Introduction
European Union (EU) legislation undoubtedly has an impact on the training of doctors in the UK, and service provision in the NHS. Issues where the BMA currently has most interest are the impact of legislation on foundation programme places for UK medical graduates, and the European Working Time Directive.

This briefing covers the following key issues:

- The problem of oversubscription to the Foundation Programme for medical graduates is anticipated to continue for the foreseeable future. The BMA is concerned that any changes in the law which allow EU graduates to apply to the foundation programme would only result in further strain on the current system.

- The BMA wants to see high quality, safe patient care and the maintenance or further enhancement of the quality of training and education for junior doctors. We support the implementation of the Working Time Regulations for employed doctors in the training grades, as has applied to all career grade doctors since 1998.

- The BMA would not be supportive of further attempts to renegotiate the European Working Time Directive or to overturn rulings by the European Court of Justice.

Impact of EU legislation on Foundation Programme places for UK medical graduates
In order for graduates from UK medical schools to become fully registered with the General Medical Council (GMC) and consequently able to practise medicine in the UK or elsewhere in the world, they must successfully complete the first year of the UK Foundation Programme (FP). Medical students who have completed their studies in the UK (of any domicile) and approximately half of the EU’s medical students are eligible to apply for the two-year FP.

In the past three years there have been more applications to the UK FP from eligible students than there were places available. Although all applicants so far have eventually been placed (due to some applicants failing final exams, choosing to go overseas, dropping out or for other reasons), 2013 was the first year that additional jobs had to be created by Government to ensure all eligible graduates could become fully registered with the GMC.¹

The FP oversubscription can be attributed to a rise in UK medical student numbers since 2000, as well as increased numbers of applications from eligible graduates of EU medical schools and EU expansion. It is therefore anticipated that the UK FP will continue to be oversubscribed for the foreseeable future.²
If a UK medical graduate is unable to secure a place on the FP, they will be unable to achieve full GMC registration in the UK and must either successfully apply for an equivalent period of training in another country, or be unable to practise medicine in the UK. Educating a UK medical student requires significant investment from the UK taxpayer and would therefore represent a considerable loss if a UK graduate were unable to practise medicine in the UK.

Current EU and UK legislation affecting applications to the UK FP excludes graduates of EU medical schools who have already achieved the equivalent of full GMC registration in their countries – 16 countries in total. Extending the FP to medical graduates from those countries would apply immense pressure to the Programme and be likely to mean that some UK graduates could be squeezed out and unable to achieve full registration as a doctor in the UK.

Recently, an EU medical graduate challenged the FP’s eligibility criteria, contending that it amounted to indirect discrimination. As a graduate who had undertaken a six year medical degree, her qualification amounted to eligibility for full GMC registration, yet she sought to apply for a FP place which essentially is the equivalent of re-doing her final year of qualification. The employment tribunal rejected her claim on the basis that she already has the equivalent of full GMC registration and hence did not need to complete the F1 year. The court of appeal rejected the appeal of this decision, which has averted additional pressure on the FP. If the appeal had been successful, graduates from 16 previously excluded European countries would have been able to apply for a place on the UK FP. However, this does not solve the growing problem of oversubscription by graduates of UK medical schools.

The four UK nations are currently undertaking a review which aims to tackle the oversubscription of the FP. Formal recommendations as to how to tackle this issue are yet to be made but it is anticipated that any plan will be implemented in Autumn 2014.

**European Working Time Directive**

The European Working Time Directive (EWTD) is European Union legislation and is enshrined in UK law as the Working Time Regulations 1998 (WTR). The WTR have applied in full to most workers, including all employed doctors other than those in the training grades, since 1 October 1998. These rules have were formally applied to junior doctors as of 1 August 2009, meaning that the maximum number of hours of work per week has decreased from 56 to 48 hours.

The BMA would not be supportive of further attempts to renegotiate the EWTD or to overturn rulings by the European Court of Justice. Previous attempts to change legislation have taken many years and securing significant improvements to junior doctor training within the parameters of the EWTD must remain the priority. The BMA is currently engaged in contract negotiations with NHS Employers, and we aim to develop a contract for trainees which, within the parameters of EWTD, provides safeguards against unsafe working hours and patterns.

The BMA wants to see high quality, safe patient care and the maintenance or further enhancement of the quality of training and education for junior doctors. We support the implementation of the WTR for employed doctors in the training grades, as has applied to all career grade doctors since 1998. This is important health and safety legislation, which protects doctors from working dangerously long hours and improves patient safety. Whilst the EWTD is crucial in bringing doctors’ hours to safe levels, we believe that doctors who have control of their working patterns should have the right to opt out of the 48 hour working week. Therefore, the BMA welcomed its retention following negotiations in 2009.

The BMA shares many of the concerns around the maintenance of training standards, agrees that patient safety issues must be paramount and wishes to work constructively with all interested parties to try to develop sensible, workable and achievable solutions to these problems. We note
that in 2011, the then Strategic Health Authorities confirmed to the Medical Programme Board\textsuperscript{6} that all previously derogated rotas were compliant with the WTR. However the BMA remains concerned that the 2013 GMC National Training Survey shows that 58.5\% of trainees report regularly working longer hours than on their rota. Even more worryingly, in 2012 the Royal College of Surgeons reported that 80.3\% of surgical trainees were regularly working above their contracted hours\textsuperscript{7}.

On 11 October 2013, the Government announced an independent review of the implementation of the EWTD for doctors, which will be made up of representatives from across the medical profession and employers.\textsuperscript{8} The BMA will be represented on the taskforce which is being chaired by the Royal College of Surgeons of England. The taskforce will review the effect of the implementation of EWTD on continuity of patient care, and training opportunities for doctors. It will report to the Government in January 2014.

The BMA is keen for the taskforce to look at how the EWTD can be implemented in a way that protects patient safety and maintains safe working hours for doctors. It is important to consider how working patterns affect patient safety and continuity of care, doctors’ well-being, and where the opportunities lie for improvements. It is also important to examine how enough time for training can be ensured for all doctors. For junior doctors this means protected time for learning and professional development. For consultants this means having protected time to supervise junior doctors and assure the quality of patient care.

We recognise that new ways of working, particularly focused consultant expansion to provide consultant-based care for patients, are absolutely necessary to help directive implementation while securing high-quality patient care and maintaining high-quality training. We are also acutely aware that these changes may well necessitate reconfiguration of service delivery. We are keen to work with all involved to ensure the maintenance of high quality, safe patient care during the implementation process.

There are a number of ways in which training could be improved within the parameters of the EWTD such as ensuring that junior doctors are only involved in procedures that are suitable to their level of training, reducing inappropriate work such as bureaucracy, and maximising the innovative use of technology and effective rota design. We are pleased that recommendations made by Professor Sir John Temple in ‘Time for Training – a Review of the impact of the European Working Time Directive on the quality of training’\textsuperscript{9} are being taken forward by Health Education England within their Better Training, Better Care programme.\textsuperscript{10}
For further information, please contact:
Stephanie Creighton | Senior Public Affairs Advisor |
T: 0207 383 6681 | M: 07824 550 771 | E: screighton@bma.org.uk |
BMA House | Tavistock Square | London | WC1H 9JP |

Notes

2. Graduates of EU medical schools who have undertaken an undergraduate degree which gives them on graduation the equivalent of full GMC registration cannot apply for a first year place on the UK Foundation Programme. Only students who have graduated from a UK medical schools, including overseas campuses of medical schools, and those from the EU who have completed an equivalent year degree to that in the UK can apply. Graduates of EU medical schools who have already achieved the equivalent of full GMC registration can apply for a year 2 foundation programme post. For more information please see http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC4QFjAA&url=http%3A%2F%2Fwww.foundationprogramme.nhs.uk%2Fdownload.asp%3Ffile%3DMaster_FP_Reference_Guide_2012_FINAL_June_2012.pdf&ei=WSJhUuKoNqTE0QXb3IGoDg&v6u=https%3A%2F%2Fs-v6exp1-dp-metric.gstatic.com%2Fgen_204%3Fip%3D193.22.89.2%3D138209746617138%26auth%3Dosud7wby63msbrqvhw5bf4pts%26mdm%3D0.666794178251165%26v6s=2%26v6t=1071%26v6u=https%3A%2F%2Fwww.gmc-uk.org/National_training_survey_key_findings_report_2013.pdf_52299037.pdf
3. Kapenova v Department of Health [2013] EqLR 188
4. For more information on discussions around the juniors contract please see http://bma.org.uk/working-for-change/negotiating-for-the-profession/bma-junior-doctors-committee/contract-update-for-juniors