

**Consultation on the  
English language  
requirements and  
process for registration  
with the NMC**

**June 2015**

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## Introduction

- 1 The Nursing and Midwifery Council (NMC) is the professional healthcare regulator of nurses and midwives in the UK. We exist to protect patients and the public. We do this by setting standards of education, training, conduct and performance for nurses and midwives. We also hold the register of those who have qualified and meet those standards and take action when a nurse or midwife's fitness to practise is called into question.

## Aims of this consultation

- 2 The aims of this consultation are to seek the views of stakeholders on the process that we propose to put in place for:
  - 2.1 European Economic Area<sup>1</sup> (EEA) trained nurses and midwives who apply for registration;
  - 2.2 nurses and midwives seeking readmission to our register following a lapse of registration; and
  - 2.3 investigating concerns about the language competence of nurses and midwives on our register.

## Background

- 3 All nurses and midwives must have the necessary knowledge of English to practise safely and effectively in the UK. *The Code: Professional standards of*

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<sup>1</sup> The European Economic Area consists of all 29 member states of the European Union together with Iceland, Liechtenstein, Norway and Switzerland.

*practice and behaviour for nurses and midwives*<sup>2</sup> requires nurses and midwives to be able to communicate clearly and effectively in the English language. The Code makes it clear that the ability to communicate effectively with patients and colleagues lies at the heart of good nursing and midwifery practice.

- 4 We can currently check the language competence of nurses and midwives trained outside the EEA who wish to register with us. All of these non-EEA trained nurses and midwives must demonstrate that they have the necessary language skills by passing the academic version of the International English Language Testing System (IELTS) achieving a score of at least seven in each section and seven overall.<sup>3</sup> These requirements are not affected by this consultation and will remain unchanged. UK nationals who were trained in the UK will automatically satisfy us of their knowledge of English as they will have undertaken an NMC approved pre-registration education programme in English.
- 5 Until now we have not been able to check the language competence of EEA trained nurses and midwives. However, the recently revised European Directive on Mutual Recognition of Professional Qualifications<sup>4</sup> will allow us to apply language controls where there are concerns about the English language competence of an EEA trained nurse or midwife that emerge as part of the recognition and registration process. We support this change, as it will enhance public protection and help us receive adequate assurance that all those who enter our register have the necessary language abilities to practise safely and effectively.
- 6 In November 2014, the UK government announced plans to give us new powers to put in place language controls in line with the revised Directive. The Department of Health consulted on the proposed amendments to our legislation, the Nursing and Midwifery Order 2001 (the order), which would bring these into effect and allow us to change the statutory rules which set out how our processes work. Details of the government's consultation and its response are available on its website.<sup>5</sup>
- 7 This consultation does not seek to revisit the topics covered by the UK government's consultation, specifically whether language controls should be introduced at all. The purpose of this consultation is to seek your views on how we propose to apply the new requirements in a proportionate way.

## **Role of employers**

- 8 The proposals set out in this consultation document are designed to complement and not replace the important role that employers must play in checking that the nurses and midwives they employ have the necessary knowledge of English to practise safely and effectively in their role. We will be communicating with employers to highlight their responsibilities.

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<sup>2</sup> *The Code: Professional standards of practice and behaviour for nurses and midwives* (NMC, 2015) <http://www.nmc.org.uk/standards/code/>.

<sup>3</sup> <http://www.nmc-uk.org/Documents/Registration/Registering%20as%20a%20nurse%20or%20midwife%20from%20outside%20EU%20or%20EEA.pdf>

<sup>4</sup> Directive 2005/36/EC on the recognition of professional qualifications, as amended by Council Directive 2013/55/EU

<sup>5</sup> <https://www.gov.uk/government/consultations/language-controls-for-healthcare-and-associated-professions>

## What are we proposing?

- 9 Issues on which we seek your views cover the following areas:
  - 9.1 the evidence that will satisfy us of the language competence of EEA trained nurses and midwives before we can register them;
  - 9.2 our approach to considering language competence as a requirement for readmission to the register, when a nurse or midwife's registration has lapsed; and
  - 9.3 the process that we will put in place to deal with fitness to practise referrals for nurses and midwives on our register where there are concerns about their language competence.
- 10 During the development of our proposals, we have tried to ensure that they are fair and proportionate, while achieving the overriding objective of protecting the public. An initial equality impact assessment has been produced and will be revised in light of any evidence provided in response to this consultation. It is available on request.
- 11 Our draft guidance for EEA trained nurses and midwives can be found at annexe 1 to this document.
- 12 The corresponding draft amendments to our fitness to practise<sup>6</sup> and registration rules<sup>7</sup> are set out in annexe 2.
- 13 A list of all the consultation questions in this document can be found on page 15.
- 14 If you want to read about the new requirements for EEA trained nurses and midwives applying for registration, please go to section 1.
- 15 If you want to read about the approach we wish to take for any nurses and midwives who want to be readmitted to the register please go to section 2.
- 16 If you want to read about the process we will put in place to deal with fitness to practise allegations of lack of language competence, please go to section 3.

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<sup>6</sup> The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) <http://www.nmc.org.uk/globalassets/sitedocuments/legislation/legislation-updated/fitness-to-practise-rules-2004---consolidated---effective-from-06.02.2012-updated-re-s44-of-svg-act-2006-as-at-10.09.12.pdf>

<sup>7</sup> The Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004 (as amended) <http://www.nmc.org.uk/globalassets/sitedocuments/legislation/legislation-updated/education-registration-and-registration-appeals-rules-2004---consolidated-text---effective-from-17.07.2014.pdf>

## **Section 1: Providing evidence of language competence at initial registration for EEA trained nurses and midwives**

- 17 All nurses and midwives applying for registration will need to have the necessary knowledge of English to practise safely and effectively in the UK. This section outlines the process we will put in place for EEA trained nurses and midwives.

### **Evidence required for demonstrating necessary knowledge of English**

- 18 The criteria outlined below reflect our objective of enhancing patient protection and provide us with an adequate assurance that EEA trained nurses and midwives have the necessary knowledge of English before we can register them. The evidence requirements we are currently considering are based on a number of key criteria.
- 18.1 The evidence should clearly be able to demonstrate competence in the four areas of:
- 18.1.1 reading;
  - 18.1.2 writing;
  - 18.1.3 listening; and
  - 18.1.4 speaking.
- 18.2 The evidence must be recent, objective and independent.
- 18.3 The evidence must clearly demonstrate that the applicant can read, write, communicate and interact with patients, service users, relatives and healthcare professionals in English.
- 18.4 The evidence must be verifiable by the NMC.
- 19 With these criteria in mind, we think that we will be able to accept the following types of evidence for demonstrating that EEA trained nurses and midwives have the necessary knowledge of English.
- 19.1 The applicant demonstrates that they have achieved the required scores in the academic IELTS test, which will be a minimum overall score of 7.0 and at least 7.0 in each of the four areas. The IELTS test result should be no more than two years old at the time of making an application for registration.<sup>8</sup>
- 19.2 The applicant holds a pre-registration primary nursing or midwifery qualification which was taught and examined in English, and which was composed of 50 percent clinical interaction. At least 75 percent of the clinical interaction with patients, service users and other healthcare

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<sup>8</sup> The British Council advises that two years is the accepted period for an individual to remain proficient in English if the language is used regularly. The justification for this is that proficiency in English deteriorates after two years if it is not used on a regular basis.

professionals as part of the programme must have been conducted in English.<sup>9</sup>

- 19.3 The applicant has been registered and practised for two years in a country where the first and native language is English in instances where they were required to pass a language assessment for registration in that country.
- 20 If the Registrar is not satisfied that the applicant has the necessary knowledge of English, additional evidence, information or documentation may be requested. Where evidence cannot be provided or is insufficient, then we will ask the applicant to successfully pass an academic IELTS test.
- 21 IELTS is a rigorous and widely accepted English language test and is our preferred system for testing. Choosing IELTS as the form of assessment would be consistent with the approach we already have in place for non-EEA applicants and that used by other UK regulators and the UK immigration service. We are aware that other comparable systems of English language testing may be developed, so will keep the use of IELTS under review.
- 22 We have produced guidance (at annexe 1) for applicants which gives further details on the types of evidence we will accept. Our guidance indicates what evidence we will routinely accept but we will have discretion to consider other evidence provided by an applicant seeking registration. When considering whether any other evidence meets our requirements, we will apply the principles outlined above and in the guidance document.

### **Moving to a two-stage recognition and registration process**

- 23 EEA trained nurses and midwives are able to have their qualifications recognised on the basis of satisfying the requirements of the Recognition of Professional Qualifications Directive.
- 24 Currently, where an applicant holds a qualification that meets EU and UK requirements and also meets our other requirements, including good health and good character and holding an appropriate indemnity arrangement, they generally move directly to registration.
- 25 To reflect the requirements of the new EU and UK legislation, we now propose to separate the recognition of qualifications from the granting of registration into a two-stage process. To be proportionate and to comply with EU requirements, we will not apply language controls until after the recognition of qualifications stage.
- 26 To achieve this, we are proposing that applicants will be given the opportunity (but would not be required) to supply evidence of their English language competence when they submit their initial application for registration.<sup>10</sup>
- 27 From this information, we may be able to ascertain straight away that the nurse or midwife in question has the necessary knowledge of English. Where this is the

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<sup>9</sup> All UK pre-registration nursing and midwifery programmes will automatically meet this requirement.

<sup>10</sup> The legislation does not allow us to formally request evidence of language competence at this stage, although there is nothing to stop nurses and midwives submitting evidence to speed up the process if they want to, particularly if they know they already meet our evidence requirements.

case, we will not ask for further evidence or information on language competence and will proceed to the registration process, subject to the applicant meeting our other requirements.

28 When the applicant has not supplied evidence of their knowledge of English alongside their initial application, or if such evidence is insufficient, we will continue to assess whether their qualification meets the criteria for recognition in the usual way. If the qualification meets the necessary criteria for recognition but we still have concerns about their language skills, we propose to:

28.1 send a confirmation to inform the nurse or midwife that their qualification has been recognised;<sup>11</sup> and

28.2 ask them to provide us with evidence to demonstrate that they have the necessary knowledge of English as listed in our guidance document.

29 If a nurse or midwife subsequently informs us that they do not have any of these pieces of evidence, or we think that the evidence they have supplied is not sufficient, we will formally ask them to pass an IELTS test before we can register them.

30 Figure 1 outlines the process that we would expect applicants to follow.

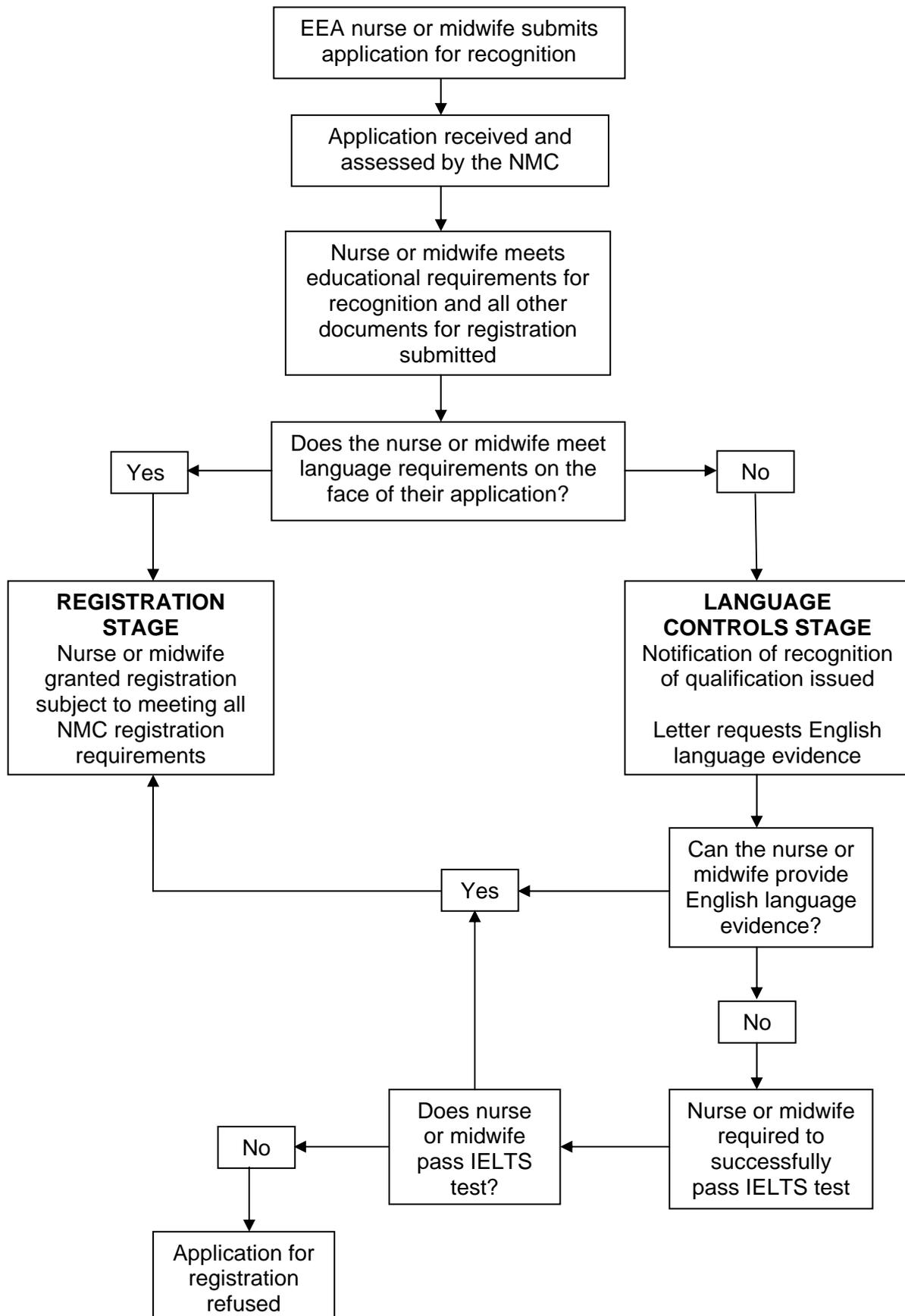
Q1: To what extent do you agree or disagree that the types of evidence (we propose to accept to demonstrate English language competence for initial registration) are fair and appropriate?

Q2: To what extent do you agree or disagree that the way in which we will request evidence (to demonstrate English language competence) is fair and appropriate?

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<sup>11</sup> This recognition confirmation will not however constitute authorisation to practise.

**Figure 1: Proposed process for demonstrating English language competence when applying for registration**



## Language competence checks for EEA trained nurses and midwives requiring compensation measures<sup>12</sup>

- 31 The vast majority of nurses and midwives who have trained within the EEA are likely to benefit from having their qualification ‘automatically’ recognised in the UK because the qualification is based on a set of common training standards required across the EEA.<sup>13</sup> All nurses responsible for general care (adult nurses in the UK) and midwives who trained after their countries joined the EEA will meet these minimum standards.
- 32 However, not all applicants qualify for automatic recognition of their qualification. This is because they may have trained as a nurse or midwife before their country joined the EEA, have enforceable Community rights<sup>14</sup>, or they might hold a qualification that is not subject to common training standards across the EEA, for example as a children’s or mental health nurse. In this small number of cases, nurses and midwives are subject to a detailed individual assessment of their education and experience against the UK’s own training requirements.<sup>15</sup> Where there may be substantial differences between an applicant’s training and that required in the UK, a nurse and midwife will be required to undertake an aptitude test or period of adaptation to make up for any shortfalls. These are referred to as ‘compensation measures’ and are undertaken through an NMC-approved education institution in the UK.
- 33 We are proposing to seek evidence of language competence before a nurse or midwife begins a compensation measure. We believe that this is necessary to protect the public, for example where the nurse or midwife potentially has access to patients as part of the compensation measure. We consider this to be the most appropriate approach in the interests of patient and public safety.

Q3: To what extent do you agree or disagree that we should seek assurance of language competence through a compensation measure before EEA nurses and midwives have access to patients and service users?

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<sup>12</sup> The provisional process outlined above for general system applicants depends on the final government legislation underpinning this approach and may be subject to change.

<sup>13</sup> If they are a nurse responsible for general care (adult nurse in the UK) or a midwife, holding a qualification listed in annexe V of the Directive, based on the requirements outlined in articles 21 and 40 of the Directive.

<sup>14</sup> Those with enforceable community rights include the following.

- UK nationals may have enforceable community rights by virtue of having resided in another relevant European state as a worker, self-employed person, student or self-sufficient person.
- Those that are not a national of an EEA state or Switzerland, who are the following.
  - The family member registered under the law of an EEA state of:
    - a non-UK EEA national in (or relocating to) the UK as a worker, self-employed person, self-sufficient person, or a student; or
    - a UK national residing in (and relocating from) another relevant European state as a worker, self-employed person, self-sufficient person or a student.
  - A person previously falling into the above categories who has retained their Community rights following the death or departure of the EEA national from UK or following divorce, annulment of marriage or termination of the civil partnership.

<sup>15</sup> This is known as the “general system” for recognition of qualifications and complies with Articles 10 to 14 of the Directive.

## Section 2: Readmission to the register

- 34 If a nurse or midwife's registration lapses, they can later apply to be readmitted to the register. Some nurses and midwives seek readmission immediately after their registration has lapsed, while others do so having been off the register for a more significant period of time. The latter may be the case, for instance, after a period of time spent practising abroad or when returning to practice after a career break or a period of family leave.
- 35 The proposed changes will expand our current powers to make sure that all nurses and midwives returning to the register have the necessary knowledge of English to practise safely. All applicants, whether from the EEA, overseas or UK, will need to demonstrate that they have a sufficient knowledge of English to practise safely.
- 36 We are likely to be satisfied that some applicants seeking readmission have the necessary knowledge of English without requiring additional evidence. For example, if an applicant has trained in the UK it may be a strong indication that they are unlikely to have lost their knowledge of English over time.
- 37 We also think that those who have recently demonstrated to us that they have the necessary knowledge of English are unlikely to have lost their language skills in the meantime. However, for those who have not recently<sup>16</sup> demonstrated their language skills, this may be an indication that some of those skills may have deteriorated over time.
- 38 Where a nurse or midwife applies for readmission to the register, we propose to use the following criteria to determine whether they demonstrate the required competence in English for safe and effective practice:
- 38.1 the length of time since the nurse or midwife has last practised in the UK;
  - 38.2 the extent to which the nurse or midwife was trained or had practised in an English speaking environment;
  - 38.3 whether the nurse or midwife has previously demonstrated English language competence at their initial application for registration; and
  - 38.4 other information as may be appropriate. For example, concerns that may have been raised about the nurse or midwife's English language competence while previously registered with the NMC.
- 39 This list of factors is not exhaustive but indicates the circumstances in which we may seek greater assurance before granting readmission to our register. They will be used to determine where there are more serious concerns about the risk to patient safety which means that requesting a language assessment may be

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<sup>16</sup> By 'recent', we mean evidence relating to English language competence that is less than two years old at the point of making an application to the NMC. The British Council advises that two years is the accepted period for an individual to remain proficient in English if the language is used regularly. The justification for this is that proficiency in English deteriorates after two years if it is not used on a regular basis.

appropriate. The list of factors will be clearly set out in our readmissions information.

Q4: To what extent do you agree or disagree with our approach concerning English language competence in relation to the readmission of a nurse or midwife to the register?

Q5: Do you think that there are any other evidence sources that we should consider?

### **Section 3: Introducing a new ground of impairment for fitness to practise cases**

- 40 As part of its new legislation, the government is introducing a new ground of fitness to practise impairment in relation to English language competence. The new powers will enable us to investigate allegations that the nurse or midwife does not have necessary knowledge of English to practise safely and effectively.<sup>17</sup> Under the new rules, the NMC's Registrar and the Conduct and Competence Committee will have the power to direct a nurse or midwife facing such an allegation to undertake an examination or other assessment of their knowledge of English. This will apply to any nurse or midwife, irrespective of their initial route of entry to the register.
- 41 In the following section, we are seeking your views on the process that we intend to put in place to deal with allegations of impaired fitness to practise by reason of a nurse or midwife not having the necessary knowledge of English.

#### **Investigating an allegation of impairment by reason of not having the necessary knowledge of English**

- 42 If we receive an allegation that a nurse or midwife does not have the necessary knowledge of English, the Registrar will have the power to direct the nurse or midwife to undertake an examination or other assessment of their knowledge of English.
- 43 Before the Registrar does this, we will carry out some preliminary investigations to help us decide whether the ability of the nurse or midwife to practise safely is impaired by reason of their knowledge of English. We may invite the nurse or midwife to submit evidence about their language competence or seek further information from their employer. For example, where they are able to provide evidence that they have recently obtained a qualification that has been taught and examined in English, this may mean that it is not necessary to direct that they undergo an additional examination or assessment.
- 44 If our preliminary investigation suggests that the nurse or midwife does not have the necessary knowledge of English, the Registrar will direct them to undertake an examination or other assessment. This will take into account their ability in relation to four components:
- 44.1 reading;
  - 44.2 writing;
  - 44.3 listening; and
  - 44.4 speaking.
- 45 Our proposal is that the nurse or midwife will be directed to undertake the same test required of EEA and non-EEA nurses and midwives when they initially apply for registration or apply for readmission to the register, namely IELTS.

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<sup>17</sup> Interpretation: "the necessary knowledge of English", Schedule 4 of the Nursing and Midwifery Order

- 46 Following the examination or other assessment, the nurse or midwife will be required to provide us with a certificate or other document stating the result achieved. It must be signed by an officer of the body providing the examination or other assessment. The result stated within this signed certificate or other document shall be conclusive proof of the result achieved by the nurse or midwife. In other words, it will not be possible for either the NMC or the nurse or midwife to challenge the result stated on the certificate or other document.
- 47 Where the result of the IELTS examination demonstrates that the nurse or midwife has achieved a minimum overall score of 7.0, and at least 7.0 in each of the four components, this will demonstrate evidence of the necessary knowledge of English. Therefore, in such cases, the allegation is unlikely to proceed any further as there is no evidence to support the allegation. This is because the nurse or midwife will have achieved a standard which is consistent with the standard that both EEA and non-EEA nurses and midwives are required to demonstrate at initial registration and readmission to the register.
- 48 Where there has been a failure to achieve the minimum score, we will determine whether the allegation should be referred to the Conduct and Competence Committee by taking into account all other relevant factors, including any responses or evidence submitted by the nurse or midwife. These factors will include evidence that the nurse or midwife has:
- 48.1 trained or practised in an English speaking environment;
  - 48.2 previously practised safely and effectively in the UK;
  - 48.3 previously demonstrated competence in English language in the course of their initial application to the register; or
  - 48.4 recently obtained a qualification that has been taught and examined in English.

### **The Conduct and Competence Committee**

- 49 Once an allegation of not having the necessary level of English is referred to the Conduct and Competence Committee, that panel will also have the power to direct the nurse or midwife to undertake an examination or other assessment of their knowledge of English and provide it with evidence of the result.
- 50 The Conduct and Competence Committee will only use this power where there is a lack of up-to-date information regarding the nurse or midwife's English language capability.
- 51 Any panel considering an allegation of current impairment by reason of language competence at a substantive hearing will have regard to the same factors as set out in paragraph 48 in determining whether there is impairment.
- 52 If the panel finds that the fitness to practise of the nurse or midwife is currently impaired by reason of not having the necessary knowledge of English, then it will be able to impose the following:

- 52.1 no sanction;
- 52.2 a caution order;
- 52.3 a conditions of practice order; or
- 52.4 a suspension order.

53 A panel will not be able to make a striking-off order solely in respect of an allegation of impairment by reason of language competence unless the nurse or midwife has been continuously suspended or subject to a conditions of practice order for a period of two years.

### **Conduct and Competence Committee's consideration of an allegation at a review hearing**

- 54 Where a panel imposes a conditions of practice or suspension order on a nurse or midwife at a substantive hearing, we will hold a review hearing before the order expires.<sup>18</sup>
- 55 Before the review hearing, it is proposed that the Registrar will have the power to direct the nurse or midwife to undertake an IELTS examination. The result of the examination will be provided to the Conduct and Competence Committee to assist them in determining what action to take at the review hearing.
- 56 A reviewing panel will have the same powers of sanction as set out above in paragraph 52.

### **Failure or refusal to comply with direction to undergo a language assessment**

- 57 The new article 28A(4) of the order will allow panels to draw such inferences as seem appropriate if a nurse or midwife fails to comply with a direction made by the Registrar or the Conduct and Competence Committee. This is akin to a refusal by a nurse or midwife facing a lack of competence allegation to submit to an assessment.<sup>19</sup>
- 58 In some cases, where a nurse or midwife refuses to comply with a direction to undergo a language assessment by the Registrar or the Conduct and Competence Committee, we will consider whether to deal with this refusal as an allegation of misconduct.<sup>20</sup> The circumstances in which this course of action will be taken will depend on the facts of each case.

Q6: To what extent do you agree or disagree that in cases where the Registrar directs a nurse or midwife to undergo a language assessment we should use the same test (IELTS) as required for initial registration?

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<sup>18</sup> Article 30(1) of the Nursing and Midwifery Order 2001 (as amended)

<sup>19</sup> Rule 31(6) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004

<sup>20</sup> Nurses and midwives are required to cooperate with all investigations under paragraph 23 of *The Code: Professional standards of practice and behaviour for nurses and midwife* (NMC, 2015).

Q7: To what extent do you agree or disagree that the result stated in the signed IELTS certificate or other document would provide conclusive proof of the result achieved by the nurse or midwife?

## Conclusion

59 We believe that the process that we have outlined in this document and in our accompanying guidance forms a fair and proportionate way to get adequate assurance that nurses and midwives from the EEA entering our register have the necessary knowledge of English. We believe that the process to deal with any allegations that we may receive for nurses and midwives on our register is also fair.

Q8: Do you think that there are any groups who may be unfairly impacted by the changes that we outline in this document?

## Consultation questions

Q1: To what extent do you agree or disagree that the types of evidence (we propose to accept to demonstrate English language competence) are fair and appropriate?

Q2: To what extent do you agree or disagree that the way in which we will request evidence (to demonstrate English language competence) is fair and appropriate?

Q3: To what extent do you agree or disagree that we should seek assurance of language competence through a compensation measure before EEA nurses and midwives have access to patients and service users?

Q4: To what extent do you agree or disagree with our approach concerning English language competence in relation to the readmission of a nurse or midwife to the register?

Q5: Do you think that there are any other evidence sources that we should consider?

Q6: To what extent do you agree or disagree that in cases where the Registrar directs a nurse or midwife to undergo a language assessment we should use the same test (IELTS) as required for initial registration?

Q7: To what extent do you agree or disagree that the result stated in the signed IELTS certificate or other document would provide conclusive proof of the result achieved by the nurse or midwife?

Q8: Do you think that there are any groups who may be unfairly impacted by the changes that we outline in this document?

## Next steps and how to respond

This consultation will run from 1 June to 21 August 2015. To respond to this consultation, please complete our online survey at

<http://survey.euro.confermit.com/wix/p1843908943.aspx>. Alternatively, you can complete a response form available on our consultation webpage and email it to [consultations@nmc-uk.org](mailto:consultations@nmc-uk.org).

After the consultation has closed, we will analyse your responses to finalise the approach that we take. Subject to the outcome of this consultation, the rule changes will be presented before the Council for approval. Subject to a successful completion of the parliamentary processes the rules will take effect.