

EXPLANATORY MEMORANDUM TO
THE HEALTH CARE AND ASSOCIATED PROFESSIONS (KNOWLEDGE OF
ENGLISH) ORDER 2015 (COMMENCEMENT No. 1) ORDER OF COUNCIL 2015
2015 No. 1451

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The Health Care and Associated Professions (Knowledge of English) Order 2015 (Commencement No. 1) Order of Council 2015 (“the Commencement Order”) is an Order of the Privy Council to bring into force, in part, Parts, 3, 4 and 5 of The Health Care and Associated Professions (Knowledge of English) Order 2015 (“the Knowledge of English Order”)¹.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Part 1 of the Knowledge of English Order came into force on 20th March 2015. A Commencement Order of Council is required to bring into force the provisions of the Knowledge of English Order that amend the Nursing and Midwifery Order 2001, the Dentists Act 1984 and the Pharmacy Order 2010. The Privy Council make this order under the power in article 1(3) of the Knowledge of English Order and under article 3(3) of that order, the Commencement Order is subject to the negative resolution procedure. Before making this order the Privy Council, in accordance with article 3(5) of the Knowledge of English Order, consulted the Scottish Ministers.
5. **Territorial Extent and Application**
 - 5.1 This instrument extends to all of the United Kingdom (UK).
6. **European Convention on Human Rights**
 - 6.1 The Commencement Order commences provisions of the Knowledge of English Order which amend the Dentists Act 1984, but the necessary statement was made in relation to the Knowledge of English Order. The then Parliamentary under Secretary of State made this statement in relation to that Order-

In my view the provisions of the Health Care and Associated Professions

¹ S.I. 2015/806.

(Knowledge of English) Order 2015 are compatible with the Convention rights.

7. Policy background

- 7.1 Current legislation does not allow the Nursing and Midwifery Council (NMC), the General Dental Council (GDC) and the General Pharmaceutical Council (GPhC) to require evidence of a European applicant's knowledge of the English language prior to registration, even when the regulatory body has cause for concern. These regulatory bodies are however, already able to carry out language checks on non-European applicants who wish to practise in the UK.
- 7.2 In addition, not having the necessary knowledge of the English language is currently not a ground in its own right on which the NMC, GDC and GPhC can carry out fitness to practise investigations, until that lack of knowledge has resulted in deficient professional performance in practice. In some circumstances this could pose a risk to patient safety.
- 7.3 The Commencement Order brings into force the provisions in the Knowledge of English Order which amend the NMC's, GDC's and GPhC's governing legislation, introducing powers for these regulatory bodies to apply proportionate language controls and, where appropriate, require European applicants for registration to provide evidence of their knowledge of the English language following recognition of their qualification, but before registration and admission onto the register. These changes to the regulators' governing legislation take account of EU legislation on the mutual recognition of professional qualifications, and are compliant with Directive 2005/36/EU.
- 7.4 The Commencement Order also brings into force provisions of the Knowledge of English Order that amend certain fitness to practise powers of the NMC and GPhC, to ensure that not having the necessary knowledge of the English language is a ground for taking fitness to practice proceedings in its own right, instead of the regulators having to wait until a registrant's poor English language skills causes deficient professional performance.
- 7.5 Language controls have already been introduced² for EEA doctors wishing to practise in the UK.

8. Consultation outcome

- 8.1 The Government undertook a consultation from 3rd November to 15th December 2014 on the proposals to introduce language controls for nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians and pharmaceutical chemists in Northern Ireland. The vast majority of respondents were supportive of the proposals and agreed that amending the regulators governing legislation through the Knowledge of English Order would improve quality of care and patient safety.

² See the Medical Act 1983 (Amendment)(Knowledge of English Order) 2014/1101.

8.2 A separate consultation was therefore not necessary for the Commencement Order.

9. Guidance

9.1 When the provisions of the Knowledge of English Order are brought into force by this Commencement Order, the NMC, GDC and GPhC will have a statutory duty to publish guidance relating to the evidence, information and documents to be provided for the purpose of demonstrating that a health care professional has the necessary knowledge of the English language.

9.2 We therefore do not consider it is necessary for the Department to provide further guidance on this issue.

10. Impact

10.1 The impact on business, charities or voluntary bodies is to individual professionals (who are likely to be European applicants) who may be required to take a language test at a cost of around £140 or will be stopped from working in the UK in some cases where their English language skills are not at the necessary level. The majority of costs will fall to the individual regulatory body themselves in terms of set up and administration costs.

10.2 The impact on the public sector is nil.

10.3 A Regulatory Triage Assessment was prepared for The Health Care and Associated Professions (Knowledge of English) Order 2015, which received a green opinion from the Regulatory Policy Committee, as having no or limited impact on business. Therefore, an Impact Assessment has not been prepared for this instrument.

10.4 Additionally, there are no additional impacts to report on particular groups on the basis of equality.

11. Regulating small business

11.1 The legislation does not directly apply to small business, the changes that it brings about relate to the individual rather than business.

12. Monitoring & review

12.1 The policy objective is to ensure that all healthcare professionals working in the UK have the necessary knowledge of the English language to practise in a safe and competent manner. This will be measured by the number of future complaints made to the relevant regulatory bodies about concerns of a health care professional's language capability. We will ask the relevant regulatory bodies to keep the Department updated on this.

13. Contact

- 13.1 Sharon Corner at the Department of Health Tel: 0113 2546150 or email: sharon.corner@dh.gsi.gov.uk can answer any queries regarding the instrument.