

BRIEFING: House of Commons second reading debate on the European Union (EU) Withdrawal Bill - Thursday 7 September and Monday 11 September 2017

Summary of key points

This Bill must directly transfer and retain our existing laws and protections from the EU into UK legislation.

Our priorities for the UK's withdrawal from the EU include ensuring that there is:

- Prioritisation of safe staffing levels across health and care settings;
- Confirmation that existing EU nurses and healthcare workers will retain their rights to stay throughout the withdrawal bill and be granted indefinite leave to remain;
- Protection of existing rights of workers; and
- No dilution of health and safety regulations in the workplace.

We are greatly concerned that the UK's withdrawal from the EU may:

- Present new challenges and exacerbate current negative conditions, specifically regarding the recruitment and retention of the existing and future nursing community;
- Dilute fair employment practices and;
- Prevent the cross-border exchange of knowledge and skills.

We call on governments across the UK to work together to ensure that the UK continues to be a world leader in clinical innovation and healthcare by enabling health and care services to draw on the knowledge, skills and expertise from the international health sector after the UK withdraws from the EU. Failure to do so poses a significant risk to the ability of the health and care system to meet patient need safely or effectively.

We are concerned that future UK governments will be granted powers to amend the protections and legislation, such as TUPE and the Working Time Directive (WTD) – as identified in this briefing - without sufficient parliamentary scrutiny after the UK's exit in March 2019.

Key statistics

- One in 15 nurses and midwives working in the NHS in England is from an EU country¹.
- The number of European Economic Area (EEA) nurses joining the Nursing and Midwifery Council (NMC) register has fallen by 92 per cent, from 1,261 nurses in July 2016 to 96 nurses in December 2016².
- 86% of nurse leaders say that nurses recruited from the EU are essential for the proper functioning of NHS services across the UK and 59% state that they have recruited non-UK EU nationals in order to fill staffing gaps³.
- As of December 2016, there are approximately 40,000 registered nurse vacancies in England⁴.

¹ <https://www.nmc.org.uk/news/press-releases/nmc-releases-new-data-on-eu-nurses-and-midwives/>

² <http://www.health.org.uk/news/new-data-show-96-drop-nurses-eu-july-last-year>

³ <https://www.rcn.org.uk/professional-development/publications/pub-006195>

⁴ <https://www.rcn.org.uk/london/about/publications/safe-staffing-report-2015>

- One in three nurses working across England, Scotland and Northern Ireland are due to retire in the next 10 years⁵.

1 Safe and effective staffing

The UK's relationship with the EU has had, and continues to have, a direct and indirect impact on our delivery of quality health and social care. Nursing staff, and the wider health and care community from all backgrounds, are central to this delivery. Domestic workforce shortages have caused a historical overreliance on nursing staff from the EEA and EU, and changes to the status and ability of these professionals which adds a dimension of complexity and risk to patient safety as the UK leaves the EU. These individuals make a critical contribution to our health and care services.

The current uncertainty of immigration status for EU and EEA nursing staff in particular is preventing professionals from coming to work in the UK, and also causing them to leave. As a member of the Cavendish Coalition – a group of health and care organisations united in their commitment to provide the best care to communities, patients and residents – we call on the UK government to commit to granting EU and EEA healthcare workers indefinite leave to remain⁶. Securing the status of health and care workers will help enable the high quality continuity of care after the UK withdraws from the EU, as well as provide assurance for the tens of thousands of committed individuals providing care and support. Across the devolved nations, Scotland has signalled its commitment to do this.

Retaining existing EEA rights to stay and granting indefinite leave to remain for current EU and EEA health and care workers is the first step in securing sufficient workforce supply. Following the UK's withdrawal from the EU, the health and care sector must also be enabled to further recruit staff from the EU and EEA countries to ensure that health and care services can continue to deliver high quality care.

Non-EEA Nursing staff are presently listed on the Shortage Occupation List (SOL) until 2018. 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 candidates⁷. In the least, adult (general) nursing - which is the route into many nursing roles in health and social care - should remain on the SOL, at least until we are much closer to achieving greater self-sufficiency across the UK through credible and robust workforce strategy and planning across health and care services in the UK.

Suggested lines of inquiry

- When will the UK government set out the right to remain for all health and care workers who are EU/EEA nationals?
- Will the UK Government ensure that any future immigration system enables health and care services to recruit nursing staff from EU and EEA countries after the UK's withdrawal?
- To ensure that no policies are adversely changed as they are transferred into UK law, will the UK Government ensure that that the purpose of the Bill is only to make the necessary changes for retaining EU law into UK law?

⁵ Royal College of Nursing, *Labour Market Review: Unheeded warnings: health care in crisis*, September 2016

⁶ <http://www.nhsemployers.org/your-workforce/need-to-know/brexit-and-the-nhs-eu-workforce/the-cavendish-coalition>

⁷ <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-k-shortage-occupation-list>

2 Making the UK an attractive place to work

The nursing workforce in health and social care is approaching crisis, with not enough staff being trained, recruited or retained. Put simply, growth of the domestic workforce supply has not kept pace with rising patient need. This year, in the NHS in England, there are approximately 40,000 nursing vacancies and for the first time in a decade, more nurses left the profession than joined^{8 9 10}. In Scotland, the vacancy rate for nursing staff is 4.5%, the highest figure ever recorded¹¹. The scale of the challenge facing the nursing workforce cannot be ignored. In Northern Ireland the last available data are from March 2015 and showed a vacancy rate of 5.1% for nursing, midwifery and health visiting staff¹².

86% of nurse leaders say that nurses recruited from the EU are essential for the proper functioning of NHS services across the UK. 59% state that they have recruited non-UK EU nationals in order to fill staffing gaps¹³.

Evidence directly from the Migration Advisory Committee in 2016, shows that retaining talented staff can be difficult when working conditions become strained as the healthcare system faces unprecedented pressures¹⁴. There are fewer nurses, looking after more patients with more complex needs. Lack of sufficient nurses to deliver safe and effective care contributes to stress and fatigue of the workforce. Longstanding wage restraint and the current public sector pay cap adds additional pressure to both professionals, and to the health and care system domestically. Resolving the pay cap will help address recruitment and retention issues which are causing frontline challenges across the UK.

We call on the UK government to invest in nursing. We must have a well-rewarded, valued and motivated UK and international workforce, both now and in the future¹⁵. Patient safety, and Government's ability to provide assurance of safe and effective staffing within health and care, depend on the involvement and engagement of a committed and motivated workforce.

Suggested lines of inquiry

- When will the UK Government commit to lifting the public sector pay cap to enable recruitment and retention of nursing staff?
- What action will be taken to ensure that each country within the UK has credible and robust workforce strategy and planning for health and care services?

3 Protections of workers' rights

The health sector, public health and social care have been through significant change in recent years, with growth in independent provision of publicly funded health and social care services. It is important that nurses and other staff are not disadvantaged through any adverse changes to existing working conditions and employment benefits, including when changing employers. We also know that health and care employers are being asked to find financial efficiencies, resulting in changes which are not always implemented with due prioritisation of quality of care or the interests of employees.

⁸ <https://www.rcn.org.uk/professional-development/publications/pub-006195>

⁹ <https://www.rcn.org.uk/london/about/publications/safe-staffing-report-2015>

¹⁰ <https://www.nmc.org.uk/news/news-and-updates/new-figures-show-an-increase-in-numbers-of-nurses-and-midwives-leaving-the-professions/>

¹¹ <http://www.isdscotland.org/Health-Topics/Workforce/Publications/2017-06-06/2017-06-06-Workforce-Report.pdf>

¹² HSC Vacancy Survey, collated by the Department of Health in Northern Ireland

¹³ <https://www.rcn.org.uk/professional-development/publications/pub-006195>

¹⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510630/Partial_review_of_the_shortcode_occupation_list_-_review_of_nursing.pdf

¹⁵ Royal College of Nursing, NHS Pay Review Body for the 2017, September 2016

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 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 directive¹⁶. 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 safety¹⁷. Healthcare 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.

Suggested lines of inquiry

- Will the UK Government give reassurance to the public that the interests of employers facing current pressures will not override and infringe upon patient safety and worker’s rights?
- Will the UK Government give explicit commitment to maintain TUPE and the WTD?

4 Protection of health and safety regulations

A substantial proportion of UK health and safety regulations originate from the EU, and provide important protections for nurses and other health and care workers working across health and care settings.

The EU’s health and safety related directives, among other things, 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 absence¹⁸. The implementation of hoists and other lifting equipment, as required by the Manual Handling Directive, has resulted in reduced risks of injury to nursing staff and patients. Research commissioned by the Health and Safety Executive on the implementation of the *Manual Handling Operations Regulations* and the *Provision and Use of Work Equipment Regulations* which evolved from EU directives found evidence of effectiveness^{[1] [2]}.

The working conditions of nursing staff and others in the health service are closely linked to the patient experience and patient safety. There is a clear link between the employment environment for NHS staff, including nurses and health care assistants, and the quality of patient care¹⁹. 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 increase risk of negative patient outcomes and a detrimental impact on patient safety.

¹⁶ 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](#)

¹⁷ Patient Safety Network, *Nursing and Patient Safety*, July 2016. Available [here](#).

¹⁸ <http://www.hse.gov.uk/statistics/industry/healthservices/index.htm>

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

[2] Health and Safety Executive (2003) *Evaluation of the implementation of the use of work equipment directive and the amending directive to the use of work equipment in the UK*. HSE Books: Sudbury

¹⁹ Results of RN4CAST research 2012 <http://www.bmj.com/content/344/bmj.e1717>

The UK government, and future successive governments, have a moral duty to ensure the UK's health and safety regulations do not stagnate after the UK withdraws from the EU. Protections in the workplace must mirror the standards adopted by other developed countries. The UK must remain committed to promoting employment policy and practice which is attractive to skilled health and care workers from Europe and around the world.

Suggested lines of inquiry

- The EU guarantees minimum employment standards for UK workers. Can the UK government guarantee that these minimum standards will not be undermined at any point?

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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