Immigration Bill – report stage

House of Commons
Tuesday 1 December 2015

The British Medical Association (BMA) is a voluntary professional association and independent trade union which represents doctors and medical students from all branches of medicine all over the UK. With a membership of over 160,000 worldwide, we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession and promote the achievement of high quality healthcare.

This briefing highlights the BMA’s views on the following measures proposed in the Immigration Bill: language requirements for public sector workers (Part 7) and the immigration skills charge (Part 8).

Executive Summary

- The BMA supports the principle that all doctors in the UK should have an acceptable command of English in order to communicate effectively so that they do not put the safety of their patients at risk.
- The BMA believes the Government’s proposals to introduce new English language requirements for public sector workers should not undermine or duplicate the English language testing requirements already required by the General Medical Council for obtaining a licence to practise in the UK.
- The Government’s lack of meaningful consultation on proposals to impose an immigration skills charge on employers who sponsor non-European Economic Area (EEA) migrants is deeply concerning.
- While an immigration skills charge may be appropriate in industries that recruit workers for financial benefit, it is not appropriate for the NHS. The BMA believes the NHS should be exempt from any immigration skills charge, which takes funds away from the health service.
- The BMA does not support, and is not calling for, unfettered immigration of overseas doctors and recognises that the principle of reducing reliance on migrant workers and training and up-skilling UK resident workers to fill workforce gaps is valid\(^1\).
- Employers must have the capacity to recruit and retain overseas doctors where other solutions to staffing have been unsuccessful and where a clear workforce need exists. Consequently, the immigration system must remain flexible enough to recruit doctors from outside the UK/EEA should the resident workforce be unable to fulfil this.

Part 7 – Language requirements for public sector workers

Part 7 of the Immigration Bill introduces a new statutory duty to ensure that every public sector employee working in a ‘customer-facing’ role must speak fluent English. Specifically, a duty will be imposed on public sector bodies to have regard to a statutory code of practice on English
Speaking Requirements for Public Sector Workers. The Government is currently consulting on a draft code of practice on the English Language Requirements for Public Sector Workers, to which the BMA will issue a response.

The BMA does not dispute the need to ensure that doctors have a high level of communication skills to ensure patient safety, and we have long supported language skills being a prerequisite for any doctor wanting to practice in the UK since 2002: patient safety must be paramount at all times.

The GMC stipulates that all doctors who practise medicine in the UK must have the necessary knowledge of English to communicate effectively so they do not put the safety of their patients at risk. Communicating includes speaking, reading, writing and listening. Doctors who wish to work in the UK, who have not qualified in the UK, have to pass the International English Language Testing System (IELTS) language test to the level set by the GMC, or have to provide evidence of language competence equivalent to this.

Under current rules, the GMC, individual employers and Responsible Officers have already taken steps to ensure the language competence of doctors working in the NHS. Recent changes to the fitness to practice rules mean that the GMC can now cite a doctor’s inability to speak, write, read or comprehend English as a reason for impaired fitness to practice.

In addition, Responsible Officers in England, who help evaluate the fitness to practice of doctors, now also have to have oversight of the communication skills of all doctors working in their designated organisation. These Responsible Officers have a duty to “ensure that medical practitioners have sufficient knowledge of the English language necessary for the work to be performed in a safe and competent manner”.

The BMA is concerned that the new code of practice proposed by the Bill may duplicate the language controls that are currently in place. It is unclear how the code of practice aligns with existing legal obligations and will not duplicate what is already in place for the medical profession.

The draft code of practice states that ‘It is not anticipated that public authorities will need to impose a higher standard in fulfilling the fluency duty than the standards already required for such roles’. The ‘Consultation on draft language requirements for public sector workers Code of Practice’ states that the Code will apply ‘in respect of existing workers in such roles, not just newly recruited staff’ and will be enforced for ‘existing staff through a complaints-based process rather than routine re-testing’. The BMA is also concerned that the use of guidance, as recommended, leaves open the possibility of varying interpretation and inconsistency in implementation between different areas.

For the purpose of absolute clarity, the BMA would insist that any amendments to the English language requirements of doctors practising in the UK are undertaken through amendments to the licensing procedures and must be the responsibility of the General Medical Council. The code of practice needs to reference the regulations that are already in place for doctors and the duty upon Responsible Officers to ensure language competency for doctors. The code must also be clear in stating that its purpose is not to duplicate provisions that are already in place for the medical profession but aims to provide guidance for those working in public authorities where regulatory controls are not currently in place.
Part 8 – Immigration skills charge

The Immigration Bill seeks to introduce new measures which would impose an immigration skills charge on employers who sponsor non-EEA migrants. The BMA recognises that the principle of reducing reliance on migrant workers and training and up-skilling UK resident workers to fill workforce gaps is entirely valid. We also recognise that an immigration skills charge may be appropriate in some industries who recruit migrant workers for financial benefit.

The BMA notes that the Government asked the Migration Advisory Committee (MAC) to make recommendations on the immigration skills charge as part of a wider review of the Tier 2 (General) visa route. The MAC Call for Evidence on Tier 2 (General) included gathering evidence on applying a skills levy to businesses recruiting migrants from outside the EEA, the proceeds of which will fund apprenticeships in the UK\(^7\). The BMA submitted evidence to this consultation\(^8\). However, the BMA does not consider this to be a full and robust consultation exercise specifically on the impact of the skills levy and we are deeply disappointed to see its inclusion in the Bill prior to the MAC reporting on its findings.

As outlined in our response to the MAC consultation, we do not believe an immigration skills charge is appropriate for the NHS; we believe the NHS should be exempt from any skills charge for several reasons. We would echo calls made during Public Bill Committee\(^9\) for an exemption for NHS staff.

A single sponsor arrangement is in place for medical trainees in Scotland and England. These sponsors are already engaged in training doctors so enforcing an additional skills charge would be taking money out of an already overstretched NHS. It is unclear whether the skills charge would be a single payment made when an international doctor was recruited or whether it will be applied on an annual basis for the length of the doctor’s stay in the UK.

It is highly unlikely that the NHS will benefit from the proceeds of the charge, which will fund apprenticeships in the UK. Training doctors is a lengthy process and requires an undergraduate medical degree. A UK medical student will typically spend five years as an undergraduate before undertaking the two-year Foundation Programme. It would not be possible to up-skill resident workers or put apprenticeships in place for doctors (or indeed for many other frontline healthcare workers) because of this long and rigorous training process and additional regulatory requirements.

The NHS is facing a number of workforce pressures both in primary and secondary care. The number of trained nurses required by the NHS far exceeds the number available in the UK workforce; this has now been acknowledged by the Government and nurses have been added to the shortage occupation list\(^10\).

The workforce shortages in the health service are not just confined to nursing though: the BMA has been calling for general practice to be added to the shortage occupation list since October 2014 and there is evidence of shortages in a number of medical specialities regionally across the UK\(^11\). It is essential that the NHS can recruit the staff that it needs both from the UK and overseas where the resident workforce is unable to fulfil this. Employers already have to pay a charge for each migrant they sponsor from overseas through the charge for a Certificate of Sponsorship. The imposition of an immigration skills charge will add a further financial burden on employers who need to recruit from overseas to ensure patient safety.
The payment of the skills charge by NHS employers would be money that is lost to the NHS and we believe the NHS should be exempt and the government should make this clear.

For further information, please contact:

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1 Prime Minister’s Speech on Immigration, 21st May 2015;
2 Overarching Impact Assessment, Immigration Bill
3 Draft Code of Practice on the English Language Requirement for Public Sector Workers
4 Consultation on draft language requirements for public sector workers code of practice
6 Consultation on draft language requirements for public sector workers Code of Practice
7 Migration Advisory Committee: Review of Tier 2
8 BMA submission to the Migration Advisory Committee Call for Evidence: Review of Tier 2: BMA submission- Review of Tier 2
9 Hansard, House of Commons, Immigration Bill (Fourteenth sitting) 10 November 2015
10 Restrictions on nurse recruitment from overseas changed, Department of Health, 15 October 2015
11 BMA submission to the Migration Advisory Committee Call for Evidence: Review of Tier 2: BMA submission- Review of Tier 2