating Committee or Practice Committee (as the case may be) may direct the person against whom the allegation was made to undergo an examination or other assessment of whether the person has the necessary knowledge of English.

(3) Subsection (4) applies where the Professional Conduct Committee are determining an application referred to them under section 36I(5).

(4) The Professional Conduct Committee may direct the person who made the application to undergo an examination or other assessment of whether the person has the necessary knowledge of English.

(5) A person of a description specified by rules may, in the circumstances specified by the rules, direct a person against whom an allegation under section 36N was made to undergo an examination or other assessment of whether the person has the necessary knowledge of English.

(6) An examination or other assessment under subsection (2) or (4), or by virtue of rules under subsection (5), must be made in accordance with rules.

(7) The rules must, in particular, provide for—

- (a) the procedures to be followed when directing a person to undergo an examination or other assessment;
- (b) the person undergoing an examination or other assessment to provide information in respect of the examination or assessment to such persons as may be prescribed by the rules;
- (c) for the information provided by virtue of paragraph (b) to be disclosed to such persons as may be prescribed by the rules.

(8) A Practice Committee may draw such inferences as seem appropriate to them if a person fails—

- (a) to undergo an examination or other assessment as directed under subsection (2) or (4) or by virtue of rules under subsection (5); or
- (b) to provide the information required by virtue of rules made under subsection (7)(b).”

(a) Section 36O was inserted by S.I. 2005/2011.

(b) Section 36P was inserted by S.I. 2005/2011.

Rules: consultation requirements

27. In section 50D(1) (rules: consultation requirements)(a), after “rules under” insert “section 27BA or 36PA or”.

Interpretation: “the necessary knowledge of English”

28. In section 53(1) (interpretation)(b), insert in the appropriate place—

““the necessary knowledge of English”—

- (a) in relation to a person registered, or applying to be registered, in the dentists register, means a knowledge of English which, in the interests of the person and the person’s patients, is necessary for the practice of dentistry in the United Kingdom;
- (b) in relation to a person registered, or applying to be registered, in the dental care professionals register, means a knowledge of English which, in the interests of the person and the person’s patients, is necessary for the practice of a profession complementary to dentistry in the United Kingdom;”.

Registration appeals: dentists register

29.—(1) Schedule 2A (registration appeals: dentists register)(c) is amended as follows.

(2) In paragraph 1—

- (a) in the definition of “appealable registration decision”, after “3(2)” insert “and (4)”;
- (b) in the definition of “person concerned”, after “3(2)” insert “or (4)”; and
- (c) in the definition of “the requisite period”—
 - (i) after “paragraph 2(1)(a), (b),” insert “(ba),”; and
 - (ii) after “paragraph 2(1)(aa)” insert “or (bb)”.

(3) In paragraph 2(1)—

- (a) after paragraph (ab) insert—

“(ac) a decision to require a person to undergo an examination or other assessment under section 15A(6)(a);” and
- (b) after paragraph (b) insert—

“(ba) a decision for the purposes of section 21A(2A)(a) that the registrar is not satisfied that a person falls within section 15(1)(b);

“(bb) a decision for the purposes of section 21A(2A)(a) that the registrar is not satisfied that a person falls within section 15(1)(ba);”.

(4) In paragraph 3, after sub-paragraph (2) insert—

“(3) Sub-paragraph (4) applies where, within the requisite period, an applicant has not been served with—

- (a) notification of a decision mentioned in paragraph 2(1)(ba) or (bb), or
- (b) notification under section 21A(2B).

(4) The omission shall be treated as a decision mentioned in paragraph 2(1)(ba) or (bb), as the case may be, which is an appealable decision for the purposes of this Schedule.”.

(5) In paragraph 4(1)(b), after “3(2)” insert “or (4)”.

(a) Section 50D was inserted by S.I. 2005/2011 and has been previously amended by the Health and Social Care Act 2012 (c.7), section 55(2) and Schedule 5, paragraphs 33 and 37.

(b) There are amendments to section 53 not relevant to this Order.

(c) Schedule 2A was inserted by S.I. 2005/2011 and has been previously amended by S.I. 2007/3101.

Directive 2005/36: functions of the Council under section 36ZA(3)

30. In Schedule 4ZA (Directive 2005/36: functions of the Council under section 36ZA(3))(a), in the table insert in the appropriate place—

“Article 53	Ensuring that any language controls imposed on dentists or dental care professionals are compliant with article 53 of the Directive.”
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Registration appeals: dental care professionals register

31.—(1) Schedule 4A(b) (registration appeals: dental care professionals register) is amended as follows.

(2) In paragraph 1—

- (a) in the definition of “appealable registration decision”, after “3(2)” insert “and (4)”;
- (b) in the definition of “person concerned”, after “3(2)” insert “or (4)”; and
- (c) in the definition of “the requisite period”, after “paragraph 2(1)(a),” insert “(ab),”.

(3) In paragraph 2(1), after paragraph (aa) insert—

“(ab) a decision for the purposes of section 36C(6A)(a) that the registrar is not satisfied of matter B in relation to the applicant;

(ac) a decision to require a person to undergo an examination or other assessment under section 36CA(6)(a);”.

(4) In paragraph 3, after sub-paragraph (2) insert—

“(3) Sub-paragraph (4) applies where, within the requisite period, an applicant has not been served with—

- (a) notification of a decision mentioned in paragraph 2(1)(ab), or
- (b) notification under section 36C(6B).

(4) The omission shall be treated as a decision mentioned in paragraph 2(1)(ab), which is an appealable decision for the purposes of this Schedule.”.

(5) In paragraph 4(1)(b), after “3(2)” insert “or (4)”.

PART 4

Nursing and Midwifery Order 2001

32. The Nursing and Midwifery Order 2001(c) is amended in accordance with articles 33 to 43.

Necessary knowledge of English: applicants for registration in the register of qualified nurses and midwives

33. After article 5 (establishment and maintenance of register), insert—

“Supplementary provisions as to necessary knowledge of English

5A.—(1) The Council must publish guidance about—

- (a) the evidence, information or documents to be provided by an applicant for the purpose of satisfying the Registrar under article 9(2)(ba) that the applicant has the necessary knowledge of English; and

(a) Schedule 4ZA was inserted by S.I. 2007/3101.

(b) Schedule 4A was inserted by S.I. 2005/2011 and has been previously amended by S.I. 2007/1301.

(c) S.I. 2002/253.

- (b) the process by which the Registrar is to determine whether the Registrar is satisfied as mentioned in paragraph (a).
- (2) The Registrar must have regard to the guidance published under paragraph (1) in determining whether the Registrar is satisfied as mentioned in paragraph (1)(a).
- (3) Paragraphs (4) and (6) apply if, having considered any evidence, information or documents provided by the applicant in support of the applicant’s application, the Registrar is not satisfied under article 9(2)(ba) that the applicant has the necessary knowledge of English.
- (4) The Registrar may request the applicant to provide further evidence, information or documents within such period as the Registrar may specify.
- (5) The Registrar may not exercise any power under paragraph (4) unless the Registrar has complied with any duty under article 9(3C).
- (6) The Registrar may require the applicant—
 - (a) to undergo an examination or other assessment; and
 - (b) to provide information in respect of that examination or assessment,
 within such period as the Registrar may specify.
- (7) In the case of an applicant who is an exempt person, the Registrar may not exercise the power under paragraph (6) without having first—
 - (a) exercised the power under paragraph (4); and
 - (b) considered any further evidence, information or documents provided by the applicant.
- (8) Guidance published under paragraph (1) may make different provision in relation to different cases or classes of case.
- (9) In this article, references to an applicant are references to a person applying for registration in a part of the register or readmission to that part.”.

Registration of nurses and midwives

- 34.—**(1) Article 9 (registration)(a) is amended as follows.
- (2) In paragraph (2)—
 - (a) in sub-paragraph (b), for “nurse or midwife; and” substitute “nurse or midwife;”;
 - (b) after sub-paragraph (b) insert—
 - “(ba) satisfies the Registrar that he has the necessary knowledge of English; and”.
 - (3) After paragraph (3A)(b) insert—
 - “(3B) Paragraph (3C) applies if—
 - (a) the Registrar is satisfied that the applicant falls within article 13(1)(b), (c) or (e) but not within article 13(1A); and
 - (b) the applicant has paid the prescribed fee under paragraph (2)(c); but
 - (c) the Registrar decides to make a request under article 5A(4).
 - (3C) The Registrar must notify the applicant that the Registrar recognises that the applicant, by virtue of falling within article 13(1)(b), (c) or (e), but not within article 13(1A), is entitled to be registered in a part of the register, subject to meeting any other requirements for registration.”.
 - (4) In paragraph (5), insert at the beginning “Subject to paragraph (5ZA),”.
 - (5) After paragraph (5) insert—

(a) Article 9 has been previously amended by S.I. 2007/310 and 2014/1887.
 (b) Paragraph (3A) was inserted by S.I. 2007/3101.

“(5ZA) In calculating any period of time for the purposes of paragraph (5), the following are to be disregarded—

- (a) any period which begins on the date on which the Registrar makes a request under article 5A(4) and ends on the date on which the applicant complies with the request; and
- (b) any period which begins on the date on which the Registrar requires the applicant to undergo an examination or other assessment under article 5A(6)(a) and ends on the date on which the applicant complies with the requirement under article 5A(6)(b).”.

(6) After paragraph (5A) insert—

“(5B) A document that is requested or required under article 5A(4) or (6)(b) is not to be treated as missing for the purposes of this article.”.

(7) In paragraph (6), after “Registrar’s decision” insert “, including a decision for the purposes of paragraph (3B)(a) that the Registrar is not satisfied that the applicant falls within article 13(1)(b), (c) or (e) and not within article 13(1A),”.

Renewal of registration and readmission

35.—(1) Article 10 (renewal of registration and readmission)(a) is amended as follows.

(2) In paragraph (2), after sub-paragraph (aa) insert—

“(ab) in such circumstances as may be prescribed, meets the condition in article 9(2)(ba);”.

(3) After paragraph (2) insert—

“(2A) If the Council makes rules pursuant to paragraph (2)(ab)—

- (a) paragraph (3) applies to an applicant who is required to meet the condition in article 9(2)(ba) as if “(ab),” were inserted after “paragraph (2)”; and
- (b) article 5A applies as if in paragraph (9) of that article “or renewal of registration,” was inserted after “registration.”.

(4) In paragraph (4)(a), after “article 9(2)(b)”, insert “, (ba)”.

Approved qualifications

36. In article 13(1)(d) (approved qualifications)(b), for “applying,” substitute “applying.”, and omit the words from “and, in either case” to the end.

Allegations

37. In Article 22(1) (allegations)(c), after sub-paragraph (a)(iv) insert—

“(iva) not having the necessary knowledge of English.”.

Assessment of necessary knowledge of English

38. After article 28, insert—

“Assessment of necessary knowledge of English

28A.—(1) The Council may make rules authorising the giving of directions by—

- (a) any of the Practice Committees;

(a) Article 10 has been previously amended by S.I. 2007/3101 and 2014/1887.

(b) Article 13 has been previously amended by S.I. 2007/3101.

(c) Article 22 has been previously amended by S.I. 2008/1485 and the Policing and Crime Act 2009 (c.26), section 81(5).

- (b) any other persons specified in the rules, requiring the person concerned to undertake an examination or other assessment of that person’s knowledge of English.
- (2) An examination or other assessment under paragraph (1) must be made in accordance with rules.
- (3) The rules must, in particular, provide for—
 - (a) the procedures to be followed by such persons when directing the person concerned to undertake such an examination or other assessment;
 - (b) the person concerned who is required to undertake such an examination or other assessment to provide information in respect of that examination or assessment to such persons as may be prescribed under the rules;
 - (c) the information provided by virtue of sub-paragraph (b) to be disclosed to such persons as may be prescribed under the rules.
- (4) Rules under this article may make provision for the Conduct and Competence Committee or the Health Committee to draw such inferences as seem appropriate to it if a person fails—
 - (a) to undergo an examination or other assessment by virtue of rules under paragraph (1); or
 - (b) to provide the information required by virtue of rules made under paragraph (3)(b).
”.

Orders of the Health Committee and the Conduct and Competence Committee

39. In article 29(6) (orders of the Health Committee and the Conduct and Competence Committee), for “(ii) or (iv)” substitute “(ii), (iv) or (iva)”.

Restoration to the register of persons who have been struck off

40. In article 33(5) (restoration to the register of persons who have been struck off), for “and (b)” substitute “, (b) and (ba)”.

Appeals against Registrar’s decisions

41. In article 37(1) (appeals against Registrar’s decisions)(a), insert before sub-paragraph (a)—
- “(za) requires a person to undergo an examination or other assessment under article 5A(6)(a) because the Registrar is not satisfied that the person has the necessary knowledge of English;
 - (zb) makes a decision for the purposes of article 9(3B)(a) that the Registrar is not satisfied that a person falls within article 13(1)(b), (c) or (e), and does not fall within article 13(1A);”.

Directive 2005/36: functions of the Council under article 40(2)

42. In Schedule 3 (Directive 2005/36: functions of the Council under article 40(2))(b), in the table insert in the appropriate place—

“Article 53	Ensuring that any language controls imposed on a nurse or midwife are compliant with article 53 of the Directive.”
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(a) Article 37 has been previously amended by S.I. 2007/3101, 2008/1485, 2009/1182, 2014/1887 and 3272.
 (b) Schedule 3 was substituted by S.I. 2007/3101.

Interpretation: “the necessary knowledge of English”

43. In Schedule 4 (interpretation)(a), insert in the appropriate place—

““the necessary knowledge of English”—

- (a) in relation to a person registered, or applying to be registered, as a nurse means a knowledge of English which is necessary for the safe and effective practice of nursing in the United Kingdom;
- (b) in relation to a person registered, or applying to be registered, as a midwife means a knowledge of English which is necessary for the safe and effective practice of midwifery in the United Kingdom;”.

PART 5

Pharmacy Order 2010

44. The Pharmacy Order 2010(b) is amended in accordance with articles 45 to 57.

Interpretation

45. In article 3(1) (interpretation)(c), insert in the appropriate place—

““the necessary knowledge of English”—

- (a) in relation to a person registered, or applying to be registered, as a pharmacist means a knowledge of English which is necessary for the safe and effective practice as a pharmacist in Great Britain;
- (b) in relation to a person registered, or applying to be registered, as a pharmacy technician means a knowledge of English which is necessary for the safe and effective practice as a pharmacy technician in Great Britain;”.

Entitlement to entry in Part 1 or 2 of the Register: pharmacists and pharmacy technicians

46. In article 20(1)(a) and (2)(a) (entitlement to entry in Part 1 or 2 of the Register: pharmacists and pharmacy technicians)—

- (a) in paragraph (ii), omit “and”; and
- (b) after paragraph (ii) insert—

“(iia) P has the necessary knowledge of English; and”.

Pre-entry requirements in respect of qualifications and additional education, training or experience: pharmacists

47. In article 21 (pre-entry requirements in respect of qualifications and additional education, training or experience: pharmacists), omit paragraph (6).

Pre-entry requirements in respect of qualifications and additional education, training or experience: pharmacy technicians

48. In article 22 (pre-entry requirements in respect of qualifications and additional education, training or experience: pharmacy technicians), omit paragraph (4).

(a) Schedule 4 has been previously amended by S.I. 2002/2469, 2003/3148, 2007/3101, 2008/1485, 2011/1043, 2013/235, 2014/1887 and S.R. 2009/144 (Northern Ireland).

(b) S.I. 2010/231.

(c) Article 3 has been previously amended by S.I. 2011/1043.

Necessary knowledge of English: applicants for registration in the register of pharmacists and pharmacy technicians

49. After article 23, insert—

“Supplementary provisions as to necessary knowledge of English

23A.—(1) The Council must publish guidance about—

- (a) the evidence, information or documents to be provided by an applicant for the purpose of satisfying the Registrar under article 20(1)(a)(iia) or (2)(a)(iia) that the applicant has the necessary knowledge of English; and
- (b) the process by which the Registrar is to determine whether the Registrar is satisfied as mentioned in paragraph (a).

(2) The Registrar must have regard to the guidance published under paragraph (1) in determining whether the Registrar is satisfied as mentioned in paragraph (1)(a).

(3) Paragraphs (4) and (6) apply if, having considered any evidence, information or documents provided by the applicant in support of the applicant’s application, the Registrar is not satisfied under article 20(1)(a)(iia) or (2)(a)(iia) that the applicant has the necessary knowledge of English.

(4) The Registrar may request the applicant to provide further evidence, information or documents within such period as the Registrar may specify.

(5) The Registrar may not exercise any power under paragraph (4) unless the Registrar has complied with any duty under article 24(2B).

(6) The Registrar may require the applicant—

- (a) to undergo an examination or other assessment; and
- (b) to provide information in respect of that examination or assessment,

within such period as the Registrar may specify.

(7) In the case of an applicant who is an exempt person, the Registrar may not exercise the power under paragraph (6) without having first—

- (a) exercised the power under paragraph (4); and
- (b) considered any further evidence, information or documents provided by the applicant.

(8) Guidance published under paragraph (1) may make different provision in relation to different cases or classes of case.

(9) Before issuing such guidance, or varying or withdrawing it, the Council must consult such persons or organisations as it considers appropriate, including, where it considers appropriate, persons appearing to it to represent the organisations specified in article 5(1)(a) to (g).

(10) In this article, references to an applicant are references to a person applying under article 23 for entry or renewal of entry in Part 1 of the Register as a pharmacist, or in Part 2 of the Register as a pharmacy technician.”

Notification by the Registrar: entry and renewal

50.—(1) Article 24 (notification by the Registrar: entry and renewal) is amended as follows.

(2) After paragraph (2) insert—

“(2A) Paragraph (2B) applies if—

- (a) A has paid any fee prescribed under article 36(1)(a); and
- (b) the Registrar is satisfied that A falls within article 21(1)(b) or (c) or article 22(1)(b); but
- (c) the Registrar decides to make a request under article 23A(4).

(2B) The Registrar must notify A that the registrar recognises that A, by virtue of falling within article 21(1)(b) or (c) or 22(1)(b), is entitled to be registered in Part 1 of the Register as a pharmacist or in Part 2 of the Register as a pharmacy technician (as the case may be), subject to meeting any other requirements for registration.”.

(3) For paragraph (4) substitute—

“(4) Any failure by the Registrar to inform A of—

- (a) a decision by the Registrar for the purposes of article 24(2B) that article 24(2A)(b) does not apply in relation to the person; or
- (b) the result of the application as required by paragraph (3)(a),

is to constitute a decision by the Registrar for the purposes of article 24(2B) that article 24(2A)(b) does not apply in relation to the person, or a decision by the Registrar to refuse the application (as the case may be) which is to be taken as having been made at the end of the specified period.”.

(4) At the beginning of paragraph (5) insert “Subject to paragraph (5A),”.

(5) After paragraph (5) insert—

“(5A) In calculating any period of time for the purposes of paragraph (5), the following are to be disregarded—

- (a) any period which begins on the date on which the Registrar makes a request under article 23A(4) and ends on the date on which A complies with the request; or
- (b) any period which begins on the date on which the Registrar requires the applicant to undergo an examination or other assessment under article 23A(6)(a) and ends on the date on which the applicant complies with the requirement under article 23A(6)(b).”.

(6) After paragraph (11) insert—

“(12) A document that is requested or required under article 23A(4) or (6)(b) is not to be treated as missing for the purposes of this article.”.

Appealable decisions

51.—(1) Article 39 (appealable decisions) is amended as follows.

(2) After paragraph (1)(c) insert—

- “(ca) a decision by the Registrar to require a person to undergo an examination or other assessment under article 23A(6)(a);
- “(cb) a decision by the Registrar for the purposes of article 24(2B) that article 24(2A)(b) does not apply in relation to the person;”.

(3) At the end, insert—

“(3) The reference in paragraph (1)(l) to a person’s fitness to practise does not include a reference to a person’s fitness to practise where the only allegation made in relation to the person is an allegation under article 51(1)(ca).”.

Appeals to the Appeals Committee

52. In article 40(2) (appeals to the Appeals Committee), for “the application is, by virtue of that paragraph,” to the end substitute—

“by virtue of that paragraph—

- (a) the application is taken to have been refused by the Registrar; or
- (b) the Registrar is taken to have made a decision for the purposes of article 24(2B) that article 24(2A)(b) does not apply in relation to the person.”.

Impairment of fitness to practise

- 53.** In article 51(1) (impairment of fitness to practise)(a), after sub-paragraph (c) insert—
“(ca) not having the necessary knowledge of English;”.

Professional performance assessments

- 54.** After article 55(1) (professional performance assessments), insert—
“(1A) In this article, a reference to the standard of a registrant’s professional performance includes the standard of the registrant’s knowledge of English and, in particular, whether the registrant has the necessary knowledge of English.
(1B) But an assessment carried out by virtue of this article must not be limited to an assessment of whether a registrant has the necessary knowledge of English.
(1C) Where an assessment is required to be undertaken by virtue of article 55A, that assessment must not be carried out by an assessment team.”.

Assessment of necessary knowledge of English

- 55.** After article 55, insert—

“Knowledge of English assessments

- 55A.**—(1) The Council may make rules authorising the giving of directions by any of—
(a) the Investigating Committee;
(b) the Fitness to Practise Committee;
(c) such other persons as may be specified in the rules,
requiring a registrant to undertake an examination or other assessment of that registrant’s knowledge of English.
(2) An examination or other assessment under paragraph (1) must be made in accordance with rules.
(3) The rules must, in particular, provide for—
(a) the procedures to be followed by such persons when directing the person concerned to undertake such an examination or other assessment;
(b) the person concerned who is required to undertake such an examination or other assessment to provide information in respect of that examination or assessment to such persons as may be prescribed under the rules;
(c) the information provided by virtue of sub-paragraph (b) to be disclosed to such persons as may be prescribed under the rules.”.

Rules in respect of proceedings

- 56.** In article 61(3)(h)(i) (rules in respect of proceedings), for “or article 55” substitute “, article 55 or article 55A, or to provide the information required by virtue of rules made under article 55A(3)(b)”.

The Directive: designation of competent authority etc.

- 57.** In Schedule 3 (the Directive: designation of competent authority etc.), in the table insert in the appropriate place—

(a) Article 51 has been previously amended by S.I. 2012/3006.

“Article 53	Ensuring that any language controls imposed on a pharmacist or pharmacy technician are compliant with article 53 of the Directive.”
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Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision principally to introduce language controls for certain health care professionals who are nationals of an EEA State or Switzerland or who have equivalent rights (“exempt persons”).

The controls are being introduced in relation to dentists, dental care professionals, nurses and midwives in the United Kingdom, pharmacists and pharmacy technicians in Great Britain and pharmaceutical chemists in Northern Ireland (pharmacy technicians are not regulated in Northern Ireland).

In order to make such provision, this Order amends:-

- (a) the Pharmacy (Northern Ireland) Order 1976 (1976/1213 (N.I. 22) (in Part 2 of this Order);
- (b) the Dentists Act 1984 (c.24) (in Part 3 of this Order);
- (c) the Nursing and Midwifery Order 2001 (S.I. 2002/253) (in Part 4 of this Order); and
- (d) the Pharmacy Order 2010 (S.I. 2010/231) (in Part 5 of this Order).

The Nursing and Midwifery Council (for nurses and midwives), the General Dental Council (for dentists and dental care professionals), the General Pharmaceutical Council (for pharmacists and pharmacy technicians in Great Britain) and the Pharmaceutical Society of Northern Ireland (for pharmaceutical chemists in Northern Ireland) are the regulators who will be responsible for applying the controls to the health care professions they regulate (“relevant regulators”).

The controls are being introduced to ensure that before such health care professionals can lawfully practise in the United Kingdom, they demonstrate to the relevant regulator that they have a knowledge of English which, in the interests of themselves and their patients, is necessary for the practise of the health care profession they seek to practise in the United Kingdom. This is referred to in the Order as having “the necessary knowledge of English” (see articles 5, 28, 43 and 45).

This Order:-

- (a) Removes current restrictions on a relevant regulator imposing language controls on exempt persons, and introduces a new registration requirement for all applicants, including those who are UK nationals, of having the necessary knowledge of English (see, for example, articles 7, 12, 14, 20, 34(2) and 46);
- (b) Regulates the language controls that a relevant regulator can impose on such applicants (see, for example, articles 8, 13, 21, 33 and 49);
- (c) Requires a relevant regulator to issue a letter recognising the qualifications of exempt persons in cases where registration cannot proceed because the language skills of an applicant who is an exempt person need to be investigated further (see, for example, articles 9, 16, 34(3), and 50(2));
- (d) Adds a new ground for fitness to practise proceedings of not having the necessary knowledge of English (see, for example, articles 10, 17, 24, 37 and 53);
- (e) Provides 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 (see, for example, articles 10, 19, 26, 38 and 55);

- (f) Amends certain time limits in relation to giving a decision on an application 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 (see, for example, articles 16(3) and (4), 21(8), 34(5) and (6) and 50(5) and (6)); and
- (g) Amends appeal rights to ensure that there is a right of appeal where appropriate against certain decisions that can be made in respect of applicants as regards language controls (see, for example, articles 29, 31, 41 and 51).

A full impact assessment has not been produced for this instrument as no or no significant impact on the private sector or civil society organisations is foreseen. A report on the consultation in relation to the Secretary of State's proposals to make this Order is available at <https://www.gov.uk/government/consultations/language-controls-for-healthcare-and-associated-professions>. Hard copies of that report can be obtained from "Professional Standards Division, Department of Health, Quarry House, Leeds, LS2 7UE".

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