

BRIEFING: The effect of Brexit on the NHS – Thursday 22 March 2018.

The RCN is pleased that the transition arrangements agreed this week mean that nursing staff from the European Economic Area (EEA) will continue to be able to come and work in the UK, but we remain concerned that the UK's withdrawal from the European Union (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, research and skills.

These issues pose the greatest and most immediate risk to the UK's nursing workforce's ability to deliver safe patient care. The UK's withdrawal from the EU must not be allowed to negatively impact patient outcomes, or the NHS and social care system's ability to staff services safely.

1. Staffing for safe and effective care: EU health and care workers' rights

One of our key priorities for the UK's withdrawal from the EU is to ensure there is sufficient nurse staffing levels to provide safe and effective care across health and care settings. Retaining EU health and care workers already here is especially vital because the domestic nursing workforce is in crisis, putting patient outcomes may be compromised.

In the UK in 2017, for the first time in a decade, more nurses left the profession than joined.¹ **The NHS in England has approximately 40,000 registered nursing vacancies.**^{2,3} In Scotland, the vacancy rate for nursing staff is 4.1%.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, the NHS vacancy rate for Northern Ireland in 2017, is approximately 6.9%.⁶ In Wales, there are no nationally published figures on vacancy rates, but our recent survey demonstrated consistent experiences of staffing shortages.⁷

In 2017, 86% of nurse leaders said that recruiting nurses from the EU was essential for the proper functioning of health services across the UK; and 59% stated that they have recruited non-UK international nurses in order to fill staffing gaps.⁸ EU nursing staff make a vital and comprehensive contribution to delivering patient care. Without them here to provide the skills we need, our NHS and social care services will be unsafe.

Uncertainty of status for European nurses now adds a dimension of complexity and risk to patient safety. Since the 2016 referendum, far fewer EU nurses and midwives are joining the Nursing and Midwifery Council (NMC) register. NMC data shows that between **September 2016 and September 2017, there was a fall of 89% in new EU registrations to the NMC – a drop from 10,000 to just over 1,000 in just one year.** Equally alarming is the growing

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

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

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

numbers of EU nurses leaving the UK altogether. During the 2013 – 2017 period, 4,067 EU nurses left the UK nursing profession altogether (a rise of 67% in just one year).⁹

Many nurses and health care practitioners work in Northern Ireland but live in the Republic of Ireland, and vice versa. Other nurses work in services that are delivered on a cross-border or all-Ireland basis. They must be able to continue to enjoy freedom of movement beyond any transition period in order to continue to deliver these services to patients, clients and the wider population. We know, for example that we currently have around 450 members with addresses in the Republic of Ireland.

We recognise the UK Government's progress on the Draft Withdrawal Agreement, published in March 2018, which gives qualified support to the rights of EU citizens - who arrive in the UK during the transition period - to have the same rights going forward as those EU citizens already here.¹⁰ We also welcome the **UK Government's ambition to offer settled status to all EU citizens living in the UK, but implementation and costings associated with this policy remain unclear.** The Home Affairs Committee's latest report, on Brexit and Immigration, is right to say that simply extending the current immigration system will not address its shortcomings - prioritising visas based on salary levels fails to recognise the benefits of international nurses to our health services, society and economy.¹¹ The UK Government must be louder and clearer in reassuring the tens of thousands of EU nurses and health care staff working across the UK – not just on their right to stay but how desperately the NHS and social care system needs them.

Shortage Occupation List

Non-EU nursing staff are currently listed on the Shortage Occupation List (SOL). This action was taken in recognition of the severe gaps in domestic nursing workforce, which have not been resolved. Any future immigration system must ensure that our NHS, health and social care services across the UK are able to recruit qualified nurses from the EU and internationally for the short to medium term whilst investing effectively in the domestic workforce supply and retention of nurses already working in our health and care services.¹²

2. Regulations of medicine, continued access to clinical trials and innovations, and, the importance of Mutual Recognition of Professional Qualifications (MRPQ)

Frameworks for regulating and importing medicines

The regulation of medicines in the UK is overseen by the Medicines and Health Products Regulatory Agency. (MHRA). Across Europe, the European Medicines Agency (EMA) is responsible for ensuring that all medicines available on the EU market are safe, effective and of a high quality. Similarly, licensing of medical devices across the EU is harmonised so that once a medical device is approved in one EU Member State, it can be sold across the continent through the Conformité Européene (CE) marking scheme.

To ensure UK patients have timely access to medical devices, the UK Government should agree mutual recognition of the CE marking scheme between the UK and the EU. A number of non-EU countries, for example Australia, and Switzerland, have bilateral arrangements with the EU for regulating and importing medical devices into the single market.¹³

The UK Government must ensure close collaboration between the UK and the EU on medicines regulation so that timely access to medicine is maintained for UK patients. Patient care must not be compromised because of delays in the UK being able to regulate, access or administer medicines. This is likely to require a formal agreement to continue to support

⁹ Nursing and Midwifery Council, "New figures show an increase in numbers of nurses and midwives leaving the professions", July 2017. Available [here](#).

¹⁰ Department for Exiting the European Union, *Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, March 2018. Available [here](#).

¹¹ House of Commons Home Affairs Select Committee, *Home Office Delivery of Brexit: Immigration*, 2017-19. Available [here](#).

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

¹³ European Commission, *Mutual Recognition Agreements*, website updated March 2018. Available [here](#).

and participate in EMA assessments, and a clear agreement on how the UK would approve these assessments domestically.¹⁴ Non-EU countries such as Switzerland, have made an arrangement to work closely with the EMA on a bi-lateral basis.¹⁵

Access to and inclusion in clinical trials

The UK has one of the highest number of clinical trials, for example for rare diseases and paediatric conditions, where international collaboration is vital, and without it progress would be much slower.¹⁶ The EMA have developed and are about to deliver new Clinical Trials Regulations, which will come into force during 2019. These regulations set up a new database and information system to aid the supervision and assessment processes for clinical trials which take place cross border. It is the ambition of the EMA that the new regulations will increase the efficiency of trials so that resource is allocated effectively, and that by promoting and supporting innovation and research, trial duplication will be minimised.

We call on the UK Government to ensure close collaboration with EU partners for clinical trials, through replicating the EU Clinical Trials Regulation when implemented and agreeing to mechanisms which enable the UK to take part in pan-European clinical trials.

MRPQ

At present, the education and training of registered nurses must conform to standards set out in an EU law called the MRPQ Directive which are implemented by the NMC in their standards for pre-registration nursing education.¹⁷

MRPQ has enabled the seamless mobility of healthcare professionals and helped raise educational standards across Europe. It also puts safeguards in place - including language checks on EU nurses and a duty to inform other health regulators about suspended or banned professionals - which are important and positive developments for patient safety in the UK.¹⁸ A potential move away from these standards and information sharing systems could lead to a loss of safeguards, loss of access to alert mechanisms and other exchange between professional regulators, and may make it much more difficult for EU nursing staff to work in the UK as registered nurses, and for the health and social care leaders needing to recruit from the EU. Any changes to standards and recognition arrangements for the longer term would need to be evidence based and assess risks and benefits.

3. 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. They provide important protections for health care workers and their patients, and we know that the employment environment for NHS staff, including nurses and health care assistants, directly links to patient outcomes and safety.

Workers' rights

The Working Time Regulations (WTR) 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

¹⁴ British Medical Association, *Brexit briefing: Medicines and medical devices regulation*, January 2018. Available [here](#).

¹⁵ European Medicines Agency press release, *EU and Swiss regulators sign confidentiality agreement*, July 2015. Available [here](#).

¹⁶ British Medical Association, *Brexit briefing: Medicines and medical devices regulation*, January 2018. Available [here](#).

¹⁷ EU Directive 2005/36/EC Annex V.2 (5.2.1). Available [here](#).

¹⁸ NHS Employers, *Mobility of health professionals across Europe*, June 2017. Available [here](#).

directive.¹⁹ 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.²⁰

It is essential that the WTR remain as currently drafted and among other Royal Colleges, we wrote to the Prime Minister asking for clarity on this matter in December 2017.²¹ In response, the Prime Minister did not reassure our members that the WTR was a negotiating objective and priority for UK Government. Research from 2018 tells us that nursing staff rate work life balance as one of the highest factors that can cause dissatisfaction in their role.²² WTR directly impacts on hours worked, and work life balance could be negatively affected should these regulations be removed in future.

Across the EU, directives have been agreed and reached on protecting part-time workers (of which there are many in the health service) and those on fixed term contracts, so that they 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.**

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.²³ Research on the implementation of the *Manual Handling Operations Regulations* and the *Provision and Use of Work Equipment Regulations* which evolved from the EU, found implementation of hoists and other lifting equipment has resulted in reduced risks of injury to nursing staff.^{24,25} Sacrificing or diluting these protections may remove more staff from work due to injury and ill health.

Legal protections in the workplace must mirror the regulatory standards adopted by other developed countries. **The UK Government must showcase its commitment to promoting employment policy and practice** which is attractive to skilled health care workers in the UK, and around the world. Successive and future UK Governments must not be granted powers to amend EU derived protections and legislation, such as TUPE and the WTR without sufficient parliamentary scrutiny, in future.

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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¹⁹ 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](#)

²⁰ Patient Safety Network, *Nursing and Patient Safety*, July 2016. Available [here](#).

²¹The Guardian, *Changes to EU working rules will 'put patients' lives at risk, say medics*, December 2017. Available [here](#).

²² Deloitte, *Time to care: Securing the future for the hospital workforce in the UK*, February 2018. Available [here](#).

²³ 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](#).

²⁴ 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

²⁵ Health and Safety Executive, *Second Evaluation of the Manual Handling Regulations (1992) and Guidance*. 2002, HSE Books: Sudbury