Agenda item: 4

Report title: Impact of revised directive 2013/55/EU on the GMC’s acceptable overseas qualifications criteria

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Action: To consider

Executive summary
We need to revise our acceptable overseas qualifications (AOQ) criteria because of imminent changes to the Recognition of Professional Qualifications Directive 2005/36/EC (the Directive). The current minimum basic medical training (BMT) requirements of six years of study or 5,500 hours of theoretical and practical training provided by, or under the supervision of, a university (Article 24(2)) will change to at least five years of study and 5,500 hours.

To comply with the Directive it is clear that we have to apply the new BMT requirements to EEA nationals and exempt persons with a third country (non-EEA) qualification. This cohort will not have a route to registration if their primary medical qualifications do not meet the new minimum BMT requirements. It is less clear whether the new BMT requirements must be applied for non-EEA applicants with third country qualifications (including UK nationals).

The revisions to the Directive must be transposed by 18 January 2016. We therefore need to amend our AOQ criteria and decide the extent to which we apply the new BMT requirements to third country qualifications. Initial analysis shows that applying the revised requirements to third country qualifications will have greatest impact on the acceptability of North American qualifications, which are generally three or four years long.

Recommendations
The Strategy and Policy Board is asked to:

a Agree to amend the GMC’s acceptable overseas qualifications criteria to reflect the new basic medical education requirements.

b Agree that we do not apply the revised basic medical education requirements to third country qualifications awarded to non-EEA applicants.
Background

1. The Medical Act 1983, as amended (the Act) states that only third country primary medical qualifications (i.e. primary medical qualifications (PMQs) awarded by bodies outside the EEA) deemed acceptable to the General Council are satisfactory for the purposes of registration in the UK. Council has delegated the function of determining what is an AOQ to the Registrar. In lay terms, the nationality of an applicant awarded a third country PMQ affects the route to UK registration. The table at Annex A lists the types of registration for which an AOQ is required.

2. Our current AOQ criteria state that to be acceptable, a qualification must, among other things, be at least 5,500 hours over a minimum period of three years. This is consistent with the current provisions of the Recognition of Professional Qualifications Directive 2005/36/EC (the Directive) that BMT shall comprise six years of study or 5,500 hours of theoretical and practical training provided by, or under the supervision of, a university (Article 24(2)). Our current AOQ criteria are sufficiently flexible to enable us to accept basic medical education and training that has taken place outside the European context.

3. However amendments to the Directive (which the Government must transpose into UK law by 18 January 2016) will change the BMT requirements to 5,500 hours and five years.

Impact on the acceptability of primary medical qualifications awarded outside the EEA

4. We asked Counsel for advice on whether the GMC will be legally required to apply the new BMT requirements to third country PMQs awarded to both EEA nationals (and exempt persons) and non-EEA nationals. (For the purposes of this discussion, references to non-EEA nationals include UK nationals awarded non-EEA PMQs.) Counsel advised that:

   a. The new BMT requirements apply to third country PMQs awarded to EEA nationals (and exempt persons). From 18 January 2016, EEA nationals (and exempt persons) will not therefore have a route to any form of registration – whether provisional or full – in the UK if their third county PMQ does not meet the revised minimum BMT requirements.

   b. The case is less clear for non-EEA nationals with third country PMQs. Recital 10 of the Directive states that ‘all recognition should respect…minimum training conditions’. However, Recitals are not legally binding and, in Counsel’s view, there is therefore a respectable legal argument that there is no specific requirement on the GMC to apply the revised BMT requirements to non-EEA applicants. Having said that, Counsel believes that the safest option (in terms of legal risk) would be to apply the new BMT requirements to all third country qualifications.
Implementing the revised BMT requirements

5 The Medical Act is unequivocal*: third country PMQs held by EEA nationals (and exempt persons) must meet the BMT requirements stipulated in the Directive. From 18 January 2016, we must therefore apply the new BMT requirements to third country PMQs awarded to EEA nationals (and exempt persons). However, we need to decide whether to apply the new BMT requirements to third country PMQs awarded to non-EEA applicants.

6 Initial analysis shows that the majority of non-EEA PMQs will meet the new BMT conditions, if, where necessary, we include relevant postgraduate study in the calculation of time spent (which Counsel advised we may do if this study leads to the completion of BMT). However, some non-EEA PMQs will not meet the minimum BMT conditions. For example, American and Canadian PMQs are awarded after programmes of study that are generally only three or four years long; and it would be difficult to include time served in residency programmes within the calculation as residencies focus on specialty training rather than properly being described as study towards BMT. Non-EEA nationals awarded American or Canadian PMQs (and any others that do not meet the new BMT requirements) will not have a route to registration if we apply the new BMT requirements to their PMQs.

7 Two options (with associated risks and challenges) are set out at Annex B. Our preferred option (option 2) is not to apply the new BMT requirements to third country PMQs awarded to non-EEA nationals, notwithstanding the risks and challenges identified at Annex B. We will amend our AOQ criteria to reflect the agreed approach to applying the new BMT requirements to third country (non-EEA) qualifications.

8 We are exploring the issues with DH(E) and other competent authorities, and will update the Board at its meeting on 1 December 2015 on the outcome of these discussions.

Equality issues

9 Adopting this approach will mean that we will treat EEA nationals (and exempt persons) and non-EEA nationals awarded the same PMQs differently. We are undertaking an equality analysis and will update the Board on any disproportionate impact for doctors sharing protected characteristics. However, changes to EU law require us to revise our approach to the potential detriment of EEA nationals (and exempt persons). Counsel’s view is that there would be no basis for alleging discrimination on the grounds of nationality arising from differential treatment in the circumstances described in this paper.

* Sections 19(1) and 21B(1)(e)(iii).
Next steps

10 Subject to the Board’s agreement, we will make the necessary amendments to the AOQ criteria. We will then seek the Board’s approval of the amended criteria on email circulation in early December to ensure that the AOQ criteria are compliant by the implementation date of 18 January 2016.
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4 - Annex A

Routes to registration for which an acceptable overseas qualification is required

<table>
<thead>
<tr>
<th>Relevant section of the Medical Act 1983 (as amended)</th>
<th>Who¹?</th>
<th>Registration type</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>EEA nationals and exempt persons</td>
<td>Full</td>
</tr>
<tr>
<td>21</td>
<td>EEA nationals and exempt persons</td>
<td>Provisional</td>
</tr>
<tr>
<td>21B</td>
<td>Non-EEA nationals</td>
<td>Full</td>
</tr>
<tr>
<td>21C</td>
<td>Non-EEA nationals</td>
<td>Provisional</td>
</tr>
<tr>
<td>27A</td>
<td>Non-EEA nationals</td>
<td>Temporary: visiting eminent specialists</td>
</tr>
<tr>
<td>27B</td>
<td>Non-EEA nationals</td>
<td>Temporary: special purpose</td>
</tr>
</tbody>
</table>

¹ For the purposes of this discussion, references to non-EEA nationals include UK nationals awarded non-EEA PMQs.
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4 - Annex B

Options for implementing the revised basic medical training requirements in relation to our acceptable overseas qualifications criteria

1 Two options are set out below. Each highlights advantages and disadvantages (including risks). Directors considered the issues on 12 October 2015 and prefer Option 2.

2 We are carrying out an equality analysis to understand the impact that Option 2 is likely to have on applicants who share protected characteristics. We will update the Board on any disproportionate impact for any particular cohorts of doctors sharing protected characteristics.

Option 1

3 Amend our AOQ criteria and apply the new basic medical training requirements to all third country PMQs awarded to EEA nationals (or exempt persons) and non-EEA nationals1.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approach fully complies with a strict interpretation of the revised Directive. Minimal risk (if any) of legal challenge.</td>
<td>The majority of North American PMQs would not meet the minimum requirements.</td>
</tr>
<tr>
<td>All third country PMQs are assessed against the same standard: no distinction between PMQs awarded to EEA applicants (and exempt persons) and non-EEA applicants.</td>
<td>We refuse PMQs from respected medical schools that would otherwise meet our AOQ criteria.</td>
</tr>
</tbody>
</table>

1 This cohort includes UK nationals awarded non-EEA PMQs.
## Advantages

Straightforward to implement (although the courts would not look favourably on administrative simplicity as the sole basis for a policy change).

## Disadvantages

- Reputational risk: increase in complaints (applicants and awarding bodies).
- Reputational risk: temporary registration (visiting eminent specialists). Applicants holding American and Canadian PMQs would no longer be eligible for temporary registration as visiting eminent specialists. Perceptions of inflexibility.

- We have a longstanding agreement with US authorities that medical staff at the Embassy in London and US Air Force bases in East Anglia hold special purpose registration. We would no longer be able to fulfil this agreement.

- Doctors accompanying teams to major sporting events in the UK hold special purpose registration for the duration of the event (for example the Olympics and Rugby World Cup.) Doctors holding North American PMQs would therefore be unable to accompany teams attending major sporting events in the UK. The US team was one of the largest attending the 2012 Olympics in London.

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2 We have a similar agreement with the Japanese authorities.

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Option 2

4 Amend our AOQ criteria and apply the new basic medical training requirements *only* to third country PMQs awarded to EEA nationals and exempt persons. Do *not* apply the new requirements to third country PMQs awarded to non-EEA nationals.

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is a respectable legal argument to defend our position if challenged (although no guarantee of success).</td>
<td>The risk of infraction proceedings if this approach is regarded as not Directive-compliant.</td>
</tr>
<tr>
<td>We continue to register non-EEA nationals with third country PMQs who do not meet the minimum requirements but who do meet all other criteria specified in the Medical Act. As such, these applicants do not pose a risk to patient safety.</td>
<td>The risk of challenge by, and increased complaints from, individual applicants: treating applicants with the same PMQ differently depending on their nationality. For example: a PMQ awarded by the Université de Montreal to a French national (or an exempt person) would not meet our AOQ criteria (applying under section 19 or 21). However the <em>same</em> PMQ but awarded to a Canadian (or UK) national <em>would</em> meet the criteria (applying under section 21B or 21C). Counsel’s view is that there would be no basis for alleging discrimination on the grounds of nationality arising from differential treatment in these circumstances.</td>
</tr>
</tbody>
</table>

3 This cohort includes UK nationals awarded non-EEA PMQs.