

Council meeting 1 & 2 August 2006

**PUBLIC BUSINESS**

## **Adjudicating Committee procedures for EEA and Swiss nationals – paper based initial assessment**

### **Purpose**

To consider an alternative procedure to interview by the Society's Adjudicating Committee for the initial assessment of applications received from EEA and Swiss nationals who do not qualify for automatic recognition of either their qualification or work experience under current Directives 85/432/EEC and 85/433/EEC and, after 20 October 2007, Directive 2005/36/EC .

### **Strategic Objective domain**

An organisation that consistently performs as a regulator, professional representative leader and publisher.

### **Recommendation**

On the recommendation of the Adjudicating and Education Committees, Council is asked to agree that the Society should

- i. adopt a detailed paper-based initial assessment application procedure for all EEA and Swiss national applicants who do not qualify for automatic recognition of their qualification under Directive 85/432/EEC and 85/433/EEC, as an alternative to the present interview
- ii. consider all applications within 3 months of receipt of a complete application and provide the applicant with a reasoned decision on the application
- iii. consider all applications in accordance with the general EU principle of proportionality. In accordance with EU Directive 2005/36/EC an aptitude test or an adaptation period with assessments is the only requirement which can be imposed on applicants covered by Article 10(b) and 10(g).

### **1. Introduction**

The Adjudicating Committee is a Committee appointed by the Society's Council with responsibility for assessing applications from overseas qualified pharmacists<sup>1</sup> wishing to register with the Society, and setting the requirements for registration. The Committee sees its role as being to quality control the overseas applicant to ensure that he/she is equivalent to a home student at the point of entry to the Register, as the only fixed point in terms of quality assurance is at the point of entry to the Register.

Under the Society's Byelaws the Committee is charged with examining

- the content and standard of the applicant's pharmacy qualification,
- the applicant's knowledge of pharmacy in relation to current practice in Great Britain

In July 2002 the Adjudicating Committee commenced a review of its policies and procedures informed by the introduction of the 4-year MPharm degree (taught and assessed up to and including Masters level) which ensures that all UK pharmacy graduates achieve Masters level criteria and critical skills.

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<sup>1</sup> other than EEA nationals who satisfy the relevant Directives

Given that the majority of overseas applicants have a bachelor level degree as their primary pharmacy qualification (as verified by UK NARIC<sup>2</sup>), the Committee has encouraged providers of existing accredited MPharm degrees to develop a one-year full time Masters level Overseas Pharmacists' Assessment Programme (OSPAP<sup>3</sup>).

To be eligible for entry to the OSPAP the overseas qualified applicant must possess as a minimum a 3-year bachelor level equivalent pharmacy qualification and be registered or eligible to be registered as a pharmacist overseas. The Committee has determined that the standard requirement for overseas-qualified pharmacists wishing to register with the RPSGB must be satisfactory completion of the OSPAP (comprising course plus all assessments), followed by 12 months preregistration training and a pass at the Society's registration examination.

The majority of applicants are considered on the basis of the academic transcript, UKNARIC's comparability statement and evidence of their registration and good standing with a professional regulator, however a minority are called for interview. The Committee has interviewed the following categories of applicant.

- a. Applicants who possess BPharm or BSc degrees, but UKNARIC's comparability statement indicates that the standard of qualification is below UK bachelor degree level
- b. Applicants who cannot arrange for relevant documents (the academic transcript and evidence of registration and good standing) to be sent directly to the Society by the relevant institutions. The majority of these applicants are refugees or have completed their degree so long ago that their university no longer has a transcript.
- c. EEA and Swiss nationals with EEA qualifications/work experience that do not qualify the applicant for automatic registration under Directives 85/432/EEC and 85/433/EEC.
- d. EEA and Swiss nationals who hold third country qualifications recognised in another Member State and who have been permitted to practise as a pharmacist in that State.

Applicants in categories (a) and (b) will be the subject of a separate paper to Council. The Society receives approximately 50 enquiries a year from applicants in categories (c) and (d).

## **2. Disadvantages of the interview process**

The Committee's interview is a quasi academic assessment of the standard of the applicant's qualifications and training.

At a policy review meeting of the Committee held on 10 January 2006, the Committee noted that although its interviews had developed into semi-structured

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<sup>2</sup> The National Recognition Information Centre for the United Kingdom

<sup>3</sup> The OSPAP is now provided by The Schools of Pharmacy at Aston, Brighton, Sunderland and Robert Gordon Universities. The OSPAP is a 120 credit one-year post graduate diploma course taught and assessed at Masters level designed to ensure that overseas pharmacists achieve the same Masters level criteria as home graduates (minus the requirement to undertake a project). In order to be satisfied that a proposed OSPAP is fit for purpose, the Adjudicating Committee has appointed a visiting panel from amongst its members which, supported by the RPSGB Head of Accreditation, undertakes the assessment of any proposed programme against criteria consistent with MPharm accreditation criteria.

assessments of pharmaceutical and clinical pharmacy knowledge, the process remained a subjective one.

The Committee acknowledged that its members had very different styles of interviewing. This resulted in interviewees being exposed to three or four differing interview styles in a number of pharmacy related subjects over a relatively short period of time, usually 40 to 60 minutes. In such circumstances the interview was more of a measure of the applicant's ability to accommodate the differing interview styles of the Committee members than a scoping of the applicant's pharmacy knowledge. In addition, the Committee recognised that during an interview only a limited range of an applicant's knowledge and experience can be scoped.

The Committee can only interview three applicants at a meeting which can lead to considerable delay in processing a complete application, and possible failure to comply with time-limits provided in the Directives.

The legislative background and implications are included in Appendix 1

### **3. Legal advice**

Legal advice has been sought regarding the status of the 'interview' in the processing of applications covered by Directive 2005/36/EC Article 10 (b) and 10 (g). The advice received emphasises the importance of the Society structuring its initial assessment phase in such a way as to avoid any confusion between the comparison of qualifications on the one hand and any subsequent adaptation periods with assessments or aptitude tests which the applicant may subsequently be required to complete. The interview therefore cannot be used as the tool for comparison. A detailed paper-based assessment of qualifications, at least as an initial stage, would be more likely to maintain that distinction than an interview.

The application will be assessed by the Adjudicating Committee. The applicant's qualifications, knowledge and experience will be compared against the national requirements for registration, the MPharm indicative syllabus, the Society's registration examination syllabus and the preregistration performance standards. The applicant will be required to undertake additional education and/or training to address differences identified. Any requirement to undertake additional education or training must be proportionate and in accordance with ECJ case law and EU legislation.

Note: Following the implementation of the Section 60 Order, under new rules and structures assessment will be undertaken by appointed professional assessors.

### **4. Advantages of the proposed application and assessment route**

- The application in its detail aims to cover all aspects of an applicant's qualifications and experience and permits a consistent and objective assessment of qualifications and experience against published criteria.
- It is consistent with the procedures for assessing applications from EEA and Swiss nationals adopted by other healthcare regulators such as the General Dental Council and the Health Professions Council
- It is consistent with the procedures adopted by the RPSGB for considering applications from EEA and Swiss nationals wishing to join the voluntary pharmacy technicians' Register
- It complies with the legal advice received

- Changing to a paper-based assessment route before it becomes legally necessary to do so will allow assessors to test and refine the questionnaire to determine whether sufficient information will be collected for a detailed comparison with national requirements to be undertaken and to identify training needs.
- The number of applications which fall to be considered under 10 (b) and (g) of Directive 2005/36/EC could be small. Assessors would have little experience of completing such assessments. It is therefore proposed to adopt this application route to all EEA and Swiss nationals who do not qualify for automatic recognition. This will increase experience and develop skills necessary for assessing applications which must legislatively only be processed by this route.

#### **5. Risk Implications**

The proposed procedure is compliant with European legislation and case law whilst maintaining the Society's remit to protect the public and ensure safe practice. A failure to revise the application procedure for EEA and Swiss nationals would mean that the Society would be non-compliant with relevant legislation.

#### **6. Resource implications**

The proposal is cost neutral. Applications will be processed within existing resources.

#### **Recommendation**

On the recommendation of the Adjudicating and Education Committees, Council is asked to agree that the Society should

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- ii. consider all applications within 3 months of receipt of a complete application and provide the applicant with a reasoned decision on the application
- iii. consider all applications in accordance with the general EU principle of proportionality. In accordance with EU Directive 2005/36/EC an aptitude test or an adaptation period with assessments is the only requirement which can be imposed on applicants covered by Article 10(b) and 10(g).

Martha Pawluczyck  
Head of Overseas Registration

## Appendix 1

### Legislative background and implications

EEA nationals who

- have a qualification in pharmacy from a Member State of the EEA which is listed in the Annex to Directive 85/433/EEC (or if not listed, is regarded as comparable to the qualification listed in the Annex), started after the relevant reference date for that member State and which complies with all the Minimum Training Requirements described in Directive 85/432/EEC
- or
- have a qualification in pharmacy from a Member State of the EEA which was granted (or at least started) before the implementation date of Training Directive 85/432/EEC in that Member State (the reference date) and have worked in a Member State in an activity referred to in Article 1(2) of Directive 85/432/EEC (which is also an activity regulated by that Member State) for at least three consecutive years during the five years preceding the award of the certificate. (compliance under the 'acquired rights' provision of Article 6 of Directive 85/433/EEC).

are entitled to register with the Society and the Registrar cannot require these applicants to complete any additional training or assessment prior to registration.

Applications in categories c and d (see page 2 for explanation of categories) must be processed by the Society in accordance with Community legislation, each application being considered individually on its merits. To comply with the requirement for individual assessment these applicants have been invited to an interview with the Committee.

Article 43 EC prohibits restrictions on the freedom of establishment of nationals in the territory of another Member State, therefore where an EEA national does not satisfy the requirements contained in Directives 85/432/EEC and 85/433/EEC then the principle of "mutual recognition" outlined in the *Vlassopoulou* line of ECJ cases will apply. Essentially, under this principle, the Society has to compare a migrant's qualifications and abilities with those required by the national system, to see whether the applicant has the appropriate knowledge and skills to join the pharmacy profession.

If this comparison reveals that the applicant has the knowledge and qualifications which, if not identical, are at least equivalent to the national requirements, then the Society is obliged to recognise the migrant's qualification and permit the applicant to register.

If the comparison reveals that the applicant only partially fulfils the necessary qualifications, then the Society can require the applicant to demonstrate that he has acquired the relevant knowledge and qualifications, which then have to be taken into account. This falls short of requiring the applicant to re-qualify. Any requirement imposed must comply with the general principle of proportionality and be limited to the specific shortcomings identified during the assessment of the applicant's qualifications. In certain extreme cases, it could not be excluded that the shortcomings revealed by an applicant would be such as to require completion of the one-year OSPAP course, twelve months preregistration training and a pass at the

Society's registration examination. However such an extreme course would need to be justified on very clear grounds for it to be defensible as proportionate.

Directive 2005/36/EC will require greater legal differentiation between the types of applicants in category 4 and 5.

Category <b>c</b> EEA national	Training began before the reference date	Applicant has not been effectively and lawfully engaged in pharmacy practice for at least 3 consecutive years in the last 5 years – the 'acquired rights' provisions	Vlassopoulou line of case law General System procedure (Article 10 b) after 20 October 2007
Category <b>c</b> EEA national	Training began after the reference date	Training does not comply with the minimum training requirements (MTR) contained in Article 2 of Directive 85/432/EEC and as began after reference date applicant cannot rely on above 'acquired rights' provisions	Vlassopoulou line of case law
Category <b>d</b> EEA national	Qualification recognised in a Member State in accordance with Article 2 (2) - the MTR	holder has 3 years' of professional experience in the profession concerned on the territory of the MS which recognised that qualification	Vlassopoulou line of case law General System procedure (Article 10 g) after 20 October 2007
Category <b>d</b> EEA national	Qualification recognised in a Member State in accordance with Article 2 (2) - the MTR	holder does not have 3 years' of professional experience in the profession concerned on the territory of the MS which recognised that qualification	Vlassopoulou line of case law
Category <b>d</b> EEA national	Qualification recognised in a Member State but not in accordance with Article 2 (2) - the MTR	Holder may or may not have 3 years' of professional experience in the profession concerned on the territory of the MS which recognised that qualification	Vlassopoulou line of case law

Directive 2005/36/EC must be implemented into national legislation by 20 October 2007 at the latest.

In the case of an application falling within Article 10 (b) and (g) of Directive 2005/36/EC (see the above table) the Society

- must provide the applicant with a reasoned decision within 3 months of receipt of a complete application.

- can require either an aptitude test or an adaptation period with assessments but not both.
- can only require an aptitude test or an adaptation period with assessments if the comparison of the applicant's qualifications and professional experience against the content of training required in Great Britain reveals 'substantially different matters'.

'Substantially different matters', is defined in Directive 2005/36/EC as matters knowledge of which is essential for pursuing the profession and where the training received by the migrant (supplemented by knowledge acquired in the course of his professional experience in a Member State or in a third country) shows important differences in terms of duration or content from the training required in Great Britain.

### Implications of legislative provisions on the outcome of assessments

<b>Applicants covered by Article 10 (b) and 10 (g)</b>	<b>Applicants under the Vlassopoulou line of ECJ case law</b>
Constrained by the general EU principle of proportionality - need to limit the requirements imposed on an applicant to the specific shortcomings identified during the assessment of the applicant's qualifications	Constrained by the general EU principle of proportionality - need to limit the requirements imposed on an applicant to the specific shortcomings identified during the assessment of the applicant's qualifications
Reasoned decision on application within 3 months of receipt of a complete application.	Reasoned decision on application in a timely manner
No additional education or training can be required unless 'substantially different matters' are identified. If comparison reveals only minor differences then the applicant must be permitted to register with no additional requirements	Not constrained by the requirement to identify 'substantially different matters' Minor differences for example could be addressed by a requirement to undertake a period of adaptation with assessment
Can only impose either an 'aptitude test' or 'an adaptation period with assessments' – not both. The 'aptitude' test must be designed to test only the 'substantially different matters' identified.	Can require both an adaptation period and an aptitude test but only if that is assessed to be proportional in relation to the applicant's missing education and training identified. In certain extreme cases, it could not be excluded that the shortcomings revealed by an applicant would be such as to require completion of the one-year OSPAP, twelve months preregistration training and a pass at the registration examination. Such an extreme course would need to be justified on very clear grounds for it to be defensible as proportionate.