

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

Report Stage, House of Lords

Wednesday 30 September 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 14% 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, and set out in further detail in July, 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 the exemption of overseas NHS and care workers from the Immigration Health Surcharge, and the Government's confirmation on 14 July that the exemption will apply to all healthcare workers arriving on the new NHS visa, and their dependents. We also welcome that refunds are now being issued to doctors who paid the fee after 31 March. The Government must ensure that these refunds are given speedily.
- The BMA is concerned, however, that healthcare workers ineligible for the NHS Visa will still have to cover the cost of the charge upfront under a six monthly reimbursement process that won't begin until 1 October.
- The BMA believes that all health and social care workers provide invaluable services in an incredibly overstretched system, and therefore this policy should apply to all equally.
- 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 and on the route to settlement 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.
- **The BMA encourages peers to vote in favour of amendments that would address these key concerns, including:**

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

- **Amendment 3** tabled by Lord Rosser, Lord Hunt of King's Heath, Baroness Hamwee and Lord Patel that would require the Secretary of State to commission and publish an independent report on the impact of ending freedom of movement on the social care sector.

## Background

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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> and the UK's Points Based System: Further Details<sup>3</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>4</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>5</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

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

<sup>3</sup> Home Office, [UK Points-Based System: Further Details](#), July 2020

<sup>4</sup> ONS, [International migration and the healthcare workforce](#), August 2019

<sup>5</sup> NHS Digital: [NHS Vacancy Rates](#)

that the NHS is coping with the huge backlog of missed, cancelled and postponed care.<sup>6</sup> Just 7% had confidence that their local health economy will be able to manage as normal services are resumed.<sup>7</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 particularly dire consequences for specialties already facing acute shortfalls including general practice, emergency medicine, paediatrics, occupational medicine, radiology and psychiatry<sup>8</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>9</sup>, with further details announced in July.<sup>10</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 lower threshold of £20,480 for those with additional tradeable points, such as an occupation on the Shortage Occupation List or a PhD relevant to their job offer.
- A fast-track NHS visa, but applicants will need job offer, to speak English and be trained to a recognised standard.
- Fees for using the immigration system will remain i.e. visa fees, Immigration Health Surcharge<sup>11</sup> and the Immigration Skills Charge etc. Those in receipt of the NHS Visa will be exempt from the surcharge. Healthcare workers ineligible for the NHS Visa will receive six monthly reimbursements of the IHS, starting from 1 October 2020.
- 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

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

<sup>7</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%

<sup>8</sup> As of October 2019, all medical practitioners were placed on the Shortage Occupation List.

<sup>9</sup> Home Office, [Immigration Rules](#), February 2020

<sup>10</sup> Home Office, [UK Points-Based System: Further Details](#), July 2020

<sup>11</sup> In May 2020 the Prime Minister announced the Immigration health surcharge will be scrapped for overseas NHS and care workers.

social care system remains understaffed with 122,000 vacancies.<sup>12</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.

**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.**

The BMA encourages peers to vote for:

- **Amendment 3** tabled by Lord Rosser, Lord Hunt of King's Heath, Baroness Hamwee and Lord Patel that would require the Secretary of State to commission and publish an independent report on the impact of ending freedom of movement on the social care sector.

### ***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 indefinite leave to remain and the abolishment of the immigration health surcharge for NHS health workers. **However, to truly reflect the sacrifice they are making, we are calling on the Government to go further by granting all doctors currently working on Tier 1 and Tier 2 visas, and their dependents, automatic Indefinite Leave to Remain free of charge. These doctors who are already on the route to settlement in the UK, deserve to be rewarded for their service during the COVID-19 pandemic by removing the financial bureaucratic barriers to applying for residency – currently £2,389 for the main applicant. We set out this call in a letter to the Prime Minister on 13 July.**

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.

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<sup>12</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>

We therefore welcome that the Government announced on 21 May that it would exempt international healthcare workers from the charge ‘as soon as possible’, and further confirmation on the 14 July that this will apply to international doctors entering the UK on the NHS Visa. We also welcome that refunds have started being issued to doctors who have paid the charge since 31 March. We urge the Government to ensure all refunds are dealt with swiftly. However, those ineligible for the new visa will continue to pay the charge upfront, with a six monthly reimbursement scheme not expected to begin until October. The Covid-19 crisis has shone a light on the vital work that our international colleagues do, including those working in social care, and tragically, the price that some workers have paid, becoming unwell with the virus and sadly in some cases dying.

The BMA believes that all health and social care workers provide invaluable services in an incredibly overstretched system, and therefore this policy should apply to all equally.

### ***Immigration Skills Charge***

Prior to the introduction of the Immigration Skills Charge in 2017, the BMA and RCN wrote to then Home Secretary Amber Rudd to voice our concerns about the potentially damaging impact this charge could have on health and social care funding and on NHS workforce numbers. Given the ongoing pressures on both NHS and social care finances, the sustainability of services and the recruitment and retention of staff, and the added pressure of COVID-19 on the provision of these services the BMA has called for NHS and the wider health and social care system to be exempt from the ISC.

Recent analysis of data released under Freedom of Information laws to the Labour Party suggests that since 2017, 52 trusts paid £15,549,944 to the Government through the immigration skills charge. It cannot be appropriate to divert funding away from the budget for front-line health services and the training of health professionals in this way. While the government has said that funds raised from the charge would be reinvested back into the UK workforce and health system, it is not transparent how this has been achieved.

### ***Impact on UK medical graduates***

The BMA has welcomed the inclusion of all doctors on the Shortage Occupation List (SOL). However, since its implementation in October 2019, an unintended consequence has come to light that has negatively impacted on future graduates of UK medical schools.

The expansion of SOL means there will be additional pressure on places for the UK Foundation Programme – a necessary stage for UK medical graduates to gain full GMC registration. As a result, employers no longer need to satisfy the Resident Labour Market Test (RLMT) during the recruitment process and international medical graduates can apply for vacant positions together with graduates from the UK and EEA. These changes have made it more difficult for graduates of UK medical schools to gain a place during recruitment.

For example, the 2020 UK Foundation Programme was initially oversubscribed by 258 applicants, 164 of which were UK nominees. Given pressures on funding and the impact of COVID-19, it may prove harder in future to allocate all UK applicants a place as demand increases. We believe it would be wholly unacceptable if any future UK medical graduate was unable to gain a place on the UK Foundation Programme.

The BMA is calling for assurance that the Bill will not include or introduce any barriers to all UK medical graduates receiving a place on the UK Foundation Programme. As such, we would support an amendment to the SOL to ensure all UK medical graduates can access the Foundation Programme.

## **Clause 4: Consequential etc. provision**

### **Subsections 6-7**

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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.**

**For further information, please contact:**

Leah Miller, Senior Public Affairs Officer

T: 0207 383 6593 | E [lmiller@bma.org.uk](mailto:lmiller@bma.org.uk)