

European Economic Area (EEA) Doctors – Mutual Recognition and Language Testing

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Overview of the current law: EU Directive 2005/36

Doctors from an EEA state are entitled to full registration in another EEA state if they fulfil the following criteria:

- They are citizens of an EEA state ***and***
- They have completed their primary medical training in an EEA member state and hold a recognised qualification

This has been the case since 1976 and was consolidated in the Directive of 1993 and then again in 2005.

EU Directive 2005/36 stipulates specific minimum training requirements for five health professions. Doctors need a basic medical training of minimum six years (equivalent to 5500 hours) of practical and theoretical training provided by, or under the supervision of, a university. Furthermore, training should ensure that a health professional has acquired 'specific knowledge and skills'.

The Directive stipulates that "the training shall provide an assurance that the person has acquired specific knowledge and skills". Moreover, these requirements should be regarded as *minimum* standards: member states can go beyond these.

Language skills

Regarding language skills, Directive 2005/36 states that "*persons benefiting from the recognition of professional qualifications shall have knowledge of languages necessary for practising the profession in the host member state.*" Language tests are allowed in individual cases; however, one-size-fits-all tests are not allowed.

EEA doctors meeting the criteria outlined in the section above are not subjected to any testing of their language or clinical competence when registering with the GMC. This is in contrast to non-EEA doctors who must pass the International English Language Testing System (IELTS) exam¹ to prove their English language skills as well as PLAB 1 and PLAB 2² to demonstrate they have appropriate clinical skills to practice in the UK.

The British Medical Association has always emphasised the need for adequate communication skills and since 2002 has called for language skills to be made a pre-requisite for any doctor wanting to practice in another EU member state.

The European Commission confirmed in correspondence with the BMA (dated June 2005) that regulatory authorities are not justified in imposing systematic language testing on EU doctors. Thus the competent authorities cannot make linguistic knowledge a precondition for the recognition of the professional qualification.

¹ Doctors must pass the IELTS with an overall score of at least 7.0 plus individual scores of 7.0 or higher in all four disciplines – reading, writing, speaking and listening

² The PLAB exam is the Professional and Linguistic Assessments Board. PLAB 1 is a computer-marked written examination consisting of 200 questions. PLAB 2 is an Objective Structured Clinical Examination (OSCE). It takes the form of 14 clinical scenarios or 'stations' as well as a rest station and one or more pilot stations.

It remains the responsibility of employers to ensure that they employ doctors who have the requisite language skills needed in order to be able to communicate effectively with patients.

The European Court of Justice (ECJ) ruling known as the Haim case (C-424/97 Haim II) states that national measures carried out by the competent authority which restrict the exercise of fundamental freedoms of EU citizens (e.g. freedom of movement) can be justified if they fulfil four conditions:

1. They must be applied in a non-discriminatory fashion
2. They must be justified by over-riding reasons based on the general interest
3. They must be suitable for securing the obtainment of the objective they pursue
4. They must not go beyond what is necessary in order to obtain that objective

In the Haim case, the ECJ agreed that the reliability of a professional's communication with his patient, with administrative authorities and with professional bodies does indeed constitute an over-riding reason of general interest but that a systematic, one-size-fits-all language test would fail the test of proportionality.

Thus the EU rules do not prohibit language testing per se, rather they state that testing should be proportionate and must not be part of the first stage process (i.e. recognition of the professional qualification).

In addition, current Department of Health (DH) guidance reiterates that it is the responsibility of employers to ensure that the persons they employ have the necessary language and communication skills. The guidance (Health Service Circular HSC 1999/137³) states that:

"Employers are responsible for ensuring that the staff they employ have the necessary language and communication skills. A valid registration of an EEA (European Economic Area) national from a healthcare regulatory authority is no guarantee of competence in English language or usage."

Further DH guidance in respect of the Medical Performers' List states that:

"Before deciding to include an EEA national in their Medical Performers List, Primary Care Trusts (PCTs) must consider the sufficiency of the evidence provided with the application and whether or not they may need to require the applicant to provide any further evidence of language competency so that they may assess their knowledge of English....PCTs need to act in a consistent way and not discriminate against any community or group when applying this guidance."⁴

Dr Ubani case

Mutual recognition and language testing of EEA doctors have come under considerable scrutiny in the UK in recent years as a result of the case of Dr Ubani, a German locum (Nigerian-qualified) who came to the UK to provide out-of-hours services as a GP and accidentally killed a patient with an overdose of diamorphine. The repercussions of the case have been considerable prompting the Health Committee to launch an inquiry which resulted in the report "The use of overseas doctors in providing out-of-hours services"⁵.

Potential changes to UK and EU legislation

UK

Following the Dr Ubani case investigations have taken place to see whether any form of informal language testing can take place. The GMC believes that the UK's Medical Act 1983 'gold-plated' the EU law and prevents the GMC from language testing EEA doctors and that by amending the Medical Act 1983 some degree of informal language testing would be permitted. The GMC has been working with the Department of Health and are working on changes to the UK Medical Act 1983 which will allow the

³ http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4012004.pdf

⁴ Department of Health (2010) *Delivering Quality in Primary Care: Medical Performers Lists - Language Knowledge*.

⁵ Health Committee (2010) *The use of overseas doctors in providing out-of-hours services* London: HMSO

GMC to verify the competence, including language competence, of EU doctors wishing to work in the NHS⁶. The BMA agrees the government needs to change the legislation to give the GMC this power.

EU

EU Directive 2005/36 will be revised in 2011. The BMA has already commented on the unsuitability of the Directive in a number of official responses to EU consultations highlighting three principal concerns:

1. Basing a decision on fitness to practice on the length of time individuals have trained rather than on the skills they've acquired is not suitable for the continued development of a modern healthcare system
2. In implementing the Directive, the UK has prohibited the national regulatory authorities from assessing the language competence of doctors from other parts of Europe who wish to practice in that country. In the interests of patient safety, it is essential that doctors are able to communicate with their patients and that the regulatory authorities are able to assess the fitness to practice of each doctor in their jurisdiction
3. The Directive should be revised in order to introduce a legal duty on all medical regulators to share registration and fitness to practice information proactively with other regulators in Europe

BMA policy

The BMA has a range of policy relevant to the competences of EEA doctors and freedom of movement in Europe including:

- That this Meeting;
 - (i) recognises the risks of employing EEA doctors to provide locum and out of hours services who may have an inadequate command of the English language and poor knowledge of the UK healthcare service and
 - (ii) demands that the GMC takes steps to introduce an assessment of English language skills and knowledge of the UK healthcare system for EEA doctors wishing to work in the UK (2010)
- That this Meeting believes that any doctor who comes to the UK to practice medicine should:
 - (i) have an acceptable command of the English language;
 - (ii) have acceptable equivalence of breadth and depth of clinical skills, training and knowledge normally associated with UK practice of their specialty;
 - (iii) have sufficient knowledge of the operation of the NHS;
 - (iv) be governed by the normal regulatory processes applicable to doctors practising primarily in the UK. (2010)
- That this Meeting considers that there should be a full and reciprocal right to practice medicine throughout the European Economic Community for all fully registered medical practitioners who are citizens of any of the member states. (1991)
- That this Meeting welcomes the exchange of doctors throughout the EC and calls for equity in standards of training. (1993)

Thus, whilst the BMA is supportive of freedom of movement it recognises that patient safety is paramount and must not be compromised and that all doctors, EEA or otherwise, must have an acceptable command of English and acceptable clinical skills to enable them to practise in the UK.

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⁶ House of Commons Oral Evidence taken before the Health Committee, Regulatory Bodies, Tuesday 14 June 2011 - www.publications.parliament.uk/pa/cm201012/cmselect/cmhealth/c1203-i/c120301.htm