Immigration and Social Security Co-ordination (EU Withdrawal) Bill
Committee Stage, House of Lords
Tuesday 26th February 2019

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.

Freedom of movement has allowed hundreds of thousands of health and social care staff from Europe to come to the UK to provide key public services, carry out vital medical research and contribute to the overall economy. The Immigration and Social Security Co-ordination (EU Withdrawal) Bill and Immigration White Paper propose to end freedom of movement and impose tougher controls on immigration.

Any reduction in the number of doctors or healthcare staff migrating to the UK will exacerbate workforce shortages and impact on staffing levels in hospital wards, in GP practices and in community settings across the UK. Amid an already growing workforce crisis, the quality of patient care will suffer, and patient safety will be put at risk if an immigration policy is introduced which restricts the flow of vital workers. The NHS simply cannot afford to put up barriers to medical or other healthcare staff, or to deter staff from coming to work in the health service at a time when they are needed the most.

This Bill also presents a key opportunity to end the practice of indefinite immigration detention. The UK is one of only a few European countries not to have a fixed time-limit on immigration detention, which means detention can be for an indeterminate period and individuals will rarely know the term of their detention. Given the severe and deleterious effect this can have on an individual’s health and wellbeing, the BMA believes there should be a clear limit on the length of time that people can be held in detention, with a presumption that they are held for the shortest possible time.

The BMA is therefore supporting amendments to the Bill, which, if accepted, would require:

- The Government to consult trade unions before introducing a work visa scheme for EEA nationals
- Regulations made under Clause 4 (1) to be subject to the affirmative procedure
- A 28-day time-limit on the amount of time an individual from the EEA or Switzerland can remain detained under detention powers.
On 28 January 2019, the Government announced proposals to introduce a new immigration system (European Temporary Leave to Remain), which will allow EEA citizens arriving in the UK after 29 March 2019 to live, work and study in the UK if there’s no Brexit deal. EEA citizens who are granted European Temporary Leave to Remain will be able to stay in the UK for 36 months from the date it is granted. ETLR will be a temporary, non-extendable immigration status, which does not give indefinite leave to remain (ILR), lead to status under the EU Settlement Scheme or make EEA citizens eligible to stay in the UK indefinitely. EEA citizens wanting to stay in the UK for more than 36 months will need to apply for an immigration status under the new immigration system, which will come into effect from 1 January 2021. The Government has confirmed that those who do not qualify for ETLR will need to leave the UK when their Temporary Leave to Remain expires.

It is essential that if the Home Office introduces a work visa scheme for EEA nationals, this must be developed in consultation with the British Medical Association and other trade union representatives. EEA doctors and other health and social care staff currently enjoy the flexibility that comes with freedom of movement, including working within the UK and EEA simultaneously. For those arriving in the UK post-29 March in the event of a no-deal, the introduction of visas and the costs attached to this may act as a major disincentive to working in the NHS in the future. This is a huge concern at a time when the NHS is already struggling with considerable staff shortages.

Additional barriers on working in the UK could have particularly dire consequences for specialties already facing acute shortfalls including general practice, emergency medicine, paediatrics, occupational medicine, radiology and psychiatry and on staffing levels on hospital wards, in GP practices and in community settings across the UK.

Furthermore, the BMA would welcome an impact assessment on workers’ rights for any regulations made under subsection (1) which introduce a work visa scheme for EEA nationals. More broadly, the UK’s membership of the EU has brought wide-ranging benefits to UK doctors through the adoption of European employment legislation into UK law, such as the Working Time Regulations. Such legislation makes better provision for patient safety and for equality of doctors’ employment terms, both of which are beneficial to the NHS.

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, depending on Parliament’s eventual decisions regarding which areas of EU legislation should remain, undergo amendments, or should be repealed following Brexit. There is therefore a substantial risk to the NHS around employment rights and Brexit, and it is vital that the

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1 Gov.uk (January 2018) European Temporary Leave to Remain in the UK
2 BMA Briefing (2018) Employment rights - Implications of the UK’s decision to leave the European Union for fair and safe working rights
government consider carefully the BMA’s proposals, and the proposals of other key stakeholders, in the decision-making process.

**Ensuring regulations made under Clause 4 are subject to the affirmative procedure**
The BMA welcomes amendments to the Bill, which would ensure that regulations made under Clause 4 (1) would be subject to the affirmative procedure. We continue to have serious concerns over proposals in the Bill to use the ‘made-affirmative’ procedure for regulations to amend primary legislation without any parliamentary scrutiny, with regulations being approved by both houses of Parliament within a month to remain in force.

Publication of the Immigration Bill has been subject to endless delays, and yet, with just weeks to go before the UK leaves the EU, ministers are being given the power to push through regulations which will fundamentally change the rights and entitlements of EU in the UK before they have been scrutinised. These regulations must be thoroughly debated in Parliament first.

The BMA is calling for regulations made under clause 4 to be subject to the affirmative procedure, rather than the made-affirmative procedure. Any changes to the rights of EU citizens in the UK must be scrutinised and debated by both Houses of Parliament before they come into effect.

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**New Clauses 1, 2, 4, 6, 7 and 8**
**Time limit on immigration detention**

**Ending indefinite detention**
The UK’s immigration detention estate has the capacity to hold up to 3,500 individuals in 10 immigration removal centres (IRCs) at any one time. The UK is one of only a few European countries not to have a fixed time-limit on immigration detention, which means detention can be for an indeterminate period and individuals will rarely know the term of their detention. Such an approach can have a severe and deleterious effect on health and wellbeing, particularly mental health.

In our report *Locked up, locked out: health and human rights in immigration detention* the BMA explores the role of doctors in protecting and promoting the health-related human rights of detained individuals. The BMA believes that the use of detention should be phased out and replaced with alternate more humane means of monitoring individuals facing removal from the UK. As long as the practice continues, however, we believe that there should be a clear limit on the length of time that people can be held in detention, with a presumption that they are held for the shortest possible time.

We therefore asking MPs to support New Clauses 1, 2, 4, 6, 7 and 8 which allow for a 28-day time-limit on the amount of time an individual from the EEA or Switzerland can remain detained under detention powers.

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