European Union (Withdrawal) Bill
Commons consideration of Lords amendments
Tuesday 12th June 2018

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

The BMA is urging MPs to accept Lords Amendment 4, relating to enhanced protection for certain areas of EU law, including employment entitlements and equalities protections.

Key points
- The UK’s membership of the EU has had a significant effect on the development of employment rights for doctors.
- The European Working Time Directive, the right to equal pay between men and women in Article 157 of the EU Treaty, and EU laws around equality have strengthened safety and equality provisions for doctors in the UK. Given the current pressures on the NHS, creating a better work environment improves patient care and is more likely to lead to the retention of doctors.
- The UK’s decision to leave the EU has the potential to limit the future of such benefits, and to weaken those which currently exist.
- The BMA therefore supports Lords Amendment 4, which would prevent the Government from amending, repealing or revoking ‘retained’ EU law on employment rights, equality rights and other areas of EU law, after Brexit unless strict criteria were met.
- The amendment introduces key safeguards which would ensure that any changes to ‘retained’ EU law could only be made through primary legislation, other advanced scrutiny mechanisms, and only after consultation with stakeholders. We believe this amendment is a crucial safeguard for maintaining vital employment and equality protections, such as the Working Time Regulations (WTRs) after the UK leaves the EU.

Employment entitlements, rights and protection
The BMA is satisfied with the European Working Time Directive and the measures it has transposed into the UK Working Time Regulations, namely the limit of a 48-hour working week, rest breaks and statutory paid leave. These regulations are essential health and safety legislation, which alongside European Court of Justice judgements (the SiMAP and Jaeger rulings which enshrined the principle of time spent on-call at the workplace being regarded as work), have played a critical role in protecting doctors from the dangers of overwork and patients from the impact of overtired doctors.

1 Lord Amendments to the European Union (Withdrawal) Bill
2 BMA: Holding the line on working time
Together with twelve leading health organisations, the BMA wrote to the Prime Minister, Theresa May, in December 2017, asking her not to renege on commitments to maintain the WTRs, after Brexit. The twelve signatories, representing doctors, nursing staff and midwives across the UK, are clear that Brexit must not be used as an excuse to overwork any staff group. With health and care services under more pressure than ever before, what is needed is proper resourcing and investment in the workforce, not the removal of key safeguards.

In her response to this letter, the PM stated that she agreed that ‘the WTR provide important protections for people working in the NHS’ and adds that ‘once the UK has left the EU, we will ensure that EU-derived employment rights will continue to be available in domestic law’. This amendment would enshrine this commitment in legislation.

Accepting this amendment would honour the explicit commitments it has made in the past that the EU (Withdrawal) Bill will ensure that ‘workers’ rights that are enjoyed under EU law will continue to be available in UK law after we have left the EU, including rights derived from EU law, such as the Working Time Directive and the Agency Workers’ Directive. This will give certainty and continuity to employees and employers alike, creating stability in which the UK can grow and thrive.

Furthermore, while we note that while the Bill will end the general supremacy of EU law ending the jurisdiction of the European Court of Justice in the UK, the government’s statement that British courts “may have regard” to “anything done” by the ECJ or by another EU entity after Brexit if the British court considers it appropriate to do so is welcome and should be honoured after Brexit. This will be vital with regards to key ECJ judgements on workers’ rights.

We believe Lords Amendment 4 is a key safeguard for maintaining vital employment protections. Given the challenges Brexit poses to health services across the UK, any unnecessary disruption to health services and the NHS workforce at an already uncertain time should be avoided.

**Equality entitlements, rights and protection**

The UK’s Equality Act 2010, rights to equal treatment for part-time workers, health and safety protections for pregnant workers and rights to maternity leave, emergency time off for dependents and parental leave are all underpinned by EU law. This includes regulations protecting the employment status of fixed term and agency workers who may be more likely to be women or those with caring responsibilities.

The government has committed to maintaining equality rights and transposing other rights into UK law upon withdrawal from the EU. However, there is a risk that equality rights will become more vulnerable to amendment, narrower interpretation, and weaker enforcement following Brexit. We believe Lords Amendment 4 is a key safeguard for maintaining these vital protections and would ensure that any changes are made only after full and thorough scrutiny.

**For further information, please contact:**
Susan Bahl, Brexit lead: sbahl@bma.org.uk

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3 The full list of signatories to the letter to the Prime Minister are as follows: BMA, Royal College of Anaesthetists, Royal College of Paediatrics and Child Health, Royal College of Physicians, Royal College of Midwives, Royal College of Surgeons of Edinburgh, British Dental Association, Royal College of Ophthalmologists, RCGP, Royal College of Radiologists, Royal College of Emergency Medicine, Royal College of Obstetricians and Gynaecologists.

4 Letter to the Prime Minister, December 2018

5 Department for Exiting the EU: Factsheet on workers’ rights

6 This Act does not apply in Northern Ireland where a range of separate legislation covers some of the same areas