

CHAPTER 5: SECTION 1 - WORK PERMIT EMPLOYMENT

Please note that this IDI does not contain up-to-date information and will be updated shortly. Details of the rules relating to work permit employment can be found in the [Immigration Rules](#).

ANNEX C: SWITCHING INTO WORK PERMIT EMPLOYMENT

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1. GENERAL POSITION

In general, non-EEA nationals who wish to take up employment in the United Kingdom are required to be in possession of a work permit obtained on their behalf by their prospective employer prior to travelling to the United Kingdom. Those seeking to remain in the UK for longer than 6 months must also have obtained prior entry clearance before travelling. This is in addition to the visa requirements that apply to all visa nationals. These nationalities are listed in Appendix 1 of the Immigration Rules.

2. GRADUATE STUDENTS, STUDENT NURSES AND POSTGRADUATE DOCTORS AND DENTISTS AND TRAINEE GENERAL PRACTITIONERS, WORKING HOLIDAYMAKERS AND SCIENCE AND ENGINEERING GRADUATE SCHEME PARTICIPANTS

In October 2000, the government announced the introduction of a policy to formally permit graduate students, student nurses and postgraduate doctors and dentists to switch into work permit employment without having to leave the United Kingdom. Trainee general practitioners are now also formally permitted to switch into work permit employment without having to leave the United Kingdom.

In June 2003, the government announced the introduction of a policy to formally allow working holidaymakers who have spent 12 months or more in the UK, as a working holidaymaker, to switch into work permit employment without having to leave the United Kingdom.

In October 2004, Science and Engineering Graduate scheme participants who have spent 12 months or more in the UK, as a Science and Engineering Graduate Scheme participant, were formally permitted to switch into work permit employment without having to leave the United Kingdom.

2.1 Students

Applications to switch from student to work permit holder status should be accepted where a student:

- Entered or was given leave to remain in the UK as a student in accordance with paragraph 57 to 62 of the Immigration Rules; and
- Has obtained a degree qualification on a recognised degree course at a UK publicly funded further or higher education institution or a bona fide private education institution which maintains satisfactory records of enrolment and attendance; and
- Holds a valid Home Office immigration employment document for work permit employment; and
- If sponsored by his government or international scholarship agency has their written consent; and
- Does not have an adverse immigration history.

Therefore students who have obtained a degree qualification on a recognised degree course in the United Kingdom, and for whom the prospective employer has obtained a valid Home Office immigration employment document for work permit employment, should normally be permitted to switch into work permit employment without first leaving the United Kingdom. However, where applicable the student must have the express permission of their sponsor and any adverse immigration history will be taken into account.

2.2 Student nurses and postgraduate doctors and dentists and trainee general practitioners

Applications to switch into work permit employment should be accepted where a student nurse or postgraduate doctor or dentist or trainee general practitioner:

- Entered the UK or was given leave to remain as a student nurse in accordance with paragraphs 63 to 69 of the Immigration Rules; or
- Entered the UK or was given leave to remain as a postgraduate doctor, dentist or trainee general practitioner in accordance with paragraphs 70 to 75 of the Immigration Rules; and
- Holds a valid Home Office immigration employment document for work permit employment as a nurse, doctor or dentist; and
- If sponsored by his government or international scholarship agency has their written consent; and
- Does not have an adverse immigration history

Therefore, student nurses, postgraduate doctors, dentists and trainee general practitioners in the United Kingdom for whom the prospective employer has obtained a valid Home Office immigration employment document for work permit employment, as a nurse, doctor or dentist, should normally be permitted to switch into the work permit employment category without first leaving the United Kingdom. They must however, where applicable, have the express permission of their sponsor and any adverse immigration history should be taken into consideration before reaching a decision.

2.3 Working Holidaymaker

Applications to switch into work permit employment should be accepted where a working holidaymaker:

- Entered the United Kingdom as a working holidaymaker in accordance with paragraphs 95 to 96 of the Immigration Rules; and
- Holds a valid Home Office immigration employment document for work permit employment in an occupation listed on the Work Permits (UK) shortage occupations list; and
- Has spent more than 12 months in total in the UK as a working holidaymaker; and
- Does not have an adverse immigration history.

Therefore, working holidaymakers in the United Kingdom for whom the prospective employer has obtained a valid Home Office immigration employment document for work permit employment in an occupation listed on the Work Permits (UK) shortage occupations list, should normally be permitted to switch into the work permit employment category without first leaving the United Kingdom. They must however have spent more than 12 months in total in the United Kingdom as a working holidaymaker and any adverse immigration history should be taken into consideration before reaching a decision.

2.4 Science and Engineering Graduate Scheme Participants

Applications to switch into work permit employment should be accepted where a science and engineering graduate scheme participant:

- Entered or was given leave to remain in the United Kingdom as a science and engineering graduate scheme participant in accordance with paragraphs 135O to 135T of the Immigration Rules; and
- Holds a valid Home Office immigration employment document for work permit employment; and
- Has spent 12 months or more in total in the UK as a science and engineering graduate scheme participant; and
- Does not have any adverse immigration history.

Therefore, science and engineering graduate scheme participants, in the United Kingdom for whom the prospective employer has obtained a valid Home Office immigration employment document for work permit employment, should normally be permitted to switch into the work permit employment category without first leaving the United Kingdom. They must however have spent more than 12 months in total in the United Kingdom as a science and engineering graduate scheme participant and any adverse immigration history should be taken into consideration before reaching a decision.

2.5 Highly Skilled Migrants

Applications to switch into work permit employment should be accepted where a highly skilled migrant:

- Entered or was given leave to remain in the United Kingdom as a highly skilled migrant in accordance with paragraphs 135A to 135E of the Immigration Rules; and
- Holds a valid Home Office immigration employment document for work permit employment; and
- Does not have any adverse immigration history.

Therefore, highly skilled migrants, already in the United Kingdom for whom the prospective employer has obtained a valid Home Office immigration employment document for work permit employment, should normally be permitted to switch into the work permit employment category without first leaving the United Kingdom. Any adverse immigration history should be taken into consideration before reaching a decision.

2.6 Innovators

Applications to switch into work permit employment should be accepted where an innovator:

- Entered or was given leave to remain in the United Kingdom as an innovator in accordance with paragraphs 210A to 210E of the Immigration Rules; and
- Holds a valid Home Office immigration employment document for work permit employment; and
- Does not have any adverse immigration history.

Therefore, innovators, already in the United Kingdom for whom the prospective employer has obtained a valid Home Office immigration employment document for work permit employment, should normally be permitted to switch into the work permit employment category without first leaving the United Kingdom. Any adverse immigration history should be taken into consideration before reaching a decision.

3. APPLICATIONS FROM THOSE IN OTHER CATEGORIES TO SWITCH INTO WORK PERMIT EMPLOYMENT

Where an application to switch into work permit employment is not permitted within the Immigration Rules, the presumption is that in-country switching should not be allowed except in exceptional circumstances. Circumstances will be assessed by caseworkers on a case by case discretionary basis.

For the purposes of such an assessment, exceptional circumstances are defined as "circumstances relating to the individual (rather than the employment) where it is considered unduly harsh to expect the individual to leave the UK and apply for Entry Clearance in their own country".

Any instance that is raised in connection with the employment will no longer be accepted as exceptional circumstances relating to the individual. As such the following will no longer be seen as exceptional:

- Business need (or 'Business reasons').
- Because the person has skills recognised as in short supply and whose occupation is listed on the 'Shortage Occupations' list by Work Permits (UK).
- Public service needs.

- Because the person will be engaged in research and development
- If the person is seeking to remain under the Inward Investors category.
- Because of short-term business need.
- If the person is seeking to remain in a Board Level Post category.
- Financial hardship.

The above list is not exhaustive and other circumstances raised in connection with the employer, job or labour market will not be deemed exceptional.

Whilst treating each case on its merits, not all circumstances that relate to the individual will be deemed unduly harsh and therefore exceptional. Examples of circumstances that may be raised and which would not be deemed exceptional include:

- Financial burden.
- Where the overseas visa issuing post in the applicant's country of residence is closed. In such instances an alternative visa issuing post will have been designated and applicants should seek to gain the appropriate entry clearance at this post.
- Humanitarian grounds. If there are humanitarian concerns involved, it is open to the applicant to seek leave to remain in the UK in other more appropriate immigration categories than for the purposes of work permit employment.

The above list is not exhaustive and other circumstances raised in connection with the individual may also not be deemed unduly harsh and hence not exceptional circumstances relating to the individual.