Memorandum of evidence from the British Medical Association to the Home Affairs Committee inquiry on ‘Home Office delivery of Brexit: immigration’

The British Medical Association (BMA) is a voluntary professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care. The BMA is committed to safeguarding the future of the profession and the patients we serve, and it is essential we are consulted and involved in consultations to inform negotiations to leave the European Union (EU) which would affect the medical profession and patients.

The issues facing the medical and research workforce ahead of the UK’s withdrawal from the EU are considerable. Between 7-10% of doctors working in the UK are from the EU, and alongside the thousands of other NHS staff from the UK and overseas, these health professionals provide a vital public service to British citizens, conduct vital medical research, and contribute to the overall economy. Guaranteeing the rights of these nationals living and working in health services across the UK is a key priority for the BMA. Ongoing uncertainty and insecurity risks having a destabilising effect on the medical workforce, affecting morale and causing a great deal of stress to those whose futures remain uncertain.

We are urging the Government to offer permanent residence to EU doctors and medical academics who are currently working in the UK, and their family members, whether they have been living here for five years or not. EU medical students currently studying in the UK should be given sufficient stay to enable them to complete their courses and continue to foundation and training posts.

Key points:

- Despite efforts by the UK Government to reassure EU citizens in the UK regarding their rights to live and work in the UK after Brexit, the lack of concrete reassurances and ongoing uncertainty presents a very real risk that some EU nationals, including highly skilled doctors and medical researchers, will choose to leave the UK. This could have significant implications for the staffing of health and social care services, quality of care and patient safety.
- Significant doubt exists about the Home Office’s current capacity to register the more than three million EU nationals already in the UK. The Government must ensure the Home Office has the staff and resources required to manage the substantial challenges ahead.
- The Government needs to provide greater clarity on the process and requirements for applying for settled status as soon as possible. Clarification on the cut-off date for settled status is vital.
- A failure to agree a comprehensive deal on citizens’ rights by March 2019 would create considerable uncertainty for the status of EU nationals currently in the UK, including the thousands of doctors, researchers and medical students from the EU.
- We are urging the Home Office to streamline existing immigration processes and to address the existing complexities in the current immigration system for non-EU doctors, including increases within the Tier 2 appropriate salary threshold for experienced workers; the introduction of the immigration skills charge; the impact of the resident labour market test; and the exclusion of many at-risk medical specialties, such as general practice, from the shortage occupation list.
- Migration from the EU and elsewhere provides a range of benefits to the UK, in addition to staffing health services. We are urging the Government to put in place a flexible immigration system, which facilitates the entry of doctors, nurses and other key health and social care staff to the UK, while enabling UK-trained doctors to work in the EU should they so choose.

Does the Home Office have the capacity to register EU nationals already in the UK?

1. The scale of the task facing the Home Office, and its capacity to register EU nationals already in the UK, was detailed in evidence given to the Home Affairs Committee on Tuesday 10 October
2017. In their evidence to the Committee, the former Independent Chief Inspector of Borders and Immigration and the former Director General of Immigration Enforcement at the Home Office confirmed that the 6,500-strong team of visa and immigration officials were struggling to deal with their current caseload and were each dealing with approximately 40-60 applications a day from EU nationals

1.1 In a subsequent evidence session to the Committee on 17 October 2017, the Home Secretary, Amber Rudd, confirmed that the Home Office had recruited 700 extra immigration caseworkers and was looking to recruit a further 500 staff before April 2018 to help register the more than three million nationals currently living in the UK

What form should that process take and what risks need to be anticipated?

2 In June 2017, the UK Government proposed a new ‘settled status’ for EU citizens currently living and working in the UK for five years prior to an unspecified cut-off date. Individuals who arrive before the cut-off date, but who will not have been here for five years when the UK leaves the EU, will be able to apply to stay until they have reached the five-year threshold. Following the announcement in October 2017 that a new registration process will be put in place for EU citizens currently in the UK, the Prime Minister has also confirmed plans to introduce a “streamlined digital process for those applying for settled status in the UK in the future”, and a “simple process for any EU citizen who holds permanent residence under the old scheme to swap their current status for UK settled status”

2.1 While we cautiously welcome the Government’s commitment to introduce a “simple process for any EU citizen who holds permanent residence under the old scheme to swap their current status for UK settled status”, key concerns remain. These include the lack of information on the scheme, the administrative burden this will place upon those EU nationals who will be expected to undertake it, including our members, and also the capacity of the Home Office to administer a system which will require them to register the more than three million EU nationals currently in the UK. Many questions were raised about the Home Office’s ability to cope with the increase in the number of EU nationals in the UK applying for permanent residence as a means of guaranteeing their rights after Brexit; this spectre will be raised again ahead of the application process for settled status.

2.2 It will be essential that any process to register EU nationals in the UK ahead of, and after the UK’s departure from the EU, is simple, fast and straightforward. This will be key in avoiding the challenges involved in the process for applying for permanent residence, which was widely criticised for being unwieldy and time-consuming for the individuals involved, including the BMA’s European Economic Area (EEA) members.

2.3 The ongoing lack of clarity surrounding the unspecified cut-off date is also a key area of concern for the BMA. The Government has been clear that the cut-off date will be agreed during the negotiations, but that it should not be earlier than 29 March 2017 (the date Article 50 was triggered) or later than the date the UK leaves the EU. The Cavendish Coalition, of which the BMA

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2 Home Affairs Committee (17 Oct 2017) The work of the Home Secretary
3 PM’s open letter to EU citizens in the UK, October 2017
4 PM’s open letter to EU citizens in the UK, October 2017
5 FT (April 2017) UK tries to put EU nationals off applying for residency
6 UK Government: Safeguarding the position of EU citizens living in the UK and UK nationals living in the EU: summary proposals
is a founding member, has raised concerns about the implications for NHS staffing if the ‘cut off point’ for entitlement to remain in the UK was set prior to the actual date of Brexit.  

**What different challenges do the ‘no deal’ and ‘transition period’ scenarios pose for the Home Office and how might they be met?**

3 The challenges presented by a ‘no deal’ scenario by March 2019 would cause a major administrative challenge for the Home Office: the Institute for Government think-tank recently forecast that the Home Office could need 5,000 extra border staff if the UK fails to strike an exit deal.  

3.1 A failure to reach a deal on citizens’ rights would also cause considerable uncertainty for the status of EU nationals currently in the UK, including the medical profession, of whom between 7-10% working in the UK are from the EEA. Approximately 7.7% of doctors (12,029) currently working in the NHS medical workforce in England are EEA graduates, while the figures for EEA graduates for other UK nations are 5.7% (1,139) in Scotland, 8.8% (550) in Northern Ireland and 6.4% (624) in Wales.

3.2 Individuals without documentation proving entitlement to remain in the UK would be most at risk from a ‘no deal’ scenario and any changes in immigration policy. A ‘no deal’ scenario could have a destabilising effect on the medical workforce, particularly if EU nationals choose to leave, or are unable to stay due to a change in their immigration status. A BMA survey recently found that 42% of EU doctors currently working in the NHS were considering leaving the UK following the referendum result, which if borne out, would have a significant impact on the ability of the NHS to provide a safe and reliable service.

3.3 With regards to a transitional period, in her speech in Florence on 22 September, Prime Minister Theresa May called for an implementation period of “around two years” during which time “people will continue to come and live and work in the UK”. The Government must provide clarity as soon as possible about what future immigration system will be put in place to manage migration from the EU once the UK leaves the EU. This will be vital for both the Home Office, so that it can put measures in place during the transition period to ease the shift from one immigration policy to a post-Brexit system, but also to provide clarity for future migrants to the UK.

**Is there scope for the Home Office to streamline existing immigration processes and, if so, in what areas might such efficiencies be found?**

4 In recent years, immigration policy has caused difficulties for doctors and researchers from outside the EEA who remain subject to stringent immigration controls. We believe there is an opportunity for the Home Office to streamline existing immigration processes, and to address the existing complexities in the current immigration system for non-EEA doctors caused by interaction between the immigration rules and the system for training doctors. Examples include: increases within the Tier 2 appropriate salary threshold for experienced workers; the introduction of the immigration skills charge (ISC); the impact of the resident labour market test; and the exclusion of many at-risk medical specialties, such as general practice, from the shortage occupation list.

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7 The Cavendish Coalition is a group of 37 health and social care organisations, which came together after the EU referendum to provide the best care to communities, patients and residents.
9 NHS Digital provisional workforce statistics, March 2017
10 Home Affairs Committee (17 Oct 2017) [The work of the Home Secretary](https://www.gov.uk/government/publications/the-work-of-the-home-secretary)
11 [BMA survey of EU doctors working in the UK](https://www.bma.org.uk/doctor-training/immigration)
12 PM’s Florence speech: a new era of cooperation and partnership between the UK and the EU
4.1 We believe the immigration skills charge is a key example of an immigration process which could be streamlined. While the ISC may be appropriate in industries that recruit workers for financial benefit, it is not appropriate for the NHS. Enforcing a skills charge on Tier 2 employers, which includes the NHS, at a rate of £1,000 per Certificate of Sponsorship per year for doctors is counterproductive and will be doubly so if the Conservative Party delivers on its manifesto pledge to increase the ISC from £1000 to £2000 per year of visa.\(^{14}\)

4.2 Given the current financial pressures, the BMA believes the NHS should be exempt from any immigration skills charge, which takes funds away from the health service. We have warned that taking desperately needed money from our already under-funded health service will worsen the current staffing issues, and have an impact on the level of care that hospitals can provide to patients.\(^{15}\) As overseas staff can only be employed if recruitment from the UK and EU has been unsuccessful, the imposition of the ISC is essentially a penalty against trusts for trying to fill staff shortages and maintain safe patient care. This would simply result in taking money out of an already overstretched NHS, and this money being lost to the training of the health and public health workforce in the UK. It is essential that the skills charge does not act as a deterrent to NHS trusts from recruiting doctors to the workforce.

What principles should underpin a future immigration system and to what extent does the existing system meet them?

5 Migration from the EU and elsewhere provides a range of benefits to the UK beyond staffing services. Medicine and medical research thrives on the interchange of experience, knowledge and training across countries and backgrounds. Allowing doctors and medical researchers to train, teach, conduct research and practise in different countries contributes to widening the understanding of healthcare and advances new breakthroughs in medicine. It is vital that any changes to the current legal framework for mobility do not lead to a decrease in opportunities to work or study abroad as this risks limiting the interchange of experience, knowledge and training.

5.1 The BMA, as part of the Cavendish Coalition, has also identified ten key principles which we believe should underpin a future immigration system:

1. Be fair to those individuals and organisations using it by being responsive, easy to understand and navigate, transparent, predictable and affordable.
2. Support a strategy and plan to develop the UK’s domestic supply of health and social care staff.
3. Support the delivery of high quality public services across all parts of the UK.
4. Respond to skill and labour shortages within the health and social care sector, as well as attracting talent to the sector.
5. Recognise the wider value to society and the economy of certain skills and roles, beyond measuring salary levels.
6. Support the growth of the economy across all parts of the UK.
7. Position the UK as a global leader in healthcare industry, science, technology, research and education.
8. Facilitate reciprocal opportunities for UK nationals.
9. Support the stability of health and social care services in the short to medium term.
10. Lead the way on the World Health Organisation Code of Practice on ethical and international recruitment.

\(^{14}\) Conservative Party Manifesto 2017
\(^{15}\) BMA & RCN letter to the Home Secretary (March 2017) ‘Immigration Skills Charge - Impact on the NHS and health and social care workforce’