
Changes to the Immigration Rules for Postgraduate Doctors and Dentists

On 7 March 2006 the Department of Health announced that the Home Office would be making changes to the immigration rules for Postgraduate Doctors and Dentists

The changes, which will come into effect on 3 April, aim to amend the current specific category within the immigration rules which relate to Postgraduate Doctors and Dentists. In future, the only doctors and dentists who will be covered by the existing ("permit free") arrangements are those who have completed their medical degree in the UK and have been appointed to a 2 year Foundation Programme.

The Home Office has also announced its longer term policy on managing migration, based on a points based system for people coming to the UK to work, study and train. The Home Office aims to introduce the new system in stages to replace the current arrangements and simplify the system for employers and migrants.

What does this mean for future recruitment?

You need to ensure that any offers of appointment you make are line with the new rules. When you advertise your post, applicants are likely to be British Citizens or fall into the following categories;

- EEA nationals
- Doctors and dentists with existing leave to remain under the current immigration rules for Postgraduate Doctors and Dentists
- Doctors and dentists who require a work permit
- Doctors and dentists who have leave to remain under the Highly Skilled Migrant Programme
- Doctors and dentists who are in the UK by virtue of another immigration category e.g. those with leave as a dependent – each specific case would need to be checked

EEA nationals have the automatic right to work in the UK and should therefore be considered in the same way as UK applicants for posts.

Doctors and dentists who have existing leave to remain as a Postgraduate Doctor or Dentist will be allowed to stay and train in the UK until that leave expires. Therefore, if the post on offer will be completed within the period of the doctor's/dentist's existing leave, the employer (and the doctor/dentist) will not need to seek permission from the Home Office for the doctor/dentist to take up the post. However, from 3 April doctors and dentists will only be eligible for leave as a Postgraduate Doctor or Dentist for their Foundation Programme, and then only if they have studied in the UK and meet all the other requirements. If you have offered a post to a doctor or dentist who currently has leave as a Postgraduate Doctor or Dentist, but their leave will expire before the end of the post, then they will need to apply for a different category of leave to complete the post. It is likely that the work permit system would be the most appropriate category - see the information on work permits below.

The majority of candidates for posts will require a work permit. This means that you need to apply to Work Permits (UK) for a work permit before you can employ the candidate. When you make an application for a Work Permit you will have to demonstrate to Work Permits (UK) that there are no suitable EEA nationals who can

take up the post. In practice, this should involve very few adjustments to your recruitment processes. However, once your closing date has passed, you will need to review how many applicants are EEA nationals and how many would require a work permit. Depending on how many posts you are filling, and how many applicants fall into each category, you will then need to decide whether to assess the EEA candidates first or whether to assess all of the applicants at the same time. The important thing is that, before making any offers of employment, you make sure that the suitable EEA nationals are considered in advance of those who require a work permit.

If you are advertising a popular post, you may wish to restrict applications to only those doctors who do not need a work permit to take up the contract. This should reduce the number of applications you have to deal with.

Where a work permit is required, you, as the employer, need to apply for a work permit on behalf of the doctor/dentist. When this is issued, the doctor/dentist themselves will then need to apply for leave to remain as a work permit holder. If the doctor/dentist currently has leave under another category of the Immigration Rules (for example leave as a Postgraduate Doctor or Dentist) then they will not be able to take up the post until both the work permit has been issued and the doctor/dentist themselves has been granted leave to remain as a work permit holder.

Not all doctors and dentists will be able to change the basis of their stay (switch) within the UK. Those in the UK as a Postgraduate Doctor or Dentist can switch into leave as a work permit holder, but those with leave as a Visitor or as the dependant of another migrant cannot switch into leave as a work permit holder and will need to leave the UK and make the appropriate application for entry clearance from abroad.

Some doctors and dentists may have been accepted onto the Highly Skilled Migrant Programme (HSMP). Doctors and dentists who have leave under HSMP can take up any training or employment posts you offer, without the need for you or they to ask the Home Office for permission

How do I apply for a Work Permit?

Detailed information on applying for work permits can be found at www.workingintheuk.gov.uk

Applications for training posts should be made under Tier 2 of the Work Permit rules.¹ You need to complete form WP1 which is available at www.workingintheuk.gov.uk to download and complete, or to fill in on-line. You can also obtain a printed copy by calling 08705 210224 (9am – 5pm Monday to Friday).

What do I need to provide?

You will need to include the following with your application;

- Copies of the doctors'/dentists' professional qualifications i.e. their GMC/GDC certificate
- Copies of references from past employers (on headed paper) to confirm the person's work experience – these should include start and finish dates and details of the work undertaken²
- Evidence that you cannot fill the post with a resident worker – see below

NB When applying for a Work Permit, you need to make sure that the name you include for the doctor/dentist is the same as the name given on their passport.

How do I demonstrate that there is no suitable EEA applicant?

In order to satisfy the need to test the resident labour market, you should include;

- Print out of the vacancy as it appeared on a website (if advertised on NHS jobs or similar portal) or a copy of the advertisement as it appeared in a recognised journal
- Confirmation of where the post was advertised
- Proof that the advertisement was placed within 6 months of the work permit application being made.
- Information on how many people applied for the post
- Information on how many people were short listed for the post
- Explanation, for each 'resident worker' who applied, why they have not been employed

NB When a Deanery is managing the recruitment to posts, they will have to provide the relevant information to employers so that they can apply for the Work Permit.

If you cannot meet all of these requirements (e.g. placing the advertisement within 6 months of the application), you need to include an explanation of this in a covering letter.

Work Permits (UK) expect vacancies to be placed in the most appropriate medium for reaching suitably qualified 'resident workers'

What are the time limits on Work Permits?

Work Permits are granted for the duration of the contract, up to a maximum period of 5 years. As SHO posts will be phased out from August 2007, Work Permits for SHO posts will not be granted beyond 10 August 2007.³

How much does a Work Permit cost and who is responsible?

The current cost of a Work Permit is £153. The employer is responsible for this fee. Further information can be found in the Payment Guidance Notes at www.workingintheuk.gov.uk

In addition to a valid work permit, the doctor also needs valid leave to remain.

Does an employer have to apply for a Work Permit for every post a doctor/dentist undertakes?

A Work Permit is required for every post that is undertaken in the NHS. When a doctor/dentist is appointed to a training programme, the employer should apply for a work permit to cover the duration of the contract. When the doctor/dentist moves employer as part of the programme, the new employer should make an application to change the employer on the work permit. This application should be made on the WP1 form but the advertisement section does not need to be completed.

How long does it take to apply for a Work Permit?

The service standards for processing work permit applications are:

70% of all applicants are decided within 5 working days of receipt at the payment handling services.

90% of all applicants are decided within 15 working days of receipt at the payment handling services.

When should I apply for the Work Permit?

If the doctor/dentist is outside the UK, you should apply no more than 6 months before they are due to start.

If they are already within the UK, you should apply before the person's permission to stay in the country expires. Work Permits UK ask that you apply at least one month before the leave expires but no more than three months before this date.

Can doctors and dentists undertake locum posts whilst they are employed on a Work Permit?

Work Permit holder can undertake 20 hours supplementary employment each week as long as it is at the same professional level and not with an agency (excluding NHS Professionals).

What about those doctors and dentists who have already been appointed?

If you have offered a post to a doctor or dentist before 7 March (the date the rule changes were announced), and;

- that doctor/dentist does not have sufficient leave to complete the post they have been appointed to, and
- that doctor/dentist will take up post on or before 4 August

then you can apply for a work permit on their behalf without the need for you to demonstrate there was no suitable EEA candidate.

Applications for Work Permits should be made in the usual way. The normal switching provisions still apply – this affects who can take up the post without leaving the UK to make their application. This means that, for example, doctors and dentists in the UK with leave as a Postgraduate Doctor or Dentist can switch into leave as a work permit holder, but those in the UK as Visitors will need to go abroad and make the correct application for entry clearance as a work permit holder.

These special arrangements also apply to doctors and dentists who were 'matched' to a Foundation Programme before the announcement was made, regardless of whether a formal offer of employment has been issued by the employer.

In these cases, a letter from the Postgraduate Dean will need to be included with the application to confirm that the offer was made before the 7th March.

Any offer of employment that is made on or after 7 March (the date of the announcement), or for a post which starts after 4 August, will be subject to the normal Work Permit requirements, as set out above.

What about those doctors and dentists who are already employed but whose leave to remain expires before the end of their training programme?

In addition to the arrangements in the previous paragraph, doctors and dentists who are undertaking training programmes as a Specialist Registrar which are due to continue beyond their current leave to remain as a Postgraduate Doctor or Dentist can switch into the Work Permit system without the need to re-advertise their post. To benefit from these transitional arrangements, applications for Work Permits have to be submitted by the employer by **31 December 2006**. Applications should be made in the usual way.⁴

Are clinical attachments affected?

Following discussions with the Department of Health, the Home Office has also taken this opportunity to limit the amount of leave that can be granted specifically to undertake clinical attachments and dental observer posts to 6 weeks at a time or 6 months in total.

This is in line with the purpose of these posts, as a way for overseas doctors and dentists to familiarise themselves with UK working practices. They are designed to be filled for short periods only and not to be used as a way of remaining in the UK when there are no suitable training or employment posts available.

Where can I find out more about the new Immigration Rules?

The changes to the Immigration Rules were laid before Parliament on 10 March and will come into effect on 3 April.

The Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules which can be found on the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/immigration_rules.htm
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Where can I find out more about the new managed migration system?

The proposal for a new points based system for managed migration was first announced in February 2005. This was followed by an extensive consultation period. The Home Office response to this consultation, *A Points-Based System: Making Migration Work for Britain* was published on 7 March. This included further details of the new system.

A Points-Based System: Making Migration Work for Britain is available on the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/news/press_releases/a_points-based_system.html

Where can doctors find out more information?

Doctors interested in working in England can find out more information from NHS Careers at www.nhscareers.nhs.uk or 0845 6060 655.

Where can employers get more advice about the implications of the rule changes?

Further information for employers in England is available at www.nhsemployers.org.

¹ 19 June a new application category within tier 2 of the business and commercial work permit arrangements for postgraduate doctors and dentists was introduced. Under the new category, Postgraduate Deans will be able to apply for a work permit to cover the entire training programme of the doctor or dentist providing the training remains within the boundaries of their deanery. New forms and guidance will be available on the Working in the UK website www.workingintheuk.gov.uk from (12/6/06)

² Copies of references are not required if the doctor or dentist has registration with the GMC and/or GDC.

³ Work permits are issued for the duration of the employment up to a maximum of five years. As yet there are no plans to limit approvals for SHO posts.

⁴ The affect of the new arrangements on sponsored training posts is still under discussion. However these posts will, in some way, be accommodated within the work permit arrangements.