Response by the Royal College of Nursing to the Migration Advisory Committee's Call for Evidence on Review of Tier 2 Visas

Introduction

With a membership of around 425,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

The Royal College of Nursing welcomes the opportunity to contribute to this wide ranging review of the Tier 2 visa system. This response focuses on those questions of most relevance to the RCN and nursing with the key points outlined in the Executive Summary below.

The RCN submitted evidence in December 2014 in relation to the inclusion of general nursing on the Shortage Occupation List and continues to press for this. There is growing concern across the health and social care sector at national and local level about the continuing nursing shortages and the barriers to addressing these in the short term through overseas recruitment.

We also submitted evidence earlier this year in relation to the Migration Advisory Committee's call for initial views on raising the minimum salary level for migrants seeking Tier 2 visas. These are referenced as appropriate in the response.

Executive Summary

- The RCN maintains that there is a critical nurse shortage in the UK and that adult nursing should be added to the Shortage Occupations List (SOL). The RCN submission to the MAC's call for evidence in December 2014 identified a shortage of nurses, with healthcare providers struggling to recruit nurses from the UK and the European Economic Area (EEA).

- Government and other health and social care stakeholders need to take a long-term investment approach to self-sufficiency in nursing numbers. To-date this has not happened which has directly contributed to the nursing workforce shortage, the increased use of agency staff by health and care providers and attempts to recruit from EEA and overseas.

- The Government's recent moves to cap agency spend in NHS trusts in England, is likely to result in NHS trusts seeking to recruit more nurses to substantive posts, placing further pressure on overseas recruitment.

- A lack of robust, comparable workforce data across the UK limits effective long term workforce planning – both at the national and regional level. The RCN has long called for better workforce data collection and the transparent publication of this upon request, or at least at regular periods.

- The immigration rules need to address not only employers' ability to recruit from overseas in the current shortage, but also to retain those experienced overseas nurses already working here. The RCN has already highlighted the potential loss of 3.365 overseas nurses currently working in the UK as they will not meet the £35,000 salary threshold for indefinite leave to remain.

- The RCN does not believe that the current points mechanism for Tier 2 effectively prioritises those migrants of greatest benefit to the UK, and as a result is not effective. Nurses provide a huge range of critical benefits to the economy, society and health of the UK which are not reflected in the current system.

- The current overemphasis on income levels for allocation of Tier 2 visas, particularly at a time of artificially depressed salaries in the public sector, makes it difficult to recruit those migrants who can fill critical skills shortages in the public sector.

- Equally if the minimum entry salary threshold is increased above the qualified nurse's starting salary for the NHS, which is the initial salary for nurses recruited from outside the UK as well, (Band 5 £21, 692) then this will also prevent the health and social care sector from recruiting nurses to fill the current short to medium term shortage.

- Any redesigned Tier 2 system needs to retain some flexibility for urgent unanticipated skills shortages which cannot be filled from UK/EEA nurses and other professionals, so the RCN would be cautious about removing the Resident Labour Market Test (RLMT) route and introducing an even more restrictive shortage list.

- We would recommend that Tier 2 General is separated from the Intra-Company Transfers (ICTs) route as the high level of ICT visas issued potentially distorts the total inward figures for Tier 2.

- The RCN does not believe that there should be an automatic fixed time limit (or sunsetting) for listed skills shortages as this would be purely arbitrary and not rooted in evidence. Any time limits should be based on likely timescales for attracting skilled workers from within the UK labour market (eg length of training for a particular profession) or evidence of better recruitment and retention.

- The RCN does not support removing the right of dependants of Tier 2 (general) visa holders from working and believes there should be further research before any changes are considered. Nursing is an overwhelmingly female profession and removal of the right to work from dependants places additional pressures on the tier 2 visa holder, requiring them to support themselves and their family without assistance.

Response to Specific Questions

1. What impact, if any, will reducing the level of Tier 2 migration have on the economy? What are the reasons for your answer

There is a significant risk of a negative impact on the UK economy and on the health system if Tier 2 migration is reduced and health providers find it more difficult to fill vacancies. The RCN set this out in detail in its previous two submissions to the MAC.[1],[2]

In brief, this could include:[3]

- An increase in adverse health outcomes which would diminish the productivity of the labour force;
- Exacerbating existing nurse shortages and unsafe staffing levels. This impacts both on patient outcomes and staff morale (including sickness rates, burn-out and absenteeism);
- Increasing the risk of poor patient care outcomes generally;[4]
- Greater reliance on agency nursing staff and the associated costs of this;[5]
- Greater pressure on particularly vulnerable sectors (such as social care) with knock on effects to costs to the NHS of emergency care, and wider societal impacts; and
- A worsening of the demographic crisis in nursing with the ageing profile of the workforce.

[1] RCN, 'Response to the MAC's Minimum Salary Thresholds consultation', available at: http://www.rcn.org.uk/support/consultations/responses/minimum-salary-thresholds-for-tier-2-call-for-evidence (2015)

[2] RCN, 'Response to the MAC's call for evidence on partial review of the Shortage Occupations List' , available at: http://www.rcn.org.uk/support/consultations/responses/call_for_evidence._partial_review_of_the_shortage_occupation_lists_for_the_uk_and_for_scotland (2014)

[3] RCN Frontline First, 'More than Just a Number', available at www.rcn.org.uk/__data/assets/pdf_file/0007/564739/004598.pdf (2014)

[4] Lord Carter of Coles (2015) Review of Operational Productivity in NHS Providers Interim Report 2015 https://www.gov.uk/government/publications/productivity-in-nhs-hospitals

[5] RCN, Frontline First, 'Runaway Agency Spend', available at: https://www.rcn.org.uk/__.../FF-report-Agency-spending_final_2.pdf (2015)

Since the RCN responded to the last call for evidence in relation to the Shortage Occupation List in 2014, there have been some attempts to improve the data on vacancies by the Health & Social Care Information Centre (HSCIC). It shows that between 1st March and 31st May 2014 there were 17,583 nursing and midwifery vacancies advertised. By 31st November 2014, this number had risen by 13 per cent to 19,861 advertised vacancies.

However, while this data is useful, it only captures advertised vacancies within the NHS and there are likely to be many empty posts which go unadvertised. In addition, the RCN is aware that the independent sector accounts for a large share of unfilled posts and staff turnover which is not captured in the HSCIC data.

As was stated in our previous responses to the MAC, the RCN maintains that the UK Government needs to adopt a long-term investment strategy aimed at self-sufficiency both in nursing numbers and skills-mix, in order to alleviate the UK-wide shortage. While we believe that the UK will remain dependent on overseas nurses for some time to come - even if the Government does take action - only long term workforce planning, including better retention strategies, will move the UK away from damaging cyclical shortages.

2. How well does the Resident Labour Market Test provide evidence that no domestic labour is available? How could the test be improved?

The RCN is not a recruiter or provider of health services which limits direct interaction with the RLMT.

However, the RLMT would seem to place a balanced requirement on UK employers to demonstrate that there is no immediate availability of UK/EEA labour, to deal with unexpected shortages locally and nationally.

In terms of gaining a wider picture on shortages, as stated previously, other sources of evidence need to be improved.

3. Does the points mechanism operating in respect of the limit on Tier 2 certificates of sponsorship prioritise those migrants of greatest benefit to the UK? How could its efficiency at doing this be improved?

AND

4. What criteria should be used to select jobs and occupation that are genuine skills shortages and people that are highly specialist experts? What use should be made of selection criteria such as salaries, points for particular attributes, economic need, number and length of vacancies and skills level? What other criteria should be considered?

The RCN does not believe that the current allocation of tier 2 (general) visas effectively prioritises those migrants of greatest benefit to the UK and is therefore not effective. The reasons for this view are set out below:

- The strength of demand for skilled migrants has led to the monthly Tier 2 cap being exceeded several times in 2015. Consequently, while all organisations advertising beyond the EEA have to submit an RLMT, only a few of these are successful due to the cap being exceeded. This wastes time and resources for the organisations making the application and makes the RLMT obsolete. The public sector is particularly disadvantaged since salary levels are used to prioritise applicants.

- The current points system fails to take into account that nurses are paid on a fixed, incremental salary system laid down in the Agenda for Change framework, starting on Band 5, along with other NHS workers and secondly public sector pay levels (including the NHS) have been under significant downward pressure for several years as a result of Government policy, and now lagging well behind.

- Nurses provide a huge range of critical benefits to the physical and economic health of the UK. Most international nurses enter the UK as a Band 5 Agenda for Change paid position at £21,692. This role will typically include:

    - Managing and caring for a large caseload of patients, many of whom might have long-term and/or complex conditions;
    - Identifying and leading on developing their area of specialism and education;
    - Assisting and promoting nursing research;
    - Setting and monitoring measurable standards of care;
    - Developing and maintaining an awareness of budgeting; and
    - Exercising care and economy in the ordering and use of equipment.

As the RCN has set out before, nursing cannot be compared to other roles in terms of salary. Nurses, as with many other health professionals, adhere to a structured salary level set out in Agenda for Change.[6] As a result, the MAC needs to ensure that the determinants which it uses to identify a legitimate skills shortage, and the criteria it uses to identify those professions which deliver the greatest benefits to the UK , are fit for purpose. Once a shortage is established there should be clear routes for meeting this through legal migration.

It is not entirely clear how the MAC defines “genuine skills shortages” and for this reason it is vitally important that the criteria it uses are holistic, and takes into account the very positive material and economic impacts which nursing provides to the UK.

In light of this, the RCN recommends that the visa allocation diversify away from focussing excessively on salary levels towards a broader range of considerations in terms of what constitutes highly skilled and valuable to the UK, including:

- The contribution of the profession to public good/health and the economy (particularly keeping the population healthy and active);
- The breadth of professional responsibility involved; and

[6] Agenda for Change 2015/16, available at: http://www.rcn.org.uk/support/pay_and_conditions/pay-rates-2015-16

- Whether or not the profession is regulated and required to undertake additional learning (continuing professional development) in order to remain fit to practise.

We would also recommend that the MAC consider increasing the point allocation for public sector/service roles (especially in health and social care). This would allow providers flexibility in recruitment, whilst greater investment is made in domestic recruitment and in retention, in order to sustain provision and minimise excessive spend on agency staff for example.[7]

5. What will be the impact of restricting Tier 2 (General) to genuine skills shortages and highly specialist experts?

It is not entirely clear how the MAC defines "genuine skills shortages" and it is vitally important that the types of criteria which are applied are holistic and take into account the very positive material and economic impacts which nursing provides to the UK.

It is also important to remember that "genuine skills" and "highly specialist experts" are subjective terms, often driven by market demand at any given time. As such, the Tier 2 visa system should recognise that the skills-need of private and public organisations will inevitably shift and that different types of expertise will be sought at different times. In order to promote an immigration system that is streamlined and responsive to the needs of the UK economy and health system, the MAC should consider a more flexible model to facilitate this.

6. How could a restricted Tier 2 (General) Route maintain flexibility to include: a) high value roles; b) key public service workers?

The RCN believes that public sector services, including the NHS, should be given flexibility within the current Tier 2 visa system in order to ensure that patient safety and service provision are not undermined by a shortage of available, qualified staff. This could mean exempting nurses and other public sector workers in shortage from the monthly cap of Tier 2 visas issued for example.

We do not believe that restrictions on the Tier 2 (General) route will deliver the Government's aim of reducing migration effectively and in fact this is the route that clearly identifies skills the economy and society needs for the short to medium term. We would therefore be concerned about having a very restricted route, which also ignored unexpected and local shortages, as addressed through the RLMT.

The system also needs to recognise that nurses work across the health and social care sector, where models of provision, and in some case budgets, are being integrated more and more. From both a practical service provision perspective and from an ethical and equalities perspective (particularly given that nursing is predominantly a female profession) we would

[7] Monitor's 2014 quarterly report highlighted the huge cost burden of agency to the NHS, reporting that foundation trusts had spent a record £831 million on contract and agency staff in England over the six months to 30 September 2014 and 9,325,810 spent on agency staff in NHS Scotland in 2013/14. It's clear that use of rising use of agency staff is not sustainable as a long-term solution to nursing staff shortages.

not want to see restrictions placed on nurses attaining Tier 2 visas as to whether they could work only in the health or only in the social care sector.

We urge the MAC to separate Tier 2 visa route from inter-company transfers (ICTs) and deal with these separately to avoid them distorting the numbers coming through the Tier 2 system .ICTs are not subject to any cap, unlike Tier 2 general and are not subject to skills shortages assessments.

According to the Home Office 41,441 Certificates of Sponsorship were used for ICTs in 2013 (86 per cent of the total number of Tier 2 visa applications for that year). For the first two quarters of 2014 (latest available data), the proportion of ICT applications rose to 95 per cent of all Tier 2 (General) applications.[8]

7. What evidence is there of significant regional differences in skills shortages?

The nursing profession is part of a national pay system linked to the Agenda for Change framework. From what data is available, employers throughout the UK have, and continue to report a shortage of nurses which the RCN has highlighted through various reports and briefings.[9]

As a consequence of short-term workforce planning decisions by the Government, the RCN has noted that these shortages have had a detrimental impact across pay bands, including highly skilled parts of the nursing workforce (bands seven, eight and above) and this has happened across the UK.[10]

8. What evidence is there of the need to recruit highly specialist experts?

It is not clear what the MAC's definition of "highly specialist expert" is. The RCN has argued in questions 4-5 that the value and expertise of nursing is not recognised in the current Tier 2 points system, and needs to be.

The RCN is also concerned about the impact on experienced overseas nurses currently working in the health and social care sector from wider changes to immigration rules. These stipulate that any nurse who entered the UK after 6th April 2011 will need to earn £35,000 to apply for indefinite leave to remain from 2017. This equates to a senior salary on the Agenda for Change pay scales (upper Band 7). It is highly unlikely that nurses coming to the UK will

[8] Home Office, Tier 2 Certificates of Sponsorship (Intra Company transfer) from 2011 to 2014 (FOI release) https://www.gov.uk/government/publications/tier-2-certificates-of-sponsorship-intra-company-transfer-from-2011-to-2014 (2015)

Tables for 'Immigration Statistics: April to June 2014' https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2014-data-tables (2015)

[9] RCN, Frontline First, http://frontlinefirst.rcn.org.uk/

[10] RCN, Frontline First: More than Just a Number, available at: https://www.rcn.org.uk/__data/assets/pdf_file/0007/.../004598.pdf (2014)

be in a position to earn this higher level salary within five or six years, due to public sector pay levels.

This could mean that up to 3,365 overseas nurses currently working in the UK will have to leave.[11] Crucially however, this income threshold does not apply to applicants who fall within the SOL and the RCN repeats its call for nurses to be included on this list.

9. What occupations would you expect to see on an expanded shortage occupation list? How does the occupation or job title you are suggesting satisfy each of our criteria in relation to "skilled", "shortage" and "sensible"? Alternatively, what other criteria does the occupation or job title satisfy that meets the requirement of being a genuine skills shortage or for highly specialised experts?

The RCN submission to the MAC's call for evidence relating to the shortage occupation list (SOL) in December 2014 identified a shortage of nurses based on the MAC's three criteria, with healthcare providers struggling to recruit nurses from the UK and the European Economic Area (EEA). [12]

Evidence was submitted to show that there is "not only a current shortage of available nurses to employers, but it is likely to get worse in the next few years". We also know that this will be felt even more acutely in the social care/independent sector.

In addition to the current criteria being used the RCN has highlighted other measures of skill that should be used in our response to question 3 and 4, such as breadth of professional responsibility, regulatory and CPD requirements.

In relation to "genuine" skills shortage, where there is limited vacancy data collected nationally, the MAC needs to place greater weight on proxies for shortages such as agency use and also individual case studies from employers.

The RCN's Frontline First report, 'Runaway Agency Spend' found that in 2012-13, 168 trusts spent a total of £327 million on agency nurses. In 2013-14 this figure rose to £485 million and is a set to rise again in 2014-15. Using data from quarters one and two for 2014-15 and trends in agency spending over the last 36 months, we projected the total agency spend to be around £714 million for the 168 trusts.[13]

The Government's recent moves to cap agency spend in NHS trusts in England, is likely to result in NHS trusts seeking to recruit more nurses to substantive posts, placing further pressure on overseas recruitment.

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[11] RCN, 'International Recruitment report', available at: http://www.rcn.org.uk/__data/assets/pdf_file/0020/630335/RCN_Int_recruitment_final.pdf (2015)
[12] RCN, 'Royal College of Nursing response to the Migration Advisory Committee's Call for Evidence on Minimum Salary Thresholds for Tier 2 Visas', available at: http://www.rcn.org.uk/support/consultations/responses/minimum-salary-thresholds-for-tier-2-call-for-evidence (2015)

[13] RCN, Frontline First, 'Runaway Agency Spend', available at: https://www.rcn.org.uk/__.../FF-report-Agency-spending_final_2.pdf (2015)

The RCN has also managed to obtain Freedom of Information (FOI) data on non-EEA recruitment from several Trusts across England.

Across 14 responses, registered nurses and health care assistant's currently comprise an average of 49 per cent of the total non-EEA staff intake (this includes all clinical, non-clinical facing, full-time equivalent and headcount roles).

At Peterborough & Stamford Foundation Trust for example, 96 per cent of their non-EEA RN's were recruited in the last four years. Strikingly, even with this intake, the Trust is still registering over 320 full-time equivalent vacancies in front line clinical roles.

Although this is one example, this is unlikely to prove an isolated trend and further illustrates a protracted, current staff shortage which reaffirms the RCN's call for nursing to be added to the Shortage Occupations List.

10. What would be the impact of an expanded Shortage Occupation List on business and the economy?

It is essential that during times of workforce shortage that providers of health and social care are able to recruit staff to meet short term workforce gaps and continue to provide safe, effective patient care. The only way that this can be achieved is if there is long-term investment in workforce numbers and skills-mix by the Government.

Limiting recruitment during periods of high demand is likely to be economically detrimental as care services become more stretched leading to potentially worse health outcomes for both patients and staff.

The limited data available indicates that health services in the UK are currently reliant on nurses trained outside the UK and that this is likely to continue for the short term given the decisions made 2-3 years ago about UK education commissions and an ageing nursing workforce.

At the same time the continued use of agency staff and challenges with staffing levels indicate the need to recruit more nurses to deliver safe and quality patient care.

11. How far in advance can your organisation, sector or local area anticipate a potential shortage in skilled labour?

There is a systemic lack of published data on the current workforce and future workforce trends which diminishes the ability to predict future shortages. The UK needs to be aware however that it is operating in a global context of a nursing shortage and that UK nurses and other professionals are operating in a global labour market. The RCN highlighted some of these trends in its previous submission. This included the European Commission' s 2012 report outlining an action plan for the EU health workforce projected a shortage of over half a million nurses in the EU by 2020 and an ageing health workforce across the EU.[14]

[14] European Commission, Action plan for the EU health workforce, available at:

Additionally, given the length of nurse education and available data on nurse education places for example, some of these predictions can be made at least three years ahead.

However, there remain challenges due to the limited data which the RCN and others are able to access and collect.

Our view is that:

- The nursing regulator – the Nursing & Midwifery Council (NMC) – does not record enough information about a nurse's role/specialism/employer sector

- The NMC has also ceased to publish regularly the statistics that it does hold and should reinstate this.

- Whole system data collection does not exist – this also includes the independent/social care sectors. However, a recent Care Quality Commission report highlighted the challenge of high vacancy rates and high turnovers in care homes, recording a turnover rate for registered nursing staff in social care of 32 per cent;

- Vacancy data is a key indicator between the gap between demand and supply but again this is something we are unable to collect;

- The new NHS jobs data collected by HSCIC is a new trial publication, but this only looks at jobs which are advertised. The RCN is aware that Trusts are actively being discouraged from recruiting to vacancies so this is not an accurate picture even in the NHS;

- Data collection across the four UK countries is also inconsistent. In our response to the MAC's call for evidence on reviewing the Shortage Occupations List in December 2014, we highlighted that workforce data is not collected on vacancies in England (although this did used to be published) which limits our ability to do a thorough analysis;[15]

- Scotland does collect data on nursing vacancies, and is broken down by specialism. In the NHS in Scotland, nursing vacancies have increased through 2014 and there were 1,641.5 WTE nursing vacancies in June 2014, a vacancy rate of 2.9 per cent. Scotland data is available here: http://www.isdscotland.org/Health-Topics/Workforce/Publications/; and

http://ec.europa.eu/health/workforce/docs/staff_working_doc_healthcare_workforce_en.pdf (2012)

[15] RCN, Response to MAC Call for Evidence on partial review of Shortage Occupations List, available at: http://www.rcn.org.uk/support/consultations/responses/call_for_evidence._partial_review_of_the_shortage_occupation_lists_for_the_uk_and_for_scotland (2014)

12. Alternatively, is it sensible to leave the present Tier 2 (General) route intact and achieve any reduction in economic migration by raising the pay thresholds only?

Our response to the MAC's Call for Evidence on Minimum Salary Thresholds for Tier 2 Visas (July 2015), included evidence that raising the pay threshold would severely impact on Band 5 nurses from outside the European Economic Area (EEA) being able to support the UK nursing workforce which is already under significant pressure in terms of both numbers and skills-mix.[16]

Band 5's in 2015/16 command a starting salary of £21,692, rising to a current maximum of £28,180. Band 5 is recognised as the predominant entry point for all nurses entering the Nursing & Midwifery Council's (NMC) register. Currently all nurses, irrespective of nationality, are starting at the same level and are thereafter able to progress. This starting position is already very close to the current minimum salary threshold and so raising the minimum threshold beyond the entry salary for Band 5 would exacerbate staff shortages.

The RCN continues to maintain that the minimum threshold should therefore be linked to the most up-to-date Band 5 pay grade within Agenda for Change (currently £21,692 for 2015/16)[17] to ensure that employers are able to recruit nurses to address short term shortages and to avoid migrants "undercutting the resident labour force".

The Tier 2 visa system should also retain the employer's exemption from the minimum pay threshold for non-EEA nurses on bands 3-4 while they complete the Nursing and Midwifery Council's (NMC) registration processes. This exemption should be retained so that these nurses can enter the UK on lower Agenda for Change bands (3 and 4) whilst they undertake the assessments required for registration with the NMC.[18]

Section two: Sunsetting

13. The MAC has been asked how to limit the length of time occupations can be classed as having shortages:

    a. How long should the maximum duration be?

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[16] RCN, 'Royal College of Nursing response to the Migration Advisory Committee's Call for Evidence on Minimum Salary Thresholds for Tier 2 Visas', available at: http://www.rcn.org.uk/__data/assets/pdf_file/0011/631559/40.15-Minimum-salary-thresholds-for-Tier-2-_call-for-evidence.pdf (2015)

[17] RCN, Agenda for Change pay bands, available at: http://www.rcn.org.uk/support/pay_and_conditions/pay-rates-2015-16 (2015)

[18] RCN, 'Royal College of Nursing response to the Migration Advisory Committee's Call for Evidence on Minimum Salary Thresholds for Tier 2 Visas', available at: http://www.rcn.org.uk/__data/assets/pdf_file/0011/631559/40.15-Minimum-salary-thresholds-for-Tier-2-_call-for-evidence.pdf (2015)

There should be no automatic time limit as this would be purely arbitrary and not rooted in the evidence as to how the UK labour market has or has not changed. There should be regular reviews which the MAC should undertake to assess whether the categorisation of 'shortage' is still applicable, as opposed to a maximum duration. The RCN believes that these reviews should also be undertaken in consultation with key stakeholders – especially if evidence is flagged of significant changes occurring.

The RCN is also open to exploring the idea of individual Government departments monitoring public sector shortages in their respective areas of expertise (Department of Health for the NHS, for example).

18. Dependants of Tier 2 migrants, such as partners, spouses and adult minors, presently have the unrestricted right to work in the UK. The MAC is asked to consider the impact of removing this automatic right:

The RCN does not hold detailed information either on the number of non-EEA nurses who bring dependants with them, nor on whether these dependants exercise the right to work. We understand that on the latter point more generally there is very little data and are therefore concerned about whether the MAC will be able to make any meaningful analysis.

Anecdotally we know from those nurses who use our immigration advisory services that many of their dependants work within the nursing community, predominantly as health care assistants and sometimes as nurses.

We would support far greater evidence collection before any decisions are taken on altering the current arrangements, particularly given that it potentially makes dependants economically inactive and therefore less integrated and productive for society.

Removing the right to bring dependants could have a dual impact of potentially deterring non-EEA nurses from coming to the UK, particularly given that certain countries such as the United States have set out plans to make it easier for nurses and their dependants to work.[19]

Secondly, restricting dependants from working could also increase the shortages of employees in the caring sector – from nurses to health care assistants.

The RCN is concerned about the potential social impact of the removal of the automatic right of dependants to work. Nursing is predominantly a female profession – approximately 90 per cent of registered nurses are female. Removal of the right to work from dependants places additional pressures on the tier 2 visa holder, requiring them to support themselves and their family without assistance. It is also worthy of note that holders of Tier 2 (general) visas have no recourse to public funds, which means that the tier 2 visa holder cannot obtain assistance in supporting themselves and their family.

If non-EEA nurses are unable to support their families in the UK the RCN believes they will be

[19] GMA News Online, available at: http://www.gmanetwork.com/news/story/372308/news/pinoyabroad/more-foreign-nurses-may-qualify-for-h-1b-visas (2014)

deterred from either coming to the UK, or from bringing their families. This raises potential obstacles to non-EEA nurses exercising their right to a private and family life in accordance with Article 8 of the European Convention on Human Rights (ECHR).

Overall Tier 2 design

As part of the review of Tier 2, the MAC would be interested to hear wider views about ways in which the design of Tier 2 can be changed to allow businesses to hire the skilled migrants they require in order to fill skills shortages.

19. To what extent do the existing Tier 2 mechanisms and framework work optimally to enable business to bring in the skilled workers that they require?

The RCN believes that the current Tier 2 system does not recognise the importance of overseas nurses to the health care system in the UK with its overemphasis on salary levels and the impact this has once the cap for Tier 2 general visas is reached.

The monthly cap of Certificates of Sponsorship (CoS) was introduced in April 2011, and an annual figure of 21,700 was introduced. The current division of the cap has created a situation where the recruitment of nurses is being prevented.

In order to obtain a CoS, companies must have a Tier 2 Sponsor license. They must then apply before the 5 of each month to a panel operated by UKVI. On the 11th of each month the panel notifies the company whether they have been allocated one of the available CoS.

As the limit has recently been reached, the panel allocates additional points to each application. This is primarily based on income. Currently only applications scoring 50 points obtain an allocated CoS. This means that the job would have to be either on the Shortage Occupation List, or command a salary of over £46,000.

The effect of meeting the cap has therefore meant that any employers who have expended time and finances recruiting outside of the EEA cannot bring these nurses into the UK to work. There is therefore great anxiety amongst many of the larger trusts who have recruited but cannot offer sponsorship to these nurses. This will only exacerbate shortages within the nursing community.

Additionally employers who have been allocated with certificates of sponsorship must issue the certificates to an individual within three months. The recruitment process, registration requirements and subsequent delays does mean that employers may not be in a position to issue these certificates of sponsorship within the time frame, subsequently causing returns, at a time when obtaining the certificates of approval is becoming increasingly challenging

The cap has been met a number of times in 2015, which is likely to place a burden on subsequent months and the applications received.

As such whilst the RCN recognises that the Immigration Rules relating to Tier 2 visas have previously facilitated the employment of non-EEA nurses, the monthly cap is currently prohibitive to the recruitment of these nurses.

The RCN is therefore recommending the following actions:

- Immediately placing nursing on the shortage occupation list
- Considering introduction of different prioritisation for Tier 2 General visas, using criteria other than salary
- Or exemption of skilled public sector workers from the cap in recognition of the value and contribution made to society, and the expertise required to practice.

20. What changes would you make to the design of the route that would address the issues identified and are not reflected in the changes discussed elsewhere in this call for evidence?

The RCN believes that the route for nurses coming to the UK should recognise the unique skills, expertise, and qualifications required to practice as a nurse. The Nursing and Midwifery Council (NMC) evaluates and registers nurses to ensure competency. Nursing qualification levels are currently NQF Level 6. Any requirement beyond this level would place additional requirements on non-EEA nurses, beyond those required by the NMC.

The RCN strongly supports the continued recognition of NQF level 6 as the relevant required qualification for all nurses, British, EEA and non EEA. Value should be placed on the contribution nurses make to the health and wellbeing of society, rather than relying upon salary as an indicator.

The RCN reiterates the call for nursing to be placed on the shortage occupation list, to reflect the current critical shortages. The RCN suggests that visas for non EEA nurses should be allocated recognising NMC standards and registration and not simply reliant on salary.

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