

TNT Online Immigration Guide

All text current as of June 2005. Note that this area of the law changes often and is complicated! It is your responsibility to make sure that you obtain up-to-the-minute information from UK Government websites and professional immigration advisors appropriate for your circumstances. TNT accepts no liability for damage that may arise in reliance on the information below. It is general guidance only, and is not intended to be specific legal advice.

How much can I work while I'm in the UK on a working holidaymaker visa?

That depends on when your WHM visa was issued.

If it was issued before 8 February 2005, you may work full-time for the whole two years, although you must take the ordinary holidays that a full-time job would encompass. You can work in any occupation or profession.

If your WHM visa was issued on or after 8 February 2005, then you can only work for a total of 12 months out of the 2 years. The 12 months can be cumulative, i.e. shorter spells with different employers adding up to 12 months in total. You can also work in any occupation or profession.

For current Government information on the WHM visa and its limitations, see:

http://www.workpermit.com/uk/working_holidaymaker.htm

I've done my two years in the UK but am still keen to see more of the world. Can I work anywhere else?

That depends on:

- what citizenships you have; and
- what bilateral working holiday agreements your country has negotiated with other countries.

A European Passport - Worth its weight in gold

If you have a passport from one of the 28 European Economic Area (EEA) countries, you can live and work legally for any duration, without a visa or work permit, not only in that country itself, but also in the other 27 EEA countries.

Could you perhaps be a dual citizen? Many Australians/NZers/South Africans are entitled to a second citizenship through their parents or grandparents. For example, if you were born in Australia, but one of your parents was born in the UK, you will probably also be a British citizen, allowing you to benefit from EU free movement rules.

If you have parents or grandparents who were born in any EEA country, it is worth checking with the consular authorities of that country whether you are entitled to that country's citizenship under their national laws.

Which countries belong to the EEA? The 25 EU Member States: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, and the UK.
Plus Norway, Iceland and Liechtenstein.

Note: **Switzerland** is not a member of the EU. But there is a special bilateral agreement between Switzerland and the European Communities on the free movement of persons, which (with some limitations) allows citizens of the 25 EU countries to live and work in Switzerland as well, and Swiss nationals to live and work in EU countries. For more information, see:

<http://www.bfm.admin.ch/index.php?id=536&L=3>

I only have Australian citizenship. Where else can I do a working holiday?

As at June 2005, Australia had operational bilateral working holiday arrangements in place with the following countries:

United Kingdom, Canada, the Netherlands, Japan, Republic of Ireland, Republic of Korea, Malta, Germany, Denmark, Sweden, Norway, the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China, Finland, the Republic of Cyprus, France, Italy, Belgium, Estonia and Taiwan.

Generally these arrangements apply to people aged between 18 and 30. If you have had a working holiday visa for the UK, there is nothing to stop you subsequently obtaining a working holiday visa for one or more of the other countries on the list, as long as you fulfil the criteria for the issue of the particular working holiday visa you are seeking.

The websites for the embassies and consulates of these countries in Australia should be your first port of call, to check what conditions each particular country imposes for its WH visa. They'll come up easily in a google search. Some of these countries will only issue working holiday visas to Australians from their embassy or consulate in Australia. They may process your application and passport by post if you cannot get to the mission in person. Other countries will issue working holiday visas to Australians from their London embassy or other consular posts. It depends on the country and the rules change often.

Australia is in the process of negotiating further working holiday arrangements with additional countries. When an arrangement is finalised with a new country, the Australian Minister for Immigration generally puts out a media release. You'll also find an up-to-date list of countries which Australia has arrangements with at:

http://www.immi.gov.au/allforms/visiting_whm.htm

I only have New Zealand citizenship. Where else can I do a working holiday?

As at June 2005, New Zealand had operational bilateral working holiday arrangements in place with the following countries:

Argentina, Belgium, Canada, Chile, Czech Republic, Denmark, France, Finland, Germany, Hong Kong, Ireland, Italy, Japan, Korea, Malaysia, Malta, the Netherlands, Sweden, Taiwan, UK, USA, and Uruguay.

Generally these arrangements apply to people aged between 18 and 30. If you have had a working holiday visa for the UK, there is nothing to stop you subsequently obtaining a working holiday visa for one or more of the other countries on the list, as long as you fulfil the criteria for the issue of the particular working holiday visa you are seeking.

The websites for the embassies and consulates of these countries in New Zealand (or Australia if there is no mission in Australia) should be your first port of call, to check what conditions each particular country imposes for its WH visa. They'll come up easily in a google search. Some of these countries will only issue working holiday visas to New Zealanders from their embassy or consulate in New Zealand. They may process your application and passport by post if you cannot get to the mission in person. Other countries will issue working holiday visas to New Zealanders from their London embassy or other consular posts. It depends on the country and the rules change often.

New Zealand is in the process of negotiating further working holiday arrangements with additional countries. When an arrangement is finalised with a new country, the New Zealand

Minister for Immigration generally puts out a media release. You'll also find an up-to-date list of countries which NZ has arrangements with at:

<http://www.immigration.govt.nz/migrant/stream/work/workingholiday/caniworkinnz/whatisrequired/schemerequirements/>

I only have South African citizenship. Where else can I do a working holiday?

Unfortunately, South Africa does not have any bilateral arrangements for working holidays with other countries. South Africans are of course allowed into the UK under Britain's working holidaymaker scheme.

Time is running out on my UK WHM visa but I don't want to leave. What should I do?

You cannot get a second working holidaymaker visa for the UK or get an extension on your current UK WHM visa. It is legally impossible. So if you wish to remain in the UK, you must change your immigration status, i.e. apply for a different type of visa. It is important to do this with the Home Office or Work Permits UK well before your WHM visa expires. Note that recently switching in general has become more difficult. There are several options:

Staying on a work permit. If you hold a WHM visa, then you cannot switch into work permit employment while in the UK unless you are in a so-called "shortage occupation". To view the current list of shortage occupations, see:

<http://www.workpermit.com/uk/employer19.htm>

To switch from a WHM visa onto a work permit for a shortage occupation, you must have already been in the UK on a WHM visa for 12 months.

If you are not on the list of shortage occupations, then you may still be able to get a work permit for another occupation, but you will have to leave the country while your employer makes the application to Work Permits UK. This can take several weeks. The job must be for skilled employment, rather than unskilled. Your employer will also have to show that there is no UK or other EEA national who could do the job and that there is a genuine vacancy and that this is not just a means for you to stay on in the UK. For further information see:

http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/work_permits/applying_for_a_work/business_and_commercial/criteria.html?

and

http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage.html?

and

http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/your_status/already_in_the_uk/change_status.html?

Stay as the fiancé or a spouse of UK citizen or other person settled in the UK.

The rules changed in February 2005. See:

<http://www.ukvisas.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1106654124706>

and

http://www.ind.homeoffice.gov.uk/ind/en/home/news/press_releases/getting_married_in/new_rules_for_getting.html

If you are subject to immigration control (i.e. don't have the right of abode) and want to marry a UK citizen or someone else settled in the UK, you'll need to apply for a Certificate of Approval from the Home Office first, which takes about three months, unless you get married in an Anglican church.

If you are in the UK and don't want to get married, note that you cannot switch into fiancé status while you are in the UK. If you want to enter the UK as a fiancé you must go home and apply from abroad, for what is now called a "visitor for marriage" visa. Once that visa is issued, you will have six months to marry from its date of issue (not six months from your date of entry into the UK). So a fiancé visa does not buy you much time and will involve leaving the country.

Stay as a highly skilled migrant. See generally:

http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/schemes_and_programmes/hsmp.html?

WHM visa holders can switch to the HSM category but it is hard to qualify. You must have been in the UK for 12 months first.

Can I stay in the UK after my working holiday visa has expired just as a tourist? What if I leave the UK for a few days at the end of my WHM visa and then want to come back in as a tourist?

If your WHM visa simply expires and you don't leave the UK on or before the date of expiry, and you haven't applied for a change of status, you will be "overstaying". THIS IS HIGHLY INADVISABLE.

When you do eventually leave the UK, the authorities will pick up that you've overstayed, even if you're not caught while in the country. You will prejudice your chances of obtaining future visas to enter the UK, and you may even be refused entry as a tourist in the future once you are logged as an overstayer.

It is possible to obtain permission to remain in the UK as a visitor following the expiry of a WHM visa, but it takes time and is not easy. Talk to an immigration lawyer if you want to follow this route.

The best and most advisable approach is to organise to leave the UK permanently on or before the day your WHM visa expires. Don't think that just a few extra days in the UK won't matter. Play safe.

If you leave the UK on or before the date your WHM visa expires for a few days on the Continent, for example, then seek to come back into the UK after it has expired, just as a visitor/tourist, then it is highly likely that the immigration officer that you encounter will refuse you entry. Their logic will be that you are probably seeking to come back in to continue your life in the UK indefinitely, having just been there for two years, in breach of the conditions attached to visitor entry. If you are really only going back in for a few days, and have a flight home booked and paid for within a short period, you might be allowed in as a visitor again, but make sure you have all the documentation with you to prove that you really are going home within a short period. And always play it straight when dealing with immigration officials. Don't make up stories or mislead them in any way.

A better scenario would be to re-enter the UK just **before** your WHM visa expires. On re-entry, tell the immigration officer that your WHM visa is going to expire shortly and that you need another week (or short period). Specifically request a visitor's visa at that point, and you may get a stamp allowing you to enter for six months as a visitor (with no right to work).

Get Sound and Timely Advice. A Stitch in Time Saves Nine.

Immigration rules change often and everyone's circumstances are different. If you want to change status, or leave the UK to re-enter as a visitor at the end of your visa, then talk to an immigration lawyer in plenty of time before your WHM (or other) visa expires. An hour or two's consultation with an expert will not break the bank and could save you major drama later.

To find a UK immigration lawyer near you, consult the website of the Immigration Law Practitioners' Association (ILPA).

<http://www.ilpa.org.uk/>

What are the penalties if I'm caught as an Overstayer?

Overstaying (even for one day) is an offence. You can be prosecuted, and the offence is triable summarily. The penalty is a fine of a certain level, or imprisonment for not more than six months, or both.

You can also be removed from the country. And your record will be blemished with the UK immigration authorities for eternity, perhaps preventing even future holidays in the UK.

If you are working after your WHM visa has expired, be aware that your employer can be fined if you are caught as well.

What are the penalties if I breach the conditions of my working holidaymaker visa?

If your WHM visa was issued on or after 8 February 2005, and you work for more than 12 months out of the two years, then you are committing an offence. If caught, you could be prosecuted, or removed.

This material was prepared with the assistance of Anne MacGregor, Lawyer and Co-founder of the Southern Cross Group, a volunteer-run and funded advocacy and support organisation for the Australian diaspora:

www.southern-cross-group.org