



## IMMIGRATION DIRECTORATE INSTRUCTIONS (February 2009)

### CHAPTER 4

## SECTION 5 – TRAINING AND WORK EXPERIENCE SCHEME

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Caseworkers **must** refer to **all** relevant parts of this guidance, including the Immigration Rules, when considering applications.

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### 1. INTRODUCTION

Paragraph 116 in Part 4 of HC 395 relates to training and work experience and **must** be referred to when reading the following advice.

The Training and Work Experience Scheme (TWES) provisions (within the overall work permit arrangements) enabled overseas nationals to undertake work based learning in the United Kingdom. Applications were made by employers based in Britain under one of two categories:

- i. TWES Training work permits enabled the holders to undertake a period of work-based training leading to a professional or specialist qualification.
- ii. TWES Work Experience work permits enabled the holders to engage in a period of practical work experience in the United Kingdom.

The purpose of TWES was 'to enable individuals to gain skills and experience through work based learning which built on their previous education and training, and which they intend to use on their return overseas'.

Under the Immigration Rules non-European Economic Area nationals coming to the United Kingdom for the purpose of training or work experience were required to have obtained a TWES work permit for that purpose.

A TWES permit was not be granted for a person who is filling a post. (This was to guard against abuse of the TWES provisions by those seeking permits for the purpose of disguised employment).

**No further TWES work permit applications were accepted on or after 27 November 2008. Leave to enter or remain may still be granted under the guidance at 4.1 and 4.2 of these instructions for legacy TWES work permits (those where the work permit applications were made before this date).**

**The guidance at 4.3 and 4.4 of these instructions is for considering exceptional TWES Training leave to remain for applicants who may apply without a TWES work permit on the FLR(O) Application Form on or after 27 November 2008. This is a concession outside the Immigration Rules for those needing to re-sit examinations under the circumstances stated in this guidance.**

Entry Clearance is **not** mandatory for non-visa nationals

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## **2. CAPABILITY**

In most cases it will be appropriate to accept that if a TWES permit has been issued, the holder is capable of undertaking the training or work experience.

Where, however, the immigration officer, during his examination, forms the impression that the holder **may not** be capable of the work (e.g. a physical incapacity or language difficulties), he should contact the employer for guidance on this point. If, after they have had the opportunity of assessing the situation, they agree that the holder is not capable of the work, he should be refused entry under Paragraph 118, with reference to Paragraph 116(iii) of HC 395.

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### 3. FAMILIARISATION COURSES

Employees of overseas companies coming to the United Kingdom for less than six months for a short period of training in techniques or work practices used in the United Kingdom may qualify for admission as a business visitor provided any such training is restricted to observation, familiarisation and classroom instruction, and does not involve any hands-on work (see Chapter 2, section 2.2).

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### 4. GRANT PERIODS

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#### 4.1 Grant of Leave

Leave to enter should normally be granted in line with the period indicated on the TWES work permit.

Stage	Grant of Leave
Entry for Training	To correspond with the length of training up to a maximum of five years.
Entry for Work Experience	To correspond with the length of work experience up to a maximum of two years.
After Entry for Training	To correspond with the length of training up to a maximum of five years.
After Entry for Work Experience	To correspond with the length of work experience to complete a maximum of two years.

Dependants should be granted leave to enter on Code 1 for a period normally equal to, but in any event not in excess of that granted to the spouse/parent (see section 6 to this chapter if further advice is required in respect of dependants of persons in this category).

Caseworkers should read Chapter 10 of the Immigration Rules for information on the requirement to register with the police if the applicant is being granted leave to enter for longer than six months or leave to remain that will mean their stay in the United Kingdom will exceed six months.

## **4.2 Re-entry of passengers previously given leave as TWES permit holders**

If the immigration officer is satisfied that a TWES permit holder is returning from a temporary absence abroad to resume the approved employment he was in before he left the United Kingdom, he should be readmitted under Immigration (Leave to Enter and Remain) Order 2000 provided that he has extant leave (see Chapter 1, Section 9).

If his leave has expired or has less than two months to run he should be refused admittance unless he can produce evidence that the UK Border Agency has agreed to him continuing his training or employment for a longer period, in which case entry may be granted in line provided all the other requirements are met.

**The following guidance at 4.3 and 4.4 is for exceptional TWES Training extensions who may apply on the FLR(O) Application Form. They cannot apply via the TWES work permit route as this was closed on 27<sup>th</sup> November 2008.**

## **4.3 Exceptional extensions of leave**

Exceptional extensions of leave may be granted if the applicant:

- i. Currently has leave to enter or remain granted under the Training category of the TWES work permit arrangements; AND
- ii. Requires a further period of leave in order to re-sit an examination or module of the professional qualification for which their last TWES work permit was granted; AND
- iii. EITHER:
  - has not yet had two attempts (or possible attempts) at that examination or module; OR
  - has had two attempts (or possible attempts) but only failed narrowly on the second attempt, and has provided evidence that their trainer is confident that they will pass on the third attempt; OR
  - has provided medical certificates that show they were unwell at the time of one or more sittings of the examination(s).

## **4.4 Documentation required for exceptional extension applications**

Applicants must include the following documentation with their applications.

- i. A copy of their previous TWES Training work permit or work permit approval letter; and
- ii. A letter from their training provider which explains the reason why they need an extension to their leave, and the period of additional training required; and

- iii. The dates, results and number of attempts made at each exam and copies of the results slips; and
- iv. The expected dates of all future examinations, including re-sits; and
- v. Medical certificates if appropriate.

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## 5. INTENTION TO LEAVE THE UNITED KINGDOM

A TWES permit is issued on the understanding the permit holder intends to leave the United Kingdom on the completion of his training or work experience.

However the issuing of a permit does not provide sufficient evidence that this particular requirement of the Rules has been met. If there are reasons to believe that the holder does not intend to leave the United Kingdom, such as a particularly adverse immigration history, then it may be appropriate for leave to enter or remain to be refused.

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## 6. SWITCHING

A person admitted to the United Kingdom in another category, other than as a student or student nurse, may not switch to remain as the holder of a TWES permit. Where a person admitted as a student seeks to switch into TWES it will be relevant to consider whether the proposed training/work experience naturally follows on from their studies in the United Kingdom. Where this is not the case their intentions should be carefully considered.

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## 7. REFUSAL GUIDANCE – ENTRY CLEARANCE

This guidance and the relevant rules **must** be referred to when considering refusing entry clearance. Entry clearance should be refused if **any of** the requirements of paragraph 116 of HC395 are not met.

Paragraph 320 of the immigration rules sets out the general grounds on which entry clearance can be refused. Further guidance on refusing entry clearance can be found in Chapter 9, Section 2 of the Immigration Rules.

Examples of refusal wordings are given below. Please note that this is **not an exhaustive list** of all possible reasons for refusal.

"You have applied for entry clearance to the United Kingdom for training/work experience approved by the Home Office..."

Reason and paragraph	Wording
No Work Permit  Paragraph 118 with reference to 116(i)  <b>No entitlement to appeal by virtue of Section 88(2)(b) of the NIA Act 2002</b>	"... but [? in view of ...] the Secretary of State is not satisfied that you hold a valid work permit from the Home Office issued under the Training and Work experience scheme."
Incapable  Paragraph 118 with reference to 116(iii)	"... but [? in view of ...] the Secretary of State is not satisfied that you are capable of undertaking the [training/work experience] as specified in your work permit."
Intention to leave  Paragraph 118 with reference to 116(iv)	"... but [? in view of ...] the Secretary of State is not satisfied that you intend to leave the United Kingdom on the completion of your [training/work experience]."
Other employment  Paragraph 118 with reference to 116(v)	"... but [? in view of ...] the Secretary of State is not satisfied that you do not intend to take employment except as specified in your work permit."

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## 8. REFUSAL GUIDANCE – ON ENTRY

This guidance and the relevant rules **must** be referred to when considering refusing entry clearance. Entry clearance should be refused if **any of** the requirements of paragraph 116 of HC395 are not met.

Paragraph 320 of the immigration rules sets out the general grounds on which entry clearance can be refused. Further guidance on refusing entry clearance can be found in Chapter 9, Section 2 of the immigration rules.

Examples of refusal wordings are given below. Please note that this is **not an exhaustive list** of all possible reasons for refusal.

"You have asked for leave to enter the United Kingdom for training/work experience approved by the Home Office."

<b>Reason and paragraph</b>	<b>Wording</b>
No Work Permit  Paragraph 118 with reference to 116(i)  <b>No entitlement to appeal by virtue of Section 88(2)(b) of the NIA Act 2002</b> {Refusal Code B1}	"... but I am not satisfied that you hold a valid work permit from the Home Office issued under the Training and Work Experience Scheme."
Not Capable  Paragraph 118 with reference to 116(iii)	"...but I am not satisfied that you are capable of taking the employment specified in the work permit which you hold."
Intention to leave  Paragraph 118 with reference to 116(iv).	"...but I am not satisfied that you intend to leave the United Kingdom on completion of your [training/work experience]."
Other employment  Paragraph 118 with reference to 116(v)	"...but I am not satisfied that you do not intend to take employment except as specified in your work permit."
Maintenance and accommodation  Paragraph 118 with reference to 116(vi)	"...but I am not satisfied that you are able to maintain and accommodate yourself [and your dependants] without recourse to public funds."

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## 9. REFUSAL GUIDANCE – EXTENSION OF STAY

This guidance and the relevant rules **must** be referred to when considering refusing leave to remain. Leave to remain should be refused if **any of** the requirements of paragraph 119 of HC395 are not met, unless the applicant is applying for an exceptional extension of stay as detailed in 4.3 above.

Note: There is no entitlement to appeal against refusal of leave to remain, by virtue of Section 62(1)(a) where refusal is on the grounds of no switching or the refusal by Work Permits (UK) at the Home Office to approve continuing employment.

Examples of refusal wordings are given below. Please note that this is **not an exhaustive list** of all possible reasons for refusal.

"You have applied for leave to remain in the United Kingdom for training/work experience approved by the Home Office..."

Reason and paragraph	Wording
<p>No switching</p> <p>Paragraph 121 with reference to 119(i).</p> <p><b>No entitlement to appeal by virtue of Section 88(2)(b) of the NIA Act 2002</b></p>	<p>"... but [? in view of ...] the Secretary of State is not satisfied that you entered the United Kingdom with a valid work permit from the Home Office issued under the Training and Work Experience scheme or that you were admitted or allowed to remain in the United Kingdom as a student."</p>
<p>Current work permit</p> <p>Paragraph 121 with reference to 119(ii)</p> <p><b>No entitlement to appeal by virtue of Section 88(2)(b) of the NIA Act 2002</b></p>	<p>"... but [? in view of ...] the Secretary of State is not satisfied that you have written approval from the Home Office for an extension of stay in this category."</p>
<p>Incapable</p> <p>Paragraph 121 with reference to 119(iii) and 116(iii)</p>	<p>".. but [? in view of ...] the Secretary of State is not satisfied that you are capable of undertaking the [training/work experience] as specified in your work permit."</p>
<p>Intention to leave</p> <p>Paragraph 121 with reference to 119(iii) and 116(iv)</p>	<p>"... but [? in view of ...] the Secretary of State is not satisfied that you intend to leave the United Kingdom on the completion of your [training/work experience]."</p>
<p>Other employment</p> <p>Paragraph 121 with reference to 119(iii) and 116(v)</p>	<p>"... but [? in view of ...] the Secretary of State is not satisfied that you do not intend to take employment other than as specified in your work permit."</p>
<p>Maintenance and accommodation</p> <p>Paragraph 121 with reference to 119(iii) and 116(vi)</p>	<p>"... but [? in view of ...] the Secretary of State is not satisfied that you will be able to maintain and accommodate yourself [and your dependants] without recourse to public funds."</p>
<p>Duration of stay</p>	<p>"... but [? in view of ...] the Secretary of State is not</p>

<p>Paragraph 121 with reference to 119(iv)</p> <p><b>No entitlement to appeal by virtue of Section 88(2)(c) of the NIA Act 2002</b></p>	<p>satisfied that you would not, as a result of an extension of stay, spend more than 2 years in the United Kingdom on work experience approved by the Home Office.”</p>
<p>Not met requirements for exceptional extension of stay</p> <p>(outside the immigration rules)</p>	<p>“... but [? in view of ...] the Secretary of State is not satisfied that you have provided evidence of [satisfactory progress in] your studies that meets the requirements for granting an exceptional extension of stay.”</p>