To consider

Changing the process for confirming the status of doctors seeking registration as exempt persons

Issue

1 Exempt person status is derived from European legislation. It gives certain freedoms for European nationals (and others as defined by the legislation) to move between the territories of the member states with minimal obstacles. For doctors claiming ‘exempt person status’, our current arrangements mean they can apply for registration via routes that might not require them to demonstrate relevant knowledge or skills.

2 From 2 June 2014, we propose to change our process. We will require doctors seeking registration and claiming exempt person status to prove their entitlement to practise in the European member state from which they are relocating. This will mean that only those with an ‘enforceable community right’ can access routes to registration intended for exempt persons.

Recommendations

3 The Strategy and Policy Board is asked to:

   a Agree to change the arrangements for confirming exempt persons to include the requirement that applicants must provide verifiable proof that they are entitled to practise in the European state from which they are relocating.

   b Note the proposal that the changes will take effect from 2 June 2014.

   c Endorse the proposed transitional arrangements.

Changing the process for confirming the status of doctors seeking registration as exempt persons

Issue

4 Exempt person status gives access to routes to registration which do not require the doctor to undergo a test of knowledge and skills.
How is exempt person status defined?

5 Exempt persons are defined by the legislation as:

a European Economic Area (EEA) nationals (except UK nationals).

b UK nationals who benefit from an enforceable Community (EC) right (for example by moving to another EEA member state and then returning to the UK).

c Non EEA nationals who benefit from an enforceable Community right (for example through marriage to a European national (including a UK national) who has exercised an enforceable right).

The purpose of exempt person status

6 Exempt person status flows from European legislation. The underlying principle is that of freedom of movement within the territories of the member states. An exempt person and their family should be free to move between relevant European States and any deterrent to doing so should be minimised.

7 For doctors, a deterrent includes obstacles to practising in the UK when they have previously been practising in another European state, or were entitled to do so.

8 That is not to say that we must register such applicants just because they are exempt persons; they must still meet the legislative requirements. Being exempt, however, gives access to certain routes to registration including those which do not require them to sit the Professional and Linguistic Assessments Board (PLAB) test.

Exempt persons and registration

9 Doctors who have exempt person status can seek registration either on the same terms as a European national (if they hold a primary European qualification) or on the basis of an acceptable overseas qualification.

10 Those exempt persons holding a primary European qualification have an entitlement to registration including registration on a temporary and occasional basis.

11 Registration for exempt persons with an acceptable overseas qualification is at the discretion of the Registrar. The law does not require such applicants to take the PLAB test. However, the Registrar must decide whether he or she meets the standard for practising in the UK and therefore should be registered, and that the decision supports our primary obligation to protect, promote and maintain the health and safety of the public.
**Current process for confirming exempt person status**

12 The current process requires exempt persons applying for registration to show that they have been established in a relevant EEA member state. We determine this by considering a number of factors:

- **a** The duration of the stay (it must generally have been for a period longer than three months).

- **b** Evidence of residency such as tenancy agreements and bank accounts.

- **c** Whether the doctor accompanied their family member or remained in the UK (if relevant).

- **d** Whether the move was clearly temporary and with no intention of establishment (e.g. the doctor or their family member retained employment in the home state).

**Issues arising from the current process**

13 We have received an increasing number of applications from doctors who have either resided in the host state for a relatively short period and/or for reasons entirely unrelated to the practice of medicine. However, it is difficult in many cases to deny the existence of an EC right on the basis of our current process and the evidence submitted.

14 As a result, we are accepting applicants as possessing an EC right:

- **a** In the knowledge that the applicant may never have intended to seek medical registration in the European state that they have come from and;

- **b** With no certainty as to whether the applicant had any prospect of successfully making an application for registration in that state.

15 There is a risk that some doctors may be seeking to gain registration, and in some cases avoid the PLAB test, by establishing the benefit of an EC right. We have good reason to believe that some applicants do not have an EC right because they are not entitled to successfully apply for registration as a doctor in another European state. However, we are unable to prove this under the current arrangements. The risk is potentially greater in the case of applicants who do not hold a primary qualification listed in the European Directive.

**Proposed changes to the current process**

16 The current process does not include a requirement that, were he or she to apply for registration, the doctor would be entitled to practise in the EEA member state from which the doctor is relocating. We want to change the process to include this requirement.
We have sought legal opinion on this matter. Counsel has advised that:

a To benefit from an EC right, a UK national or family member must have moved to, or resided in, another relevant European state. They must also have been entitled to successfully apply for registration as a doctor in that state. The same principle applies to those with EC rights relocating from another European state to the UK.

b It would not be lawful to require that an applicant must have worked as a doctor, or obtained registration to work, in the host EC state.

c Specifying requirements obliging applicants to undertake potentially time consuming and costly procedures to prove entitlement to practise in the host state might be held contrary to European law and, for that reason, carries a risk of successful challenge. However, in terms of public protection and the public interest, the benefits of the proposed change outweigh the risk of legal challenge and, in the event of a successful claim, costs awarded against us.

If an applicant is not entitled to practise medicine in another European state they cannot claim to be deterred from coming to or returning to the UK because of an issue relating to GMC registration. Therefore, by requiring proof of entitlement to practise in the host state alongside proof of establishment, we will not be acting unlawfully.

Such proof might, for example, be in the form of a letter from the relevant competent authority confirming that the doctor is entitled to practise in that state. It will be for the applicant to prove (as it is now) that they are an exempt person.

**Benefits of making the change**

The change to our arrangements for confirming exempt person status will bring a number of benefits:

a It will ensure that our processes properly reflect the requirements of the legislation.

b It will mean that only those who can meet the legislative requirements and show that they are an exempt person can benefit from the relevant routes to registration.

c It will reduce the administrative burden of trying to establish exempt person status through examining extensive documentation such as tenancy agreements and bank statements.
Those who are not exempt persons under the new arrangements will have to apply for registration as international medical graduates and demonstrate their knowledge and skills in one of the approved ways.

Implementation and transitional arrangements

We propose to introduce the revised requirements from 2 June 2014. We will update the relevant information on our website to reflect the change.

Any open applications at that time will be dealt with under the current arrangements. If, for any reason, an applicant cannot demonstrate that they are an exempt person or gain registration under the current arrangements, any future application will be dealt with under the new arrangements.
Supporting information

How this issue relates to the corporate strategy and business plan

24  Strategic aim 5 (in 2014-2017 corporate strategy) to ‘work better together to improve our overall effectiveness, our responsiveness and the delivery of our regulatory functions’: Enhancing patient safety by ensuring that our procedures properly reflect the requirements of relevant legislation.

If you have any questions about this paper please contact: Jane Durkin, Assistant Director – Registration, jdurkin@gmc-uk.org, 0161 923 6685.
Strategy and Policy Board

22 May 2014

Changing the process for confirming exempt person status
Who is an exempt person?

1. EEA nationals (except UK nationals)

2. UK nationals who benefit from an enforceable community right

3. Non EEA nationals who benefit from an enforceable community right
An enforceable community right

<table>
<thead>
<tr>
<th>It is</th>
<th>It is not</th>
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<tr>
<td>• The rights of citizens of the EU and their family members to move and reside freely within the territory of the member states</td>
<td>• A substantive right to have professional qualifications recognised&lt;br&gt;• A substantive right to registration</td>
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Relevance to registration

PEQ
• “Entitlement” to registration

AOQ
• Access to provisional registration and full registration without having to pass PLAB
Examples

- Latvian language school
- ‘Sofa’ tenancy agreement
- Selfies
Current process versus law

Law
- Proof of residency
- Entitlement to practise

Process
- ✓
- ❌
Issues with current arrangements

- Legislation
- Patient safety
- Administrative burden
Data 2012/13

Applications
- 909

Not eligible
- 381

Eligible but refused
- 110

Eligible and granted
- 382
Proposed change

Change

• Require doctors to satisfy us that they are eligible to practise in the relevant EU state

NOTE

• It would not be lawful to require applicants to have worked or been registered as a doctor in the host State
## Benefits and risks

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<th>Benefits</th>
<th>Risks</th>
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<td>• Fully reflects the legislative requirements</td>
<td>• Successful challenge</td>
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<td>• Reduces scope for contrivance</td>
<td>• Overly burdensome for applicants</td>
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<td>• Enhances patient safety and the integrity of the register</td>
<td>• Costs if successfully challenged</td>
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2 June 2014

Transitional arrangements