
Immigration and Social Security Co-ordination (EU Withdrawal) Bill

Second Reading, House of Commons

Monday 28th January 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.

Brexit has brought a range of complications, uncertainty and confusion to health services across UK and the rest of Europe. It is highly unlikely that any Brexit deal could ever deliver the range of benefits which the UK's current membership of the EU confers on patients, the medical workforce and health services across the UK and Europe. Given the risks that Brexit poses to the NHS and the nation's health, the BMA opposes any form of Brexit and believes the public should have the final say on any proposed deal.

Key points

- The Immigration and Social Security Co-ordination EU (Withdrawal) Bill will end free movement of people into the UK and bring EEA and Swiss nationals within UK immigration control, whilst also protecting the status of Irish citizens in the UK when freedom of movement rules end.
- Nearly 10% of doctors working in the UK are from the EEA, and, alongside health and social care staff from the UK and overseas, they deliver key public services, conduct vital medical research, and contribute to the overall economy¹.
- Any changes to the UK immigration system, which could deter those who may want to work in the UK, risks having significant implications for the staffing of health and social care services, quality of care and patient safety in the future.

¹ [BMA Brexit Briefing: Workforce and Immigration](#)

- This Bill delivers the legal framework for the future immigration system, but it does not set out the detail of what that system will look like.
- Proposals within the Immigration White paper to tackle existing complexities within the current immigration system for non-EU workers, while welcome, do not go far enough to tackle the long-term needs of staffing the health and social care workforce.
- The Government's proposals for a new immigration system will be phased in from 2021 if a deal with the EU is agreed. It is unclear what immigration system will be put in place for EU nationals if Britain leaves the EU on 29th March 2019 with no deal. This must be clarified as a matter of urgency.
- The BMA believes it is essential that 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, rather than what is currently proposed.

Part 1: Measures relating to ending free movement

Clause 1: Repeal of the main retained law relating to free movement etc

Freedom of movement

Freedom of movement and the EU directive on mutual recognition of professional qualifications (MRPQ) have played a vital role in enabling thousands of health professionals and researchers from countries within the EEA to work in the UK. EEA doctors and researchers play a key role in staffing vital health services, delivering key public services and conducting medical research across the UK:

- 7.7% of doctors (12,029) currently working in the medical workforce in England are EEA graduates
- 5.7% (1,139) in Scotland
- 8.8% (550) in Northern Ireland
- 6.4% (624) in Wales²

Schedule 1 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill will repeal legislation relating to free movement and other EU laws relating to immigration. The BMA is deeply concerned about the implications of this policy on the NHS and social care workforce at a time when the health and care services are already under immense pressure in the face of rising demand and tight resources.

Reports of almost 100,000 vacancies in NHS trusts across England demonstrate the difficulty of recruiting and retaining staff within the current immigration framework³. This is leading to rota gaps across the medical profession and real concerns about the ability to adequately staff services.

For EEA doctors and other health and social care staff who have enjoyed the flexibility that comes with freedom of movement, including working within the UK and EEA simultaneously, 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 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.

The Government's own economic appraisal on the impact of proposed changes to the immigration system predict an 80% reduction in long-term migration to the UK.

² GMC (November 2017) Our data about doctors with a European primary medical qualification in 2017

³ NHS Improvement: [Performance of the NHS provider sector for the month ended 31 December 2017](#)

A recent BMA survey of EEA doctors from November 2018⁴, found that:

- More than one third of EEA doctors (35 per cent) currently working in the NHS are considering moving abroad.
- 78 per cent of EEA doctors working in the UK are not reassured by the Prime Minister's commitment to protect the rights of EEA citizens in the UK in the event of a no-deal Brexit

There is a very real risk that the end of freedom of movement, combined with the Government's new immigration policy will exacerbate existing workforce shortages across the UK. Efforts to increase the domestic supply of doctors are underway, but they will not address likely shortages resulting from the UK's decision to leave the EEA in the short to medium term given that it can take up to ten years to train a senior doctor. The UK will continue to need to recruit from the EEA and overseas, simply and flexibly, in order to sustain staffing levels across the NHS.

The BMA is calling for ongoing free movement for healthcare and medical research staff.

Settled status

If free movement ends, EEA and Swiss citizens resident in the UK will need to apply for a new immigration status under UK law through the EU Settlement Scheme. However, a recent BMA survey of over 1500 EEA doctors⁵ found that:

- 37 per cent of EEA doctors are not aware of the Government's 'Settled Status' scheme for EU nationals.

This is a deeply concerning statistic just months before the scheme is to be opened up to all EU nationals in March 2019. If the scheme is to be a success, the Home Office must significantly increase its communications to EU nationals ahead of the scheme's launch and throughout its implementation.

Future immigration system

Consequential etc provisions within Clause 1 of the Bill contain powers to make amendments by secondary legislation to bring EEA and Swiss nationals and their family members within UK immigration controls. While the Bill delivers the legal framework for the future immigration system, it does not set out the detail of what that system will look like. This will be set out via the Immigration Rules.

The Immigration White Paper published in December 2018⁶, [The UK's future skills-based immigration system](#) does however, set out the principles that will underpin a future immigration system following the end of the implementation period in December 2020, should a deal with the EU be agreed.

Key features stated include:

- The overarching objective of a future immigration system will be to attract highly skilled workers to the UK.
- That EU workers will be treated under the same rules (after the implementation period) as non-EU workers. EU workers will not be given preferential access to work in the UK. The UK may however, through future trade negotiations, enter into a bilateral agreement with another country, resulting in a preferential visa process with nationals of that country.
- The Tier 2 annual cap for sponsored workers and the removal of the Resident Labour Market Test have been proposed. A review of the minimum salary threshold of £30,000 and the Shortage Occupation List will also be undertaken.

⁴ [BMA \(November 2018\) EU Doctor Survey](#)

⁵ Ibid

⁶ [UK Government \(December 2018\) The UK's future skills based immigrations system](#)

- Introduction of a new temporary short-term worker route for low risk country nationals for a maximum of 12 months with a 12-month cooling off period and no right to bring dependants and no access to public funds.
- A review of the administrative burdens on sponsoring employers will be undertaken to make the system 'as straightforward as possible' and reduce the length of time to sponsor an overseas national to work in the UK.
- Fees for using the immigration system will remain burdened on those within it, i.e. visa fees, Immigration Health Surcharge and the Immigration Skills Charge etc.

The BMA has repeatedly raised concerns about the complexities of the current immigration system for non-EU workers and employers, and within the confines of the Tier 2 system, many of the changes outlined above are to be welcomed. However, we remain concerned that EU and non-EU nationals would continue to be subject to unnecessary bureaucracy, costs and inflexibilities, which could compound recruitment problems in the NHS.

The BMA is calling on the Government to engage with health and social care sector ahead of the publication of the Immigration Rules to ensure that any future system is efficient, flexible, user-friendly, simple and transparent and responsive to the needs of the NHS.

Clause 2: Irish citizens: entitlement to enter or remain without leave

Clause 2 of the Bill will protect the status of Irish citizens in the UK when freedom of movement rules end- a status which existed before the UK became a member of the EU. Under the provisions of the Bill, Irish citizens will not require permission to enter or remain in the UK and will not be subject to immigration controls except in specific circumstances.

The EU's principles of freedom of movement and MRPQ have enabled many health and social care professionals from countries within the EU, but especially those from the Republic of Ireland, to practice in Northern Ireland. Alongside the existing open border arrangement, healthcare professionals can travel freely across the border to provide healthcare to their patients.

There are several areas in healthcare where cross-border service arrangements have been established and are currently providing high quality care for patients, for example, in primary care, cancer services and paediatric cardiac surgery. Co-operation between Northern Ireland and the Republic of Ireland, which is in part funded by the EU, has been crucial in facilitating and delivering these services whilst also ensuring that highly skilled clinicians can be attracted and retained in Northern Ireland⁷.

Given the unique impact Brexit will have on Northern Ireland's health service, the BMA welcomes clarification that the rights of Irish citizens in the UK will be maintained after Brexit.

Clause 4: Consequential etc provision

Subsections 6-7

The BMA has serious concerns over proposals in the Immigration and Social Security Co-ordination (EU Withdrawal) Bill to use the 'made-affirmative' procedure for regulations to amend primary legislation. This mechanism essentially allows ministers to make 'urgent' changes to existing 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

⁷ BMA [Brexit Briefing \(2018\) Northern Ireland](#)

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 all regulations made under sub-sections 6-7 in 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.

Part 2: Social security co-ordination

Clause 5: Power to modify retained direct EU legislation relating to social security co-ordination

Clause 5 of the Bill contains powers which will enable the government to amend retained social security coordination arrangements and to deliver policy changes after Brexit. This clause will enable the Government to maintain consistency between the future immigration system and access to social security arrangements, such as UK benefits and pensions, for EEA nationals entering the UK.

The BMA welcomes proposals within the Bill to ensure any changes here are subject to full parliamentary scrutiny through the affirmative procedure.

For further information, please contact:

Susan Bahl

Brexit lead: sbahl@bma.org.uk

January 2019