

Council meeting 2 & 3 October 2007

PUBLIC BUSINESS

Memorandum of Understanding between EEA Competent Authorities on the exchange of fitness to practise information

Purpose

To place before Council a Memorandum of Understanding, which describes an agreed minimum level of information sharing between EEA Member State regulators concerning fitness to practise cases and the processes for undertaking that exchange of information. The objectives set out in the memorandum are supported by the Law & Ethics Committee.

Strategic Objective Domain

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

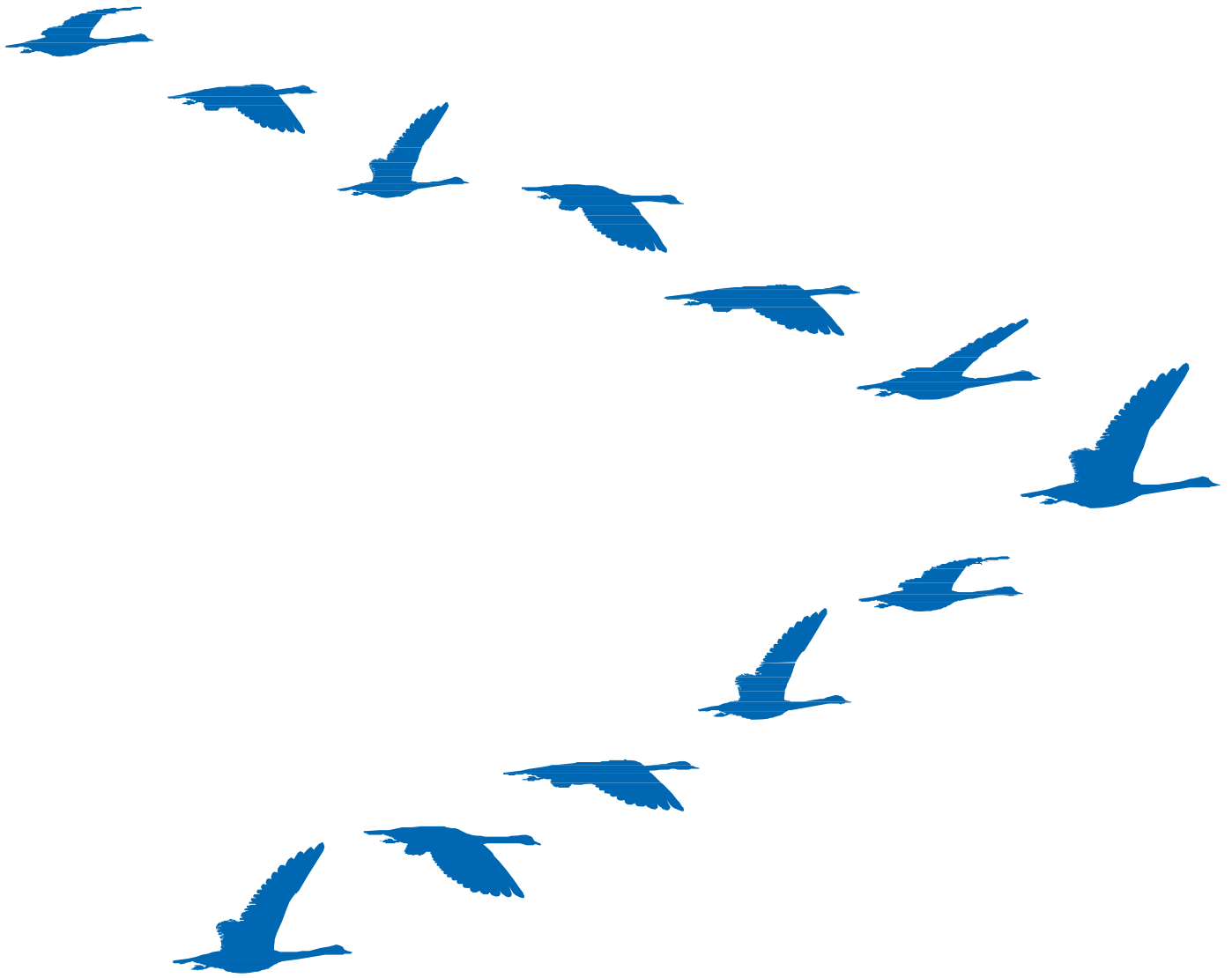
Action required

The Council is asked to agree that:

- i. the Society becomes a party to the Memorandum of Understanding between Competent Authorities to promote case by case and pro-active information sharing concerning professionals who may wish to move from one Member State to another, and
- ii. the Society actively encourages the Competent Authorities it works with to become signatories to the Memorandum of Understanding.

1. Background

- 1.1 Within the EEA there is an increasing number of healthcare professionals moving from member state to member state on a permanent or temporary basis. For example in 2005 nearly 7,500 EEA qualified healthcare professionals registered with UK regulators compared to just over 4,700 in 2003. Most healthcare professionals who move are safe, competent professionals and EU healthcare benefits from movement of skills and expertise. However there are inevitably a small number of health practitioners who fail to meet the levels of competence and standards required for practice and might put patients at risk. They may seek registration in other parts of Europe when they have a disciplinary record, have been erased from the register or in order to avoid disciplinary action in their home country.
- 1.2 The Memorandum of Understanding in Appendix 1 is the result of a working party established under the Health Professions Crossing Borders Project which is a European-wide partnership of healthcare regulators working together to develop improved information sharing and collaborative approaches on regulation in the context of the European Single Market. The UK's input into the project is led by the Alliance of UK Healthcare Regulators on Europe (AURE) and the General Medical Council (GMC).
- 1.3 The Memorandum sets out practical arrangements for the exchange of information between Competent Authorities described in Agreements 2-5 of the Edinburgh Agreement (Appendix 2). The Edinburgh Agreement was the result of the European Consensus Conference held in Edinburgh in October 2005 during the UK Presidency of the EU organised by the Department of Health (DH) and AURE. The Society was represented at this conference by Philip Green, the Deputy Secretary & Registrar.



Healthcare Professionals
Crossing Borders Agreement

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1. Healthcare Professionals Crossing Borders Agreement (the Agreement)

The Agreement of the European Consensus Conference held in Edinburgh, Scotland, on 13/14 October 2005 on the Exchange of Information on Healthcare Professionals Crossing Borders for Competent Authorities

Agreement One

- a) The European Certificate of Current Professional Status will include all the categories of information detailed in Appendix 2. Member States should use this as a template for their Certificate.
- b) The Certificate will be issued on organisational headed paper that displays the name and registered address of the competent authority and that of the addressee. Where the Certificate is issued electronically, this too will display an organisational logo and registered address.
- c) The Certificate will contain a date and an original signature when issued in hard copy format. The Certificate will contain an electronic signature when being sent electronically following prior agreement with the recipient organisation.
- d) All Certificates, transmitted by any means, will be designed to reduce or avoid fraudulent production or reproduction.
- e) Where recipient competent authorities have further questions relating to a received Certificate, where a Certificate has not been issued, or where there is a need to authenticate its validity, the issuing competent authority will seek to make an effective response to enable the registration process to proceed efficiently and within a timeframe agreed between the host and home authorities.
- f) The Certificate will expire after three months of the issue date.

Agreement Two

- a) The agreed scope of the European Certificate of Current Professional Status does not preclude the sharing of more detailed information within, or in addition to, the Certificate of Current Professional Status at the discretion of the issuing authority.
- b) In cases where there is a restriction to practise, including temporary measures (suspension), and on request from a competent authority in a host country, the competent authority of the home country should, as a minimum, respecting personal data protection legislation provided for in Directives 95/46/EC and 2002/58/EC and in the context of implementing Directive 2005/36/EC on the recognition of professional qualifications, communicate the relevant facts of a case.
- c) Relevant facts should be sufficient for the host competent authorities to make their own decisions, on a case-by-case basis, in the context of their own national laws and regulatory practices. Relevant facts should include at least the category of the problem, e.g. conduct, criminal activity etc and the sanction, but more details should be given when there is the potential for a different outcome due to a difference in national laws or regulatory practice.
- d) In the case of total or partial restriction on practice for health reasons, the decisions of one competent authority should not be questioned by another and no further questions should be asked.

Agreement Three

Competent authorities should proactively exchange information when:

- a healthcare professional's right to practise has been restricted because of a serious performance, conduct, health or criminal issue; and/or
- the competent authority has objective reasons to believe that identity or document fraud has been used in the past or may be used in the future by the individual concerned, either to avoid restrictions or to falsely register.

In these serious circumstances, as a minimum, a rapid warning should be sent to:

- the individual's home country; and
- other Member States where the individual has previously been registered, is currently registered or where there are objective reasons to believe they may move in order to seek registration.

Agreement Four

Competent authorities working with their judicial systems should make full use of the Council Decision [Inter-Institutional File 2004/238/CNS; COM(2004) 664] on the exchange of information from the criminal record.

Agreement Five

Some Member States' competent authorities have the power to impose urgent and effective interim restrictions on, or removal from, practice pending full and final determination of a case. In these pending cases where the balance is that patients or healthcare systems are at risk, and especially where a temporary or interim sanction has been imposed pending an appeal or final decision, competent authorities should reactively, or proactively, exchange information with other competent authorities on a case-by-case basis.

Agreement Six

- a) All competent authorities should run a website and this should be signposted and accessed via the 'Health Regulation' website (developed and currently managed by the Health Professions Council UK – www.healthregulation.org).
- b) Each competent authority's website should contain agreed minimum information, and the competent authority should consider publishing information in more than one language.

Agreement Seven

- a) Competent authorities agree to work collaboratively and share best practice in innovation in information exchange. A start should be made by one or more competent authorities on piloting the sharing of electronic information (e.g. smart cards).
- b) Support from the European Commission should be sought for this pilot.

Agreement Eight

In the context of exchanging good practice, competent authorities should collaborate at a European level. The establishment of European associations of professional competent authorities should be investigated.

Agreement Nine

The Glossary of Terms in Appendix 1 should be updated and expanded to reflect the published Directive.

2. Background

2.1 EU Directives and Project Aims

- 2.1.1 The sectoral Directives currently in force¹ on healthcare professionals already contain provisions about the communication between competent authorities² concerning serious matters likely to affect a professional's right to practise. These include disciplinary action or criminal offences. These provisions have been strengthened by the new Directive³ (2005/36/EC), which will replace the sectoral Directives in 2007.
- 2.1.2 Competent authorities are required to make full use of the existing provisions and, towards the end of 2007, to have implemented the new provisions.
- 2.1.3 This agreement has been developed by competent authorities across Europe and other stakeholders to ensure a common, coherent and effective approach to fulfil obligations resulting from the Directives.
- 2.1.4 In reaching an agreement, competent authorities have acknowledged that the vast majority of healthcare professionals, who migrate, are competent and conscientious practitioners who are keen to contribute positively to the provision of healthcare in their new country. Acknowledging the need to get rid of any anti-competitive regulatory restrictions, the competent authorities have therefore tried to facilitate the mobility of healthcare professionals across Europe by developing simple non-bureaucratic systems of information exchange. However, competent authorities have also sought to protect patients from the small number of professionals whose practice may put patients at risk.

1 Directive 93/16/EEC; Directives 77/452, 77/453; Directives 78/686/EEC, 78/687/EEC; Directives 78/1026/EEC, 78/1027/EEC; Directives 80/154/EEC, 80/155/EEC; Directives 85/432/EEC, 85/433/EEC.

2 Articles 11 (3) and (4); Article 12 of Directive 93/16/EEC.

3 Published on 30 September 2005, OJ L 255/22. Also, see Articles 56 and 8.

2.2 Developing the Recommendations for the European Consensus Conference and Reaching a Final Agreement

2.2.1 The process of developing this agreement began during the Netherlands EU Presidency. At the 'Amsterdam Conference' in December 2004, the problems about the exchange of information between competent authorities were well defined. These problems included:

- the processes of data exchange;
- the identification and registration of data on professional misconduct; and
- data protection.

2.2.2 Following the 'Amsterdam Conference', and during the UK EU Presidency, a European-wide Working Group of competent authorities, government and European Commission (the Commission) officials have overseen a project to develop initial recommendations on the exchange of information. These recommendations were presented to the European Consensus Conference in Edinburgh, Scotland, in October 2005. At the Conference, the recommendations were modified, then endorsed by competent authorities and other stakeholders, resulting in this agreement.

2.2.3 The project has been managed by the English Department of Health and AURE (Alliance of UK Health Regulators on Europe).

2.3 Implementation

2.3.1 Considerable progress has been made during the UK EU Presidency. This provides a strong foundation to further develop and to implement the Agreement.

2.3.2 The current project team, with relevant stakeholders, is developing plans for the implementation of the Agreement over the next two years. This includes seeking resources to manage the implementation phase of the project.

2.3.3 The Agreement should apply as soon as possible to all the sectoral health professions, but from the date of implementation of the new Directive (2005/36/EC), it could apply to all the other regulated health professions.

2.4 International Development

2.4.1 The Working Group and the European Consensus Conference took account of the fact that EU professional regulation should be seen in a global context. This is made all the more important when some Member States import considerable numbers of healthcare professionals from outside the EU. Indeed, the numbers from outside the EU registering in some Member States is considerably larger than migration between Member States. The Working Group and the European Consensus Conference have kept in mind developments outside of the EU in developing the initial recommendations and the final agreement. Members of the Working Group and the European Consensus Conference have brought ideas from the World Health Organization (WHO), developments in other countries, and from groups of health regulators such as the International Association of Medical Regulatory Authorities (IAMRA) and international bodies representing health professionals.

3. Key Principles Underpinning the Agreement

3.1 The Agreement has been developed in a spirit of mutual trust between competent authorities and the acknowledgement that all are aiming to protect patients from those professionals whose practice put patients at risk. In developing the initial recommendations and final agreement, the Working Group and, subsequently, the European Consensus Conference, agreed upon and used some key principles. These are:

- to ensure a high level of quality in healthcare and the security and protection of patients;
- to facilitate professional mobility;
- to ensure the public's confidence in healthcare professionals and their regulation;
- to avoid unnecessary bureaucracy;
- to presume innocence until found guilty in all cases of investigation into professional practice or allegations of criminal activity; and
- to fully respect personal data protection legislation provided for in Directives⁴ and in national legislation. This includes only exchanging information necessary for the protection of patients and for the registration of professionals or conferring the right to practise.

4 Directives 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with the regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p.31. Directive as amended by Regulation (EC) No. 1882/2003) and 2002/58/EC of the European Parliament and the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communication sector [Directive on privacy and electronic communications] (OJ L 201, 31.07.2002, p.37).

4. The European Template for a Certificate of Current Professional Status

- 4.1 The most common mechanism for exchange of information on healthcare professionals between competent authorities is the issuing and receiving of Certificates of Good Standing (now to be renamed Certificate of Current Professional Status).
- 4.2 The change of name of the Certificate is based on the fact that some competent authorities are willing and able to extend the information in this certificate to include information on current regulatory status. This includes current restrictions on an individual's right to practise, including interim suspension during an investigation. The European Consensus Conference acknowledged that some competent authorities currently only issue Certificates of Good Standing when there is no restriction to practise including interim suspension, i.e. the absence of a Certificate means an individual is restricted in their practice.
- 4.3 Certificates of Current Professional Status should be issued in at least the language of the 'home' country (see Glossary).
- 4.4 The template for a European Certificate of Current Professional Status is attached as Appendix 2. The standardisation that is likely to flow from the use of the agreed template should also help in overcoming potential language barriers.
- 4.5 The following agreements relate to the use and content of these Certificates.

Agreement One

- a) **The European Certificate of Current Professional Status will include all the categories of information detailed in Appendix 2. Member States should use this as a template for their Certificate.**
- b) **The Certificate will be issued on organisational headed paper that displays the name and registered address of the competent authority and that of the addressee. Where the Certificate is issued electronically, this too will display an organisational logo and registered address.**
- c) **The Certificate will contain a date and an original signature when issued in hard copy format. The Certificate will contain an electronic signature when being sent electronically following prior agreement with the recipient organisation.**

- d) All Certificates, transmitted by any means, will be designed to reduce or avoid fraudulent production or reproduction.**
- e) Where recipient competent authorities have further questions relating to a received Certificate, where a Certificate has not been issued, or where there is a need to authenticate its validity, the issuing competent authority will seek to make an effective response to enable the registration process to proceed efficiently and within a timeframe agreed between the host and home authorities.**
- f) The Certificate will expire after three months of the issue date.**

5. Dealing with Difficult Cases on a Case-by-Case Basis

5.1 Case-by-Case Exchange of Information

5.1.1 Competent authorities find themselves in a difficult situation when an individual has a restriction on their practice in one Member State and that individual seeks to register in another Member State without a Certificate of Good Standing (in future, the Certificate of Current Professional Status), or where a Certificate contains additional information which raises questions. This may include situations where an offence or misconduct would lead to a different outcome in terms of restrictions on practice in the home and 'host' country (see Glossary). This will create the need for competent authorities to share additional information.

5.1.2 One way to ensure that this information can be shared legitimately, and more freely, is for competent authorities to actively obtain consent for sharing information between authorities. This can be achieved through the use of privacy waivers. Competent authorities implementing these waivers would ask new entrants to agree to, or inform registrants that there will be, disclosure of information to other European competent authorities in the event that disciplinary action is taken against them. Where, due to national legislation, consent cannot be requested of all new entrants, then asking for consent when a Certificate is requested should be actively explored. When consent is being sought in order to share information, it will be explained clearly that this could have implications for a professional's right to practise in other European States. Personal health information would be an exception; here, the individual has a right to privacy. However, exchanging the fact that a restriction to practise for health reasons exists is seen as legitimate, on the basis that specific health reasons are to be kept confidential.

Agreement Two

- a) **The agreed scope of the European Certificate of Current Professional Status does not preclude the sharing of more detailed information within, or in addition to, the Certificate of Current Professional Status at the discretion of the issuing authority.**
- b) **In cases where there is a restriction to practise, including temporary measures (suspension), and on request from a competent authority in a host country, the competent authority of the home country should, as a minimum, respecting personal data protection legislation provided for in Directives 95/46/EC and 2002/58/EC and in the context of implementing Directive 2005/36/EC on the recognition of professional qualifications, communicate the relevant facts of a case.**

- c) **Relevant facts should be sufficient for the host competent authorities to make their own decisions, on a case-by-case basis, in the context of their own national laws and regulatory practices. Relevant facts should include at least the category of the problem, e.g. conduct, criminal activity etc and the sanction, but more details should be given when there is the potential for a different outcome due to a difference in national laws or regulatory practice.**
- d) **In the case of total or partial restriction on practice for health reasons, the decisions of one competent authority should not be questioned by another and no further questions should be asked.**

5.2 Proactive Exchange of Information

5.2.1 Proactive exchange of information is competent authorities taking the initiative and circulating information to other competent authorities without a request. This becomes important for patient safety where individuals who pose a risk seek to evade regulatory procedures.

5.2.2 A difficult situation arises for competent authorities when:

- a healthcare professional has been restricted in their right to practise because of a serious performance, conduct, health or criminal issue; and
- the competent authority has evidence that this individual may move to another Member State to try to avoid restrictions on their practice.

This situation causes further difficulty where the competent authority has evidence that identity or document fraud has been used in the past or may be used in the future by the individual concerned, either to avoid restrictions or to falsely register.

5.2.3 The competent authority may have little or no information about where an individual intends to go. In these serious cases, they will have evidence that the individual puts patients or healthcare systems at risk.

5.2.4 It can be argued that, in these rare circumstances, competent authorities have a duty to warn other competent authorities in other Member States about these individuals. This amounts to a rapid alert system in exceptional cases. The competent authority is then faced with making a judgement about whether they should send information on the individual to all Member States (and/or non-EU countries), or to Member States where they have reasons to believe the individual is most likely to move.

5.2.5 Competent authorities seem to vary as to whether they ask and record information about multiple registrations. However, in the context of free movement it is

reasonable to expect that individuals will be registered simultaneously with more than one authority. It is important that competent authorities are able to assess the regulatory risk to other Member States. They might do this by collecting information from competent authorities, particularly the home competent authority, that will help them know where their registrants have practised previously, where they may still be registered and practising, and where they may seek to take up practice in the future.

Agreement Three

Competent authorities should proactively exchange information when:

- **a healthcare professional's right to practise has been restricted because of a serious performance, conduct, health or criminal issue; and/or**
- **the competent authority has objective reasons to believe that identity or document fraud has been used in the past or may be used in the future by the individual concerned, either to avoid restrictions or to falsely register.**

In these serious circumstances, as a minimum, a rapid warning should be sent to:

- **the individual's home country; and**
- **other Member States where the individual has previously been registered, is currently registered or where there are objective reasons to believe they may move in order to seek registration.**

5.3 Criminal Records

5.3.1 Information extracted from the criminal record may be requested for a clear, defined purpose (e.g. in the context of a criminal proceeding or in order to have access to certain jobs or activities). There are two proposals from the Commission on organising exchanges of information between central authorities in charge of the criminal record. Access rights to information remain defined at national level.

5.3.2 The need to improve the quality of the information exchanged on criminal records⁵ has become a priority for the EU, and the Commission has undertaken to work swiftly and vigorously by putting forward proposals for legislation in the short and medium term.

⁵ Information on convictions handed down in other Member States is currently governed by the 1959 European Convention on Mutual Assistance in Criminal Matters (Council of Europe).

- On 13 October 2004, the Commission adopted a proposal for a Council Decision on the exchange of information extracted from the criminal record.⁶ It aims at securing rapid improvements in the current mechanisms for exchanging information between Member States, mainly by providing: (i) time limits for the transmission of this information; and (ii) the use of a standard form for requests and for replies. It also provides that when the central authority of the criminal record is asked for information about a person's criminal record, it is entitled, in accordance with national law, to complete the information in its possession by addressing a request for information to the corresponding authority in another Member State. Political agreement was reached by Member States on 24 February 2005, and it should be adopted shortly.
- On 25 January 2005, the Commission presented a White Paper analysing the main difficulties in exchanging information on convictions and making proposals for a computerised information exchange system.⁷ The Justice and Home Affairs Council of 14 April 2005 agreed on a way forward. On this basis, the Commission will table by the end of 2005 a legislative proposal setting forth an in-depth reform of the existing exchange mechanisms.

Agreement Four

Competent authorities working with their judicial systems should make full use of the Council Decision [Inter-Institutional File 2004/238/CNS; COM(2004) 664] on the exchange of information from the criminal record.

5.4 Pending Cases

- 5.4.1 Particular difficulties arise for competent authorities in cases where they are aware of serious information relating to a practitioner that indicates that the public may be at risk from that practitioner and where no final decision has been taken in the home country about the practitioner's continuing right to practise (so-called 'pending cases').
- 5.4.2 In some cases, the competent authority's decision to restrict or remove registration may be subject to appeal or practitioners may remove themselves from the home register and move to another jurisdiction.
- 5.4.3 The competent authority may have the ability in such cases to impose a temporary or interim sanction pending a final decision. The home competent authority in these circumstances needs to balance the presumption of innocence with the recognition of potential risk to patients.

⁶ Inter-Institutional File 2004/238/CNS; COM(2004) 664.

⁷ COM(2005) 10, 25.01.2005.

Agreement Five

Some Member States' competent authorities have the power to impose urgent and effective interim restrictions on, or removal from, practice pending full and final determination of a case. In these pending cases where the balance is that patients or healthcare systems are at risk, and especially where a temporary or interim sanction has been imposed pending an appeal or final decision, competent authorities should reactively, or proactively, exchange information with other competent authorities on a case-by-case basis.

6. Supporting Information Exchange

6.1 Access to Information via Websites

- 6.1.1 Competent authorities, the public and employers frequently want to find out information about a competent authority, e.g. how they can seek information on individual practitioners or who is the correct individual to communicate with.
- 6.1.2 Most competent authorities have a website that contains this sort of information. In most authorities, these websites have some parts giving free access to the general public where competent authorities will post information they consider should be freely available, e.g. on how to make a complaint. It is technically possible to offer other levels of accessibility to employers and a level of accessibility restricted to competent authorities of the same profession in other countries. This last accessibility level could contain information on individual practitioners and probably should contain a description of the standards and processes by which individual practitioners are investigated. This information will be invaluable for host competent authorities making judgements on practitioners who have moved to their own country.
- 6.1.3 In future, these databases could be expanded to contain more information, e.g. digital photographs of individual practitioners.
- 6.1.4 The Health Professions Council UK has developed a website (Health Regulation Worldwide) giving access to competent authorities worldwide. The European section of this website has been further expanded during the course of the UK EU Presidency, building on the work that began during the Netherlands EU Presidency. The Health Professions Council has agreed to continue managing this site for Europe until, or if, alternative arrangements become available.

Agreement Six

- a) **All competent authorities should run a website and this should be signposted and accessed via the 'Health Regulation' website (developed and currently managed by the Health Professions Council UK – www.healthregulation.org).**
- b) **Each competent authority's website should contain agreed minimum information, and the competent authority should consider publishing information in more than one language.**

6.2 Innovative Approaches to Information Sharing

6.2.1 Collaborative working gives the opportunity in the medium to longer term to trial innovative methods of information sharing, such as establishing personal identity and carrying personal information via smart cards (see Glossary). Competent authorities should begin to explore what such innovation may mean for professional registration and for the transfer of information between authorities.

Agreement Seven

- a) **Competent authorities agree to work collaboratively and share best practice in innovation in information exchange. A start should be made by one or more competent authorities on piloting the sharing of electronic information (e.g. smart cards).**
- b) **Support from the European Commission should be sought for this pilot.**

6.3 Exchange of Good Practice

6.3.1 The relationships between competent authorities is developing, and associations of competent authorities or professional associations of one or more professions are beginning to be formed or already exist. These associations encourage the exchange of good practice and, through the development of close inter-authority relationships, the exchange of information.

Agreement Eight

In the context of exchanging good practice, competent authorities should collaborate at a European level. The establishment of European associations of professional competent authorities should be investigated.

6.4 Definitions and Glossary of Terms

6.4.1 Definitions and terms used by competent authorities can vary in meaning across Europe. The Glossary of Terms attached to this agreement is to make the meaning of this document as plain as possible. It should not be taken as an attempt to harmonise meaning, but as a device to make a working document understandable by most readers.

Agreement Nine

The Glossary of Terms in Appendix 1 should be updated and expanded to reflect the published Directive.

Appendix 1: Glossary of Terms

Home Country and Host Country

The use of the expression ‘home country’ in the Agreement refers to the competent authority/ies where the professional is currently registered. The host competent authority/ies is/are in the country where the professional is moving and seeking registration.

Competent Authorities

In this agreement, ‘competent authority’ means any authority or body empowered by a Member State specifically to issue or receive training diplomas and other documents or information, to receive applications, and to make decisions, including, for example, to register, erase, restrict the practice of or sanction an individual healthcare professional. It is assumed that where several or other organisations hold the required information about the individual, this will be obtained by the competent authority, in its complete form, prior to the issuing of the Certificate of Current Professional Status.

Serious Offence

Within the Agreement, a serious offence or condition is not defined by its nature but by its consequences; therefore, a serious offence or condition is one that leads to any restriction on a professional’s practice. The recently published Directive (2005/36/EC) on the recognition of professional qualifications refers to the obligation to exchange information “regarding disciplinary action or criminal sanctions taken or any other serious, specific circumstances which are likely to have consequences for pursuit of activities under this Directive”.

Restriction to Practise

In this agreement, ‘restriction to practise’ can mean limitation in the type or scope of practice, suspension from practice for a period of time or permanently, or being able to work only under supervision following a period of independent practice. Restriction to practise can be the result of a competent authority making decisions based on a professional’s health, competence, conduct or criminal record.

Smart Card

In the context of this agreement, a smart card is an electronic card containing information relevant to an individual’s professional status, e.g. qualifications and identity number if used.

Fitness to Practise

'Fitness to practise' refers to the judgement made by a competent authority that there are no health, competence, conduct or criminal convictions that should restrict or stop a professional practising in general or in their particular speciality. Fitness to practise is defined by national laws and national regulatory practice and may vary between countries. There are some fitness to practise issues, which do not vary across countries, and these would include such things as severe mental impairment, acts of violence toward patients or colleagues, gross incompetence, gross negligence, absence of appropriate indemnity and other such serious offences.

(This expression does not currently appear in the Agreement but is commonly used and is therefore included.)

Requirement of Non-Discrimination Regarding Certificates of Current Professional Status and Criminal Records

A host Member State may ask for a Certificate of Current Professional Status or an extract from the criminal record at the time of registration etc only if it requires this of its own nationals when they take up any activity for the first time.

Appendix 2: Template for a European Certificate of Current Professional Status

Name

(as on passport, ID card or register)

Nationality

(the applicant's nationality, including any dual nationality status, and details of any changes or additions to nationality)

Professional ID Number/Unique Identifier

(the applicant's official and unique identifier as issued to them by the competent authority)

Gender

Date of Birth

(day, month and year of birth)

Date and Description of Primary Qualification(s) of Healthcare Professionals

(the date of qualification and name of the relevant qualification(s) held, and the name of the awarding body, the relevant Directive and title as in the Directive, as applicable)

Qualification of Specialisation

(the date of qualification and the name of relevant qualification(s) held, the relevant Directive and title as in the Directive, as applicable)

Registered Address

(the place of current practice of the applicant or the applicant's registered address(es))

Registration Status

Current restriction to practise: Yes/No

(details of the nature of the registration held, e.g. full, temporary, restricted, suspended. Where subject to conditions, all restrictions should include their duration and reason where available)

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Alliance of UK Health Regulators on Europe



SCOTTISH EXECUTIVE



- 1.4 The agreement covers the exchange of information on healthcare professions crossing borders and was developed by competent authorities to ensure a common and effective approach to fulfil obligations resulting from the Directives.
- 1.5 The Memorandum of Understanding introduces case-by-case and proactive information sharing in a form that will be acceptable to as many EU Competent Authorities as possible. It therefore describes a minimum level of information exchange. There will be no requirement for Member States to share information relating to matters under investigation or previous fitness to practise history.
- 1.6 The Fitness to Practise Directorate disclose and publish fitness to practise decisions in accordance with provisions in the Pharmacists and Pharmacy Technicians Order 2007. Signing up to the case by case and pro-active information exchange requirements in the Memorandum of Understanding fall within the Society's existing disclosure policy.
- 1.7 In the UK the GMC, the General Dental Council (GDC), the Health Professions Council (HPC) and the General Council of Osteopaths (GOsC) have already signed up to the Memorandum. In addition the GOsC have also successfully lobbied other Osteopathic Regulators in Europe to sign up.

2. Risk implications

With the increasing movement of health care professionals around Europe there is clearly an increasing risk that some health practitioners may seek registration in other parts of Europe when they have been erased or suspended from the register or in order to avoid disciplinary action in their home country. For the Society to become a signatory to the Memorandum of Understanding and to actively encourage other EEA Pharmacy Competent Authorities to sign up would be in the interests of public and patient safety.

3. Resource implications

Fitness to Practise and Education and Registration Directorates will need to ensure that their procedures take into account the requirements under the Memorandum. This is likely to be within existing resources.

4. Communications implications

There may be a need for communications and public affairs activity. The Overseas Registration department has good communication links with the relevant Competent Authorities and will utilise the Health Professions Crossing Borders regular update bulletins and the forth coming meeting of European regulators to encourage other pharmacy Competent Authorities to become signatories.

5. Action required

The Council is asked to agree that:

- i. the Society becomes a party to the Memorandum of Understanding between Competent Authorities to promote case by case and pro-active information sharing concerning professionals who may wish to move from one Member State to another, and
- ii. the Society actively encourages the Competent Authorities it works with to become signatories to the Memorandum of Understanding.

Martha Pawluczyk
Overseas Registration Manager

Appendix 1

Healthcare Professionals Crossing Borders: General Memorandum of Understanding Covering the Proactive and Case-by-Case Exchange of Disciplinary Information

Introduction

This document describes the understanding reached by participating European competent authorities for the exchange of disciplinary¹ and related information about healthcare professionals on a proactive and case-by-case basis.

Justification

1. Article 56 of Directive 2005/36/EC on the recognition of professional qualifications states² that competent authorities shall work in close collaboration and shall provide mutual assistance in order to facilitate the application of the Directive.
2. Having regard to this legal requirement, this memorandum is based on the Agreement made between European healthcare regulators at the European Consensus Conference held in Edinburgh, Scotland, on 13-14 October 2005 ('the Edinburgh Agreement'). It also takes account of the statement made by the European healthcare regulators following their meeting in Helsinki on 23 October 2006 that all regulators must exchange information about healthcare professionals that has a bearing on patient safety in Europe and on professional regulation.
3. In this context, the memorandum sets out the practical arrangements for the exchange of information between competent authorities described in Agreements 2-5 of the Edinburgh Agreement.
4. Nothing in this memorandum shall prevent participating competent authorities from sharing additional information, or sharing it more widely, than is described in this memorandum where that is in the public interest and they are not prohibited from doing so by legislation or other constraints. The memorandum does not replace but should facilitate bilateral agreements between individual Member State competent authorities where professional mobility is common.

Purpose

5. As stated in the Edinburgh Agreement, the purpose of sharing the information referred to in this memorandum is to protect patients and the public from those healthcare professionals whose practice may put them at risk. By sharing this information, we aim to:
 - Ensure a high level of quality in healthcare across the EEA and the security and protection of patients.
 - Ensure the public's confidence in healthcare professionals and their regulation.

Scope

6. This memorandum covers the sharing of information about healthcare professionals who have been subject to disciplinary or other sanctions imposed by a competent authority or other relevant body and which might affect the individual's right to practise his profession, either in his Member State of establishment or another Member State. It covers sanctions and undertakings arising from criminal behaviour, professional

¹ In this memorandum, the terms 'disciplinary' and 'fitness to practise' are used to refer to action taken by a competent authority arising from criminal behaviour, professional misconduct, professional incompetence, poor performance or ill-health.

² http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_255/l_25520050930en00220142.pdf

misconduct, professional incompetence or poor performance. It also covers sanctions imposed as a result of impaired fitness to practise by reason of ill health.

7. The exchange of information described in this memorandum shall be conducted in accordance with the national laws in the signatories' own Member States. **Because of the legislative constraints that exist in some countries, some of the Member State competent authorities that are signatories to this memorandum are currently unable to participate in the proactive aspects of information exchange described in parts of this document. Those competent authorities identified in Section B of paragraph 44, nevertheless undertake to comply with the arrangements for reactive information exchange described in this document. They will work towards achieving proactive information exchange in the interests of patient and public protection as and when this becomes legally possible within their jurisdictions. The competent authorities listed in Section A of paragraph 44 undertake to comply in full with the arrangements described in this memorandum.**

The circumstances in which information shall be exchanged

8. For the cases referred to above, the following paragraphs describe the circumstances in which information shall be shared between competent authorities.

Reactive information exchange

9. When a healthcare professional wishes to practise in another Member State the application will normally be supported by a number of documents, such as the applicant's passport, relevant educational diplomas and a Certificate of Current Professional Status (CCPS). The host competent authority's authorisation processes will be designed to facilitate the mobility of professionals, subject to the requirement to ensure a high quality of healthcare and the protection of patients and the public.

10. The host Member State competent authority may require from another competent authority, further information in the following circumstances [see Edinburgh Agreement 2]:

- Where an individual seeks to register or take up professional practice without a CCPS and the host Member State requires information from the Member State of establishment in order to be satisfied that patients and the public will not be put at risk [see Edinburgh Agreement 2, paragraph 5.1.1].
- Where a CCPS issued by a competent authority contains information that leads the host Member State to question whether the interests of patients and the public may be at risk because of matters relating to the individual's conduct, health or competence [see Edinburgh Agreement 2, paragraph 5.1.1].
- Where a competent authority in one Member State has provided information proactively and further information is requested in order to establish whether the individual concerned poses a potential risk to patients or the public [see Edinburgh Agreement 2].

11. The information that may be requested includes, but is not limited to, information to establish the healthcare professional's identity, information to ensure the authenticity of documents, and information about the health professional's education or practice history.

Proactive information exchange

12. It is necessary proactively to share information with other Member States in order to protect the interests of patients and the public in those Member States:

- Where a healthcare professional's right to practise has been restricted or removed because of serious matters relating to his conduct, health, performance, or matters of a criminal nature; and/or

- Where a competent authority has objective reasons to believe that identity or document fraud has been used, or may be used in the future, by the individual concerned, either to avoid restrictions on his practice or to obtain registration falsely in another Member State.

13. Paragraph 22 describes the basis on which the signatories to this memorandum will exchange such information.

What information will be exchanged

14. In deciding what information competent authorities will exchange, the over-riding consideration will be the need to protect the interests of patients and the public, both within their own jurisdictions and in the territories of other Member States.

15. Competent authorities will at all times respect the requirements of the relevant privacy and data protection legislation within their Member States. This includes taking account of responsibilities in respect of Article 13 of Directive 95/46/EC on the processing of personal data. Competent authorities may share data in the interests of public protection and in order to safeguard *'the prevention, investigation, detection and prosecution...of breaches of ethics for regulated professions...or a...regulatory function connected, even occasionally, with the exercise of official authority'*.

Reactive information exchange

16. In making a request for information under paragraph 10 above, the host Member State seeking information will provide details sufficient to enable the Member State of establishment to ensure the correct identification of the healthcare professional concerned, including:

- a. The healthcare professional's full name
- b. The registration, reference or licence number in the host Member State and in the Member State of establishment (if known)
- c. Professional qualifications (including the year they were awarded and the name of the awarding body), if known
- d. Where necessary, confirmation that an authorisation for the release of the information has been obtained from the healthcare professional concerned.

17. In reacting to a request for information under paragraph 16 above, the competent authority receiving the request will, as a minimum, provide the host state competent authority with the following:

- a. Confirmation of the identity of the healthcare professional
- b. Details of any current sanction imposed affecting his right to practise in relation to the matters specified in paragraph 6 above. This will include sanctions covering removal from the relevant professional register or withdrawal of a licence to practise, temporary suspension from the register or of the licence, conditions imposed on registration or the licence, any warning, admonition, reprimand or equivalent, any financial penalty imposed [Edinburgh Agreement 2]
- c. Details of any current criminal conviction relating to patient and public safety, where this is known [Edinburgh Agreement 4].
- d. Confirmation of any undertakings given by the healthcare professional voluntarily to restrict, suspend or cease his professional practice as a result of a finding against him in relation to one of the matters specified in paragraph 6 above.

- e. The date on which the sanction was imposed and its duration.

18. Member State competent authorities that are requested to provide information will have regard to all relevant privacy and data protection legislation. Taking this into account, they will make every effort to accommodate and respond positively to requests from other competent authorities for additional supporting information, documentation or evidence in relation to the matters referred to in paragraph 17.

19. Where a sanction has been imposed as a result of impaired fitness to practise by reason of ill-health, competent authorities shall not be expected to provide additional information about the nature of the impairment unless consent has first been obtained from the healthcare professional concerned [Edinburgh Agreement 2d].

20. Where a Member State competent authority receives a request for information that it cannot itself fulfil, it should consider whether there are other organisations that might be able to provide the information and advise the requesting competent authority accordingly.

21. Where individual Member State competent authorities are willing, on a bi-lateral basis, to exchange information over and above the minimum specified in paragraph 17, the scope of that exchange may be detailed in an annex to this general memorandum (see Annex B).

Proactive information exchange

22. Where a competent authority has imposed sanctions on a healthcare professional's right to practise his profession as described in paragraphs 6 or 17 above, it will need to assess the potential risk posed by that individual to patients and the public in other Member States. It will, as a minimum, proactively send the details specified in paragraph 17 above to [Edinburgh Agreement 3]:

- a. The competent authority in the individual's Member State of establishment, if known.
- b. If the individual has qualified as a healthcare professional in a Member State other than his Member State of establishment, the competent authority in the Member State where he qualified.
- c. Any Member State where the individual is known to have previously worked or been registered.
- d. Any Member State where the individual is believed to be currently working or registered.
- e. Any Member State where there is objective reason for believing that the individual may be intending to work or obtain registration (for example, because he has indicated an intention to do so or is known to have an address within that jurisdiction).

23. There will be some cases where a wider distribution of information may be necessary, for example where an individual has been found to have used document or identity fraud in order to gain access to a healthcare profession. In such cases, competent authorities may need to inform others even if the fraud has been detected before the individual could obtain access to the profession. In all cases competent authorities must act proportionately having regard to the potential risk to the patients and public confidence in the regulatory systems in other Member States.

Changes in professional status

24. Where information has been provided by one competent authority for another competent authority pursuant to paragraphs 8-23 above, and the status of the healthcare professional concerned subsequently changes in a way not previously notified (for example, because a sanction imposed is withdrawn or amended and the duration of the sanction had not been indicated in the original notification), any competent authority notified of the original sanction will be informed of the change of status.

25. Where a CCPS has been sent to another competent authority showing no sanction or other action against the healthcare professional concerned, but a disciplinary sanction is subsequently imposed, the competent authority that issued the original certificate will notify any competent authority to which it has sent such a certificate of the individual's change of status.

When information will be exchanged.

26. One of the principles of the Edinburgh Agreement is that healthcare professionals must be presumed innocent until found guilty of a professional or criminal offence. Accordingly, competent authorities providing information in accordance with paragraphs 8-23 agree to provide information in cases where a final decision on the case has been taken.

27. Where information is requested of a competent authority under paragraphs 10-11, that authority shall not be required to provide any information about the case if:

- No final decision has been taken because the case is under investigation, or
- A temporary sanction has been imposed pending a final decision, or
- The healthcare professional has appealed the decision against him.

28. However, in any case where public or patient safety may be at risk, the competent authority shall inform the body that has requested the information that proceedings are underway and that it will be notified of the outcome once a final decision has been taken.

29. Nothing in this memorandum shall prevent competent authorities from sharing additional information, or sharing information prior to the final decision in a case where this is in the public interest and competent authorities are not prevented from doing so by their domestic legislation

With whom information will be exchanged.

30. The signatories to this memorandum will designate a named officer(s) within their organisations for the receipt of information. Organisations may wish to consider creating a dedicated email post box for the exchange of information. The designated officer(s) and their contact details are listed in Annex A of this memorandum.

Proactive information exchange

31. Information provided proactively will, as a minimum, be sent to the other signatories to this memorandum in accordance with the requirements set out in paragraphs 22-25 above.

Confidentiality

32. Information received by the designated officer(s) (see paragraph 30) under the arrangements described in this document will be treated in confidence. Unless required to do so by law, or it is necessary to do so in the public interest, information will not be shared

with outside organisations or individuals without first obtaining the agreement of the competent authority that originally provided the information.

How information will be exchanged.

33. Information will be provided in electronic or paper format to the designated officer(s) in the relevant competent authorities. Where information is conveyed electronically, it may be provided in password protected or encrypted format if the participating bodies have the necessary facilities.

34. Information will be provided at least in the official language(s) of the Member State issuing the information.

Service delivery standards

Reactive information exchange

35. The information exchange described in this memorandum relates to matters of public and patient safety. When an information request is received it should, therefore, be treated as a priority matter.

36. Where information has been requested from a competent authority, that authority shall:

- Acknowledge receipt of the request within 5 working days.
- Provide the information requested within 15 working days or explain why the information cannot be provided.

Proactive information exchange

37. Where a competent authority is providing information proactively, it shall send details of the cases in which a final decision has been made at least once a month or, if cases are determined less frequently than once a month, on a case by case basis.

Supporting processes

38. The signatories agree to work towards putting in place within their organisations any administrative or other procedures necessary to help them comply with the requirements of this memorandum. For example, in order to target the proactive distribution of information in an accurate and proportionate manner in accordance with paragraphs 22-25, competent authorities will need to collect information from health professionals such as their place of qualification, other Member States where they have worked, or Member States where they are currently registered to practise.

39. Signatories may also need to put in place processes to advise healthcare professionals that information about their registration status may be shared with other EEA Member State competent authorities where that is in the public interest or necessary for the protection of patients.

40. Signatories will be assisted in exchanging information by having access to the comprehensive list of competent authorities located at www.healthregulation.org. Signatories are responsible for ensuring that the information on this website relating to their own organisations is kept up to date.

Monitoring the operation of the memorandum of understanding

41. In order to ensure the effective operation of this memorandum of understanding, the signatories will undertake to review its effectiveness after 12 months. That review will include a statistical examination of the number of cases in which information has been

exchanged on a case-by-case basis (reactively and proactively) and the competent authorities involved.

42. The review will also include an evaluation of any problems that have arisen in complying with the memorandum.

Resolution of problems

43. In fulfilling the terms of this memorandum, the signatories agree to act in a spirit of practical co-operation at all times, bearing in mind the prime objective of protecting patient and public safety. Where disagreements or problems arise, the designated officers will be initially responsible for attempting to resolve them. If a satisfactory resolution cannot be achieved in this way, the signatories to this memorandum from the relevant Member States will be consulted.

Acceptance of the terms of this memorandum

44. The organisations listed below agree to abide by the terms and spirit of this memorandum of understanding.

Section A: Signatories undertaking both reactive and proactive information exchange

Signed:.....[Presidents, Chairmen, Chief Executives or Directors
of all the participating bodies]

Date:.....

Section B: Signatories undertaking reactive information exchange

Signed: [Presidents, Chairmen, Chief Executives or Directors
of the participating bodies]

Date:.....

Annex A

[Insert list of designated officers in each of the participating bodies and their contact details]

The Norwegian Registration Authority for Health Personnel, Norway, Postbox 805
Dep, 0031 Oslo, Norway, Telephone: +47 21 52 97 00.
Email: postmottak@safh.no

Cyprus Dental Council:

General Chiropractic Council, UK: Mr Paul Ghuman, Registered Data Controller,
General Chiropractic Council, 44 Wicklow Street, London WC1X 9HL. Telephone +44 20
7713 5155. Email: p.ghuman@gcc-uk.org

General Dental Council, UK:

General Medical Council, UK: Ms Eadaoin Flynn, Intelligence and International Liaison
Manager, General Medical Council, St James's Buildings, 79 Oxford Street, Manchester
M1 6QF. Telephone: +44 (0) 161 923 6653. Email: intel@gmc-uk.org

Health Professions Council, UK:

Medical Council of Ireland:

Forum for Osteopathic Regulation in Europe (14 bodies)

Health Professions Council, UK: Mark Potter, Park House, 184 Kennington Park Road,
Kennington, London SE11 4BU. Telephone +44 (0) 207 840 9755. Email:
mark.potter@hpc-uk.org

The Health Care Board (Tervishoiuamet), Estonia:

Belgian Federal Public Service of Health:

Annex B

[To be used by individual Member States to give details of any additional bi-lateral
agreements that provide variations on, or extension of, the information sharing template
set out in the main text]