

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

Report Stage, 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 economy<sup>1</sup>.**
- 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 so called low skilled labour and should be based on needs and demands to ensure that gaps in the workforce are filled where they cannot be met by UK nationals in the short to medium term.**
- We welcome that the Government announcement on 21 May that overseas NHS and care workers will be exempt from the Immigration Health Surcharge 'as soon as possible'. The BMA is calling for clarity on who the exemption will cover. To ensure it achieves what it is intended to, **we urgently need the Government to confirm that all health and care workers (including EEA nationals who apply under the new immigration system from January 2021), and their dependents will be exempt from the charge. This exemption must apply to all healthcare professionals employed by the NHS and independent healthcare providers.**
- It is vital that the Government does not increase charges or decrease funding in any other part of the NHS to substitute any perceived loss in funding from the exemption.
- The COVID-19 pandemic has highlighted how much we depend on our international healthcare workforce. **To truly reflect their value and contribution to our communities, the BMA is calling on the Government to go further and grant all international doctors currently in the UK automatic indefinite leave to remain.**
- This would send a clear signal to our international workforce 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.

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

## **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 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. However, 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 Rules<sup>2</sup>.

### **Part 1: Measures relating to ending free movement**

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

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##### ***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 overseas<sup>3</sup>.

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. We are 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 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 framework<sup>4</sup>. This is leading to rota gaps across the medical profession and real concerns about the ability to adequately staff services. COVID-19 has placed an already stretched workforce under even further pressure. The BMA’s latest COVID-19 tracker survey of more than 7,000 doctors reveals a workforce exhausted and with little confidence that the NHS is coping with the huge backlog of missed, cancelled and postponed care.<sup>5</sup> Just 7% had confidence that their local health economy will be able to manage as normal services are resumed.<sup>6</sup>

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

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<sup>2</sup> Home Office, [Immigration Rules](#), February 2020

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

<sup>4</sup> NHS Digital: [NHS Vacancy Rates](#)

<sup>5</sup> BMA [COVID-19 tracker Survey, Wave 6](#) 21 June 2020

<sup>6</sup> How confident are you about your ability to manage patient demand as normal NHS services are resumed?” 20% of respondents said “not at all confident” and 33% said “not very confident” with regard to their own practice or department. For the local health economy, these figures were 22% and 39% respectively, and for community settings 22% and 44%

particularly dire consequences for specialties already facing acute shortfalls including general practice, emergency medicine, paediatrics, occupational medicine, radiology and psychiatry<sup>7</sup> 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 EU in the short to medium term given that it can take up to ten years to train a senior doctor, nor help meet increased pressure placed on the workforce due to COVID-19.

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 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 2020<sup>8</sup>. Key features include:

- A points based immigration system that treats both EU/EEA 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 January 2021 when the new system launches.
- Fees for using the immigration system will remain i.e. visa fees, Immigration Health Surcharge<sup>9</sup> 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.

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. International workers account for approximately one sixth of care workers in England, yet the social care system remains understaffed with 122,000 vacancies.<sup>10</sup> The average salary for care workers in England is between £16,400 and £18,400 which means that individuals would fail to meet even the lower salary threshold of £20,480 to enable them to trade points to be eligible to work in the UK.

The BMA shares concerns with the nursing and social care sectors that the current proposals for the new immigration controls will exacerbate the current social care workforce shortages and put some of the most vulnerable members of our society at risk. 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.

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<sup>7</sup> As of October 2019, all medical practitioners were placed on the Shortage Occupation List.

<sup>8</sup> Home Office, [Immigration Rules](#), February 2020

<sup>9</sup> In May 2020 the Prime Minister announced the Immigration health surcharge will be scrapped for overseas NHS and care workers.

<sup>10</sup> Skills for Care, 'The state of the adult social care sector and workforce in England', October 2019. Available at: <https://digital.nhs.uk/data-and-information/publications/statistical/nhs-workforce-statistics>

**It is vital that any future immigration system considers the needs of the NHS for both highly skilled and so called 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.**

***Indefinite leave to remain***

The BMA remains 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. At a time when skilled international doctors, nurses and other healthcare workers are risking their lives in the fight against COVID-19 – and most tragically, in some cases dying on the frontline – it is right that the Government should take action to demonstrate our appreciation for the sacrifice and vital service of these individuals.

We welcome immigration concessions the Government has made, including automatically extending visas for a year, granting the dependents of international doctors who die of COVID-19 independent leave to remain and the abolishment of the immigration health surcharge for NHS health workers. **However, to truly recognise the value of these individuals to our national healthcare service and communities, we are calling for automatic indefinite leave to remain for all international doctors currently in the UK, and their dependents.**

This would mean exempting them from the five-year settlement threshold, and the associated fee (currently £2,389 per person). Ensuring healthcare workers have certainty over their immigration status would truly reflect their value, contribution and sacrifices to our communities, not only during COVID-19 but throughout their careers.

***Immigration Health Surcharge***

The BMA has persistently called for international healthcare workers to be exempt from the unfair Immigration Health Surcharge, under which they are being charged to use the very service they are working for. These staff are also already paying tax and national insurance, meaning they are being charged twice for NHS treatment.

We therefore welcome that the Government announced on 21 May that it would exempt international healthcare workers from the charge ‘as soon as possible’. However, we need clarity on who the exemption will cover and how it will come into force.

To ensure the exemption achieves these aims we urgently need the Government to confirm that all health and care workers and their dependents will be exempt from the charge immediately and permanently. On 9 June, we joined RCN, RCP and UNISON in calling on the Government to:

- Confirm that all health and care workers will be exempt from the charge on a permanent basis. This must include includes those employed in the NHS, independent settings and the social care sector;
- Confirm that the spouses and dependents of health and care workers will also be exempt from the charge; and
- Confirm that health and care staff that have paid the charge in advance will be appropriately refunded.

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**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. The exemption to the health surcharge must also apply to EEA nationals who intend

to work in the NHS or care sector who arrive in the UK at the end of the transition period and apply under the new immigration system.

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 Ireland<sup>11</sup>.

**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.**

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#### **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.

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.**

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#### **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 proposals within the Bill to ensure any changes here are subject to full parliamentary scrutiny through the affirmative procedure.**

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#### **Amendments**

##### **Immigration Health Surcharge: Exemption for EEA and Swiss citizens who are healthcare and social workers (NC14)**

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<sup>11</sup> BMA [Brexit Briefing \(2018\) Northern Ireland](#)

Exempting health and care workers from the Immigration Health Surcharge has been a longstanding call of the BMA's, and we welcome that the Government has now committed to do this. However, In the absence of further clarity from Government on the details of the Immigration Health Surcharge exemption, we are supportive of New Clause 14, which would ensure EEA and Swiss citizens who are healthcare and social care workers and their dependents, are exempt from paying the surcharge.

This would place the Government's commitment to an exemption on a statutory footing and provide reassurance for these individuals.

#### **Visa extensions for health and social care workers during COVID-19 pandemic (NC35)**

The BMA is supportive of New Clause 35 which would place the Government's policy of visa extensions on a statutory footing and ensure that it includes all health and social care professionals.

The current automatic extension applies only to those whose visa is due to expire before the 1 October 2020. Therefore, if you do not have a visa expiring within this timeframe, you nor your dependents (i.e family members) have an automatic right to the extension. The concession applies to only a small number of doctors. It does not, for example, apply to those who switch between different visa categories (for example, doctors switching from a non-training post to a training post with a different sponsor).

Accepting this amendment would give doctors working tirelessly on the frontline during the COVID-19 pandemic reassurance that they will not need to apply for or cover the cost of a new visa for the duration of the extension.

#### **For further information, please contact:**

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