

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

Second Reading, House of Commons

Monday 18 May 2020

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.

Key points:

- The Immigration and Social Security Co-ordination (EU Withdrawal) Bill will end the EU's rules on free movement of persons into the UK, bringing EEA and Swiss nationals and their family members under UK immigration control.
- **Around 29% of doctors working in NHS hospitals, and 12% of the overall healthcare workers in the UK, are from 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, risk having significant implications for the staffing of health and social care services, quality of care and patient safety in the future.
- We welcome measures in the Immigration Rules published in February 2020 that will help recruit registered health and care professionals, including the fast-track NHS visa.
- However, any future immigration system must consider the needs of the NHS for both highly skilled and low skilled labour and should be based on needs and demands to ensure that gaps in workforce are filled where they cannot be met by UK nationals in the short to medium term.
- The Government has set out plans to increase the Immigration Health Surcharge from October 1 2020 by 56% to £624 with a discounted rate for students, their dependents and youth mobility applicants of £470. This will be extended to EU/EEA nationals from 1 January 2021 when they will be subject to the new immigration system
- The Immigration Health Surcharge could deter international doctors from choosing to live and work in the UK. This threat is especially significant among EU and EEA nationals who until January 2021 will have previously been exempt from the charge.
- **The COVID-19 pandemic has highlighted how much we depend upon our international healthcare workforce. Granting all international doctors indefinite leave to remain and scrapping the surcharge for this group would send a clear signal that they are a valued and integral part of our healthcare system and encourage more of the brightest and best medical professionals to practice in the UK.**

Background

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill and the Immigration Rules propose to end freedom of movement and impose tougher controls on immigration.

In line with the Withdrawal Agreement, an EU citizen wanting to stay in the UK beyond 31 December 2020 and their family members will need to have applied to the EU Settlement Scheme before the end of the

¹ ONS, [International migration and the healthcare workforce](#), August 2019

transition period. EU citizens resident in the UK for more than 5 continuous years will be eligible for settled status. EU citizens resident for less than 5 continuous years will be eligible for pre-settled status. Any EU citizen who does not register for settled status within the timeframe set out by the Withdrawal Agreement must have 'reasonable grounds' for doing so. It is unclear what constitutes 'reasonable grounds' and there is particular concern vulnerable people may fall through the cracks if they fail to meet the deadline of June 2021.

The Immigration Bill does not set out what the future UK system will look like. Instead, the Bill gives Ministers powers to modify primary or secondary legislation as appropriate in consequence of, or in connection with, the Bill and through delegated legislation. Details of the new Immigration system are contained in the Immigration Rules².

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. 29% of doctors working in NHS hospitals, and 12% of the overall healthcare workers in the UK, are from overseas³.

Schedule 1 of the Bill will repeal legislation relating to free movement and other EU laws relating to immigration. We are concerned about the implications of this policy on the NHS and social care workforce at a time (even before the huge impact of COVID-19 which is still to be truly assessed) when the health and care services are under immense pressure in the face of rising demand and tight resources.

Reports of almost 90,000 vacancies in NHS trusts across England between October 2019 and December 2019 demonstrate the difficulty of recruiting and retaining staff within the current immigration framework⁴. 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, the introduction of visas and the costs attached to them 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.

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.

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

² Home Office, [Immigration Rules](#), February 2020

³ ONS, [International migration and the healthcare workforce](#), August 2019

⁴ NHS Digital: [NHS Vacancy Rates](#)

the Bill delivers the legal framework for the future immigration system, it does not detail what that system will look like. These were set out via the Immigration Rules published in February 2020⁵. Key features include:

- A points based immigration system that treats both EU and non-EU citizens equally.
- A focus on reducing overall levels of migration and give top priority to those with the highest skills and the greatest talents: scientists, engineers, academics and other highly-skilled workers.
- The introduction of a salary threshold of £25,600, although migrants will still need to be paid the higher of the specific salary threshold for their occupation, known as the 'going rate', and the general salary threshold.
- A fast-track NHS visa, but applicants will need job offer, to speak English and be trained to a recognised standard.
- The MAC is taking evidence for a new list to incorporate roles in shortage from level 3+ (A level equiv). This will need to be concluded by Autumn to be ready for 21 January when the new system launches.
- Fees for using the immigration system will remain i.e. visa fees, Immigration Health Surcharge and the Immigration Skills Charge etc.
- Visa fees of £1,220 per person, and £900 for those on the shortage occupation list, will be applied.
- The Immigration Health Surcharge will increase from 1 October 2020 by 56% to £624 with a discounted rate for students, their dependents and youth mobility applicants of £470. This will be extended to EU/EEA nationals from 1 January 2021.

Whilst we welcome the inclusion of measures to help recruit doctors to the NHS, including the fast-track NHS visa, we are extremely concerned over the lack of an entry route into the UK for social care professionals. Doctors work closely alongside a range of individuals, including nurses, paramedics, allied health professionals, clinical scientists, lab and theatre technicians, porters and cleaners – many of whom are likely to be EU nationals or from overseas. These individuals play an integral role in the efficient and safe running of the health service.

It is vital that any future immigration system considers the needs of the NHS for both highly skilled and lower-skilled labour and should be based on need and demand to ensure gaps in the workforce are filled where they cannot be met by UK nationals in the short to medium term.

We also remain concerned that EU and non-EU nationals will continue to be subject to unnecessary bureaucracy, costs and inflexibilities, which could compound recruitment problems in the NHS. The COVID-19 epidemic has highlighted how much we depend upon our international healthcare workforce. We welcome immigration concessions the Government has made, including extending visas for a year and granting the dependents of international doctors who die of COVID-19 independent leave to remain. However, we would like to see the immigration system amended further to recognise this contribution by:

- Scrapping the Immigration Health Surcharge for healthcare workers
- Granting all international doctors automatic indefinite leave to remain

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 – 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.

⁵ Home Office, [Immigration Rules](#), February 2020

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. 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 Ireland⁶.

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 the transition period.

Clause 4: Consequential etc. provision

Subsections 6-7

The BMA has serious concerns over proposals in 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.

It is vital that these regulations which will fundamentally change the rights and entitlements of EU citizens in the UK must be thoroughly debated in Parliament before they are introduced.

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 following the UK's withdrawal from the EU. 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 that current proposals within the Bill would ensure any changes to social security coordination made under Clause 5 will be subject to full parliamentary scrutiny through the affirmative procedure.

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⁶ BMA [Brexit Briefing \(2018\) Northern Ireland](#)