

BRIEFING: House of Commons Committee Stage on the European Union (EU) Withdrawal Bill

We are calling for this Bill to directly transfer and retain our existing laws and protections from the EU into UK legislation. We remain concerned that the UK's withdrawal from the EU may:

- present new and exacerbate existing challenges around workforce sustainability, recruitment and retention of the existing and future nursing community;
- dilute fair employment practices and workers' rights, and;
- prevent the cross-border exchange of knowledge and skills.

The amendments that we support as outlined in this briefing are focused on securing the right to remain for health and care staff who are European Economic Area (EEA) nationals and the continued protection of both workers' rights and health and safety regulations. These issues pose the greatest and most immediate risk to the UK's nursing workforce's ability to deliver safe patient care.

This Committee stage debate is an opportunity to address longstanding concerns about the lack of domestic health and care workforce planning, in line with the UK Government's aspiration to deliver world-class, innovative health and care services.

1. Safe and effective staffing: the right to remain for EEA health and care workers

Right to remain for EEA health and care workers

Amendments 131 and 142 will crucially grant EEA nationals living and working in the UK, the right to remain. Securing the status of health and care EEA workers already in the UK is especially vital because the domestic nursing workforce is in crisis, with not enough staff being trained, recruited or retained in the UK.

Amendment 131: Clause 7, page 5, line 7, at end insert –

“(1A) A Minister of the Crown must by regulations make provision to maintain, preserve and protect the rights of any citizen of an EU member state who was lawfully resident in the UK immediately before exit day, and in particular to continue their right to be lawfully resident in the UK.”

Amendment 142: Clause 9, page 7, line 8, at end insert -

“(e) remove, reduce or otherwise amend the rights of any citizen of an EU Member State who was lawfully resident in the UK on any day before 30 March 2019.”

In the UK this year, for the first time in a decade, more nurses left the profession than joined.¹ In the NHS in England, there are approximately 40,000 nursing vacancies.^{2,3} In Scotland, the vacancy rate for nursing staff is 5.2%, the highest figure ever recorded.⁴ In Northern Ireland the last available data from March 2015 showed a vacancy rate of 5.1% for nursing, midwifery and health visiting staff.⁵ From our own calculations using the health and social care workforce census data, the NHS vacancy rate for Northern Ireland this year,

¹ Nursing and Midwifery Council, “New figures show an increase in numbers of nurses and midwives leaving the professions”, July 2017. Available [here](#).

² Royal College of Nursing, *Safe and Effective Staffing: the Real Picture*, May 2017. Available [here](#).

³ Royal College of Nursing, *RCN London Safe Staffing Report*, 2015. Available [here](#).

⁴ NHS Scotland, *NHSScotland Workforce Information*, September 2017. Available [here](#).

⁵ Department of Health Northern Ireland, *Health and Social Care Vacancy Survey*, 2017.

is approximately at 6.9%.⁶ In Wales, there are no nationally published figures on vacancy rates, but our recent survey demonstrated consistent experiences of staffing shortages across the UK.⁷

These workforce shortages have caused an overreliance on nursing staff from the EEA. Uncertainty of status for overseas nurses now adds a dimension of complexity and risk to patient safety, as the UK withdraws from the EU. This lack of certainty is undoubtedly a key reason that EEA nurses are no longer choosing work in the UK, which is already putting pressure on staff and services. In July 2017 the number of new EEA nationals joining the NMC register was less than 6% (71 individuals) of what it was in July 2016 (1,304 individuals).⁸ Yet, 86% of nurse leaders say that recruiting nurses from the EU is currently essential for the proper functioning of health services across the UK. **59% state that they have recruited non-UK EU nationals in order to fill staffing gaps.**⁹ EEA nursing staff make a vital and comprehensive contribution to delivering patient care. Without them here to provide the skills mix we need at present, our health services will be unsafe.

As a member of the Cavendish Coalition,¹⁰ **we call on the UK Government to commit to granting EEA health and care workers, currently working in the UK, indefinite leave to remain.**¹¹ Securing the status of health care workers will provide continuity of care after the UK withdraws from the EU, as well as give assurance for the tens of thousands of committed individuals delivering care. Across the devolved governments, Scotland has signalled its commitment to do this. The UK Government must commit to this, without delay.

Shortage Occupation List

Non-EEA nursing staff are presently listed on the Shortage Occupation List (SOL) until 2018, when it will be reviewed. This action was taken in recognition of the severe gaps in existing nursing workforce supply, which have not been resolved. Any future immigration system must ensure that health and social care services across the UK have access to the greatest possible pool of qualified candidates.¹² **Nursing should remain on the SOL**, until we are closer to achieving self-sufficiency of our health and care workforce across the UK. Furthermore, the SOL (which is currently variable for Scotland) should be flexible across all four countries to accurately reflect differing patterns of labour movement.

Transitional period

To help the UK move towards a stronger focus on developing its domestic nursing workforce, **we believe that a transitional period immediately after our formal withdrawal, of up to four years, is needed.** We would support the introduction of any legislation that is required in order to implement a transitional period. During this transitional period, the UK health and care sectors should be able to continue to recruit internationally educated nurses as they currently are. This will enable them to maintain service levels while simultaneously shifting its focus and investment to the domestic workforce.

⁶ Department of Health Northern Ireland, *Northern Ireland health and social care workforce census March 2017*, August 2017. Available [here](#).

⁷ Royal College of Nursing, *Safe & Effective Staffing: nursing against the odds*, September 2017. Available [here](#).

⁸ Royal College of Nursing, Freedom of Information request to the Nursing and Midwifery Council on new entrants to the nursing and midwifery register, September 2017

⁹ Royal College of Nursing, *Safe & Effective Staffing: nursing against the odds*, September 2017. Available [here](#).

¹⁰ Cavendish Coalition. Additional information about the coalition is available [here](#).

¹¹ Cavendish Coalition, *Submission to the Health Select Committee inquiry on the priorities for health and social care in the negotiations on the UK's withdrawal from the European Union*, November 2016, available [here](#).

¹² Home Office, *Immigration Rules: Appendix K: shortage occupation list*, February 2016. Available [here](#).

2. Protection of workers' rights and of health and safety regulations in the workplace

A substantial proportion of UK health and safety regulations and workers' rights originate from the EU, and provide important protections for health care workers and their patients. There is a clear link between the employment environment for NHS staff, including nurses and health care assistants, and the quality of patient care and patient safety.¹³

Amendments 115, 235 and NC58, will specifically ring-fence workers' rights protections and health and safety regulations and will prevent ministers from diluting or adapting this important legislation.

Amendment 109: Clause 7, page 6, line 18, at end insert -

"(g) amend, repeal or revoke any legal right derived from EU law and operative in UK law immediately before 30 March 2019."

Amendment 115: Clause 9, page 7, line 8, at end insert -

"(e) amend, repeal or revoke any legal right derived from EU law and operative in UK law immediately before 30 March 2019."

Amendment 235: Schedule 7, page 39, line 29, at end insert -

"(g) makes changes to EU-derived domestic legislation concerning the rights of workers in the UK."

Amendment NC58: To move the following clause -

"Retaining Enhanced Protection. Regulations provided for by Acts of Parliament other than this Act may not be used by Ministers of the Crown to amend or modify retained EU law in the following areas—

- employment entitlement, rights and protections;
- equality entitlements, rights and protections;
- health and safety entitlement, rights and protections;
- fundamental rights as defined in the EU Charter of Fundamental Rights."

Workers' rights

Through cross-industry "social dialogue" negotiations at European level, agreements have been reached, and adopted as EU directives, ensuring that part-time workers (of which there are many in the health service) and those on fixed term contracts, are treated no less favourably than full time permanent employees. The EU's Acquired Rights Directive, as implemented by our Transfer of Undertakings (Protection of Employment) (TUPE) Regulations legislation, has been a cornerstone in providing legal protection to staff when reconfigurations happen in the workplace. **It is essential that TUPE is directly implemented into UK law.**

The Working Time Directive (WTD) provides a framework to reduce fatigue within the nursing workforce, putting critical safeguards in place. These include compensatory rest and controls on working time, to address the health and safety effects of shift working patterns. We strongly supported its adoption in the 1990s and subsequent updating of the directive.¹⁴ Fatigue, long working hours, lack of rest breaks and poorly managed shift rotas are a risk factor that can impact on the health of nursing staff and patient safety.¹⁵ Health care is delivered 24 hours a day, seven days a week and so it is crucial that both the protections and safeguards offered by TUPE and the WTD are maintained, irrespective of the UK's withdrawal from the EU.

¹⁴ Royal College of Nursing, *RCN response to the first-phase consultation of the social partners at European Union level under Article 154 of the TFEU*. Available [here](#)

¹⁵ Patient Safety Network, *Nursing and Patient Safety*, July 2016. Available [here](#).

Health and Safety Regulations

The EU's health and safety related directives provide a legal framework for employers to reduce the risks of musculoskeletal disorders (MSDs), biological hazards, stress and violence to health care staff. MSDs and stress are particularly prevalent in the nursing workforce and the main cause of sickness absence.¹⁶ Research on the implementation of the *Manual Handling Operations Regulations* and the *Provision and Use of Work Equipment Regulations* which evolved from EU directives, found implementation of hoists and other lifting equipment has resulted in reduced risks of injury to nursing staff.^{17,18} These protections, policies and health and safety regulations must not be sacrificed or diluted in any way as the UK withdraws from the EU, as doing so may remove more staff from work due to health factors, therefore impacting patient outcomes.

Protections in the workplace must mirror the standards adopted by other developed countries. **By accepting the above amendments, the UK Government would be able to showcase its commitment to promoting employment policy and practice** which is attractive to skilled health care workers in the UK, from Europe and around the world.

Successive and future UK Governments must not be granted powers to amend EU derived protections and legislation, such as Transfer of Undertakings (TUPE) and the Working Time Directive (WTD) without sufficient parliamentary scrutiny after the UK's withdrawal from the EU. By supporting these amendments, we are calling on the UK Government to safeguard EU derived legal rights, which benefit both the nursing community and the patients they care for.

About the Royal College of Nursing

The Royal College of Nursing is a professional body and trade union representing over 430,000 registered nurses, midwives, nursing students, health care assistants and nurse cadets. Our members work in a variety of hospital and community settings in the NHS and independent sector.

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¹⁶ Health and Safety Executive, *Health and safety statistics in the human health and social work activities sector in Great Britain*, accessed 13.11.17. Available [here](#).

¹⁷ Health and Safety Executive, *Evaluation of the implementation of the use of work equipment directive and the amending directive to the use of work equipment in the UK*. 2003, HSE Books: Sudbury

¹⁸ Health and Safety Executive, *Second Evaluation of the Manual Handling Regulations (1992) and Guidance*. 2002, HSE Books: Sudbury