

RCN Briefing: The Immigration and Social Security (EU Withdrawal) Bill March 2020

The Immigration and Social Security (EU Withdrawal) Bill 2019-21 has been re-introduced to repeal free movement, making EU, EEA and Swiss citizens subject to UK immigration controls.

This briefing sets out our key concerns on ending freedom of movement and the implications that the planned future immigration system will have on nursing and patient care. Whilst details of the future immigration system are not set out and will instead be introduced through the Immigration Rules later this year, this Bill presents a public opportunity to highlight the impact that the proposed future immigration system will have on nursing staff and on the health and care services' ability to recruit internationally educated key workers.

It is concerning that this Bill does not set out the legal parameters for the future immigration system so that scrutiny can be undertaken. We are also concerned that the use of Henry VIII powers included in this Bill could at a later date give Ministers powers to change Immigration Rules without parliamentary approval or formal consultation with stakeholders. Any changes to regulations concerning immigration and the rights of overseas' citizens must be conducted via affirmative procedure and sufficiently scrutinized.

Summary of Key Points

- Recent statistics from the Nursing and Midwifery Council (NMC) show that there are currently 77,065 non-EEA internationally educated nurses working in health and care across the UK.¹ Internationally educated nurses make a phenomenal contribution to supporting our severely understaffed health and care services.
- If it wasn't visible previously, COVID-19 has brought to the fore the expertise and value that all nursing staff make; they are all key workers. The UK government must do everything possible to recognise the phenomenal contribution that internationally educated nurses make to patient care.
- Freedom of movement and the Mutual Recognition of Professional Qualifications (MRPQ) has enabled the mobility of health and care workers and played a key part in bolstering the UK's nursing workforce. The end of freedom of movement runs the risk of exacerbating current workforce shortages and have significant implications for our health services and the provision of care.
- The UK government's current proposals for the immigration system will exclude some health and care workers from entering the UK, primarily social care staff, and will have a devastating impact on the health and social care sector. The Home Office must urgently reconsider the current proposals, which provide no migratory route for social care workers.
- We expect the UK government to ensure that internationally educated nurses are supported to work in the UK and therefore call for the profession to continue to be exempt from the salary threshold and to be included on any shortage or priority occupation list.
- The Immigration Health Surcharge (IHS) represents an unfair and unjust financial burden and we are concerned that the recent increase to £624 will act as a disincentive for overseas workers to come and work in the UK. We continue to call for all health and care staff to be exempt from this charge and oppose the upcoming increase in fee.

Freedom of movement

The Mutual Recognition of Professional Qualifications has enabled the free movement of nurses and other health professionals by converging the standards of competency required to practice. It includes language checks on EU nurses and a duty on all EU member states to inform one another about suspended or banned professionals, both of which are important and positive developments for patient safety.² We need clarity on governments plans around retaining the

¹ Nursing and Midwifery Council, 'Registration Statistics', 2019. Available at: <https://www.nmc.org.uk/about-us/reports-and-accounts/registration-statistics/>

² NHS Employers, Mobility of health professionals across Europe, Available at: <http://www.nhsemployers.org/your-workforce/recruit/employer-led-recruitment/international-recruitment/mobility-of-health-professionals-across-europe>. June 2016.

MRPQ in the UK following the end of free movement, and assurances that the UK will continue to align professional standards with the Directive should it no longer apply.

Internationally educated nurses play a vital role in providing safe and effective care and sustaining our health and care workforce but due to uncertainty and hostility around immigration, they are choosing to leave. The latest data from the Nursing and Midwifery Council (NMC) shows that since the Brexit referendum in 2016/17, over 13,000 EU nurses left the UK workforce. The current domestic nursing workforce supply has not kept pace with rising patient need. Currently there are around 40,000 nursing vacancies in health and social care services in England.³

Ending freedom of movement, coupled with the implementation of government's proposed immigration policies, will prevent EEA nursing staff from coming to work in the UK, therefore exacerbating current workforce shortages. Whilst international recruitment cannot be relied upon as a substitute for the adequate supply of a domestic workforce, it is clear that overseas recruitment must continue, and increase in the short to medium term so that people can receive safe and effective care.

Governments across the UK must work together to ensure that the UK continues to be a world leader in innovation in healthcare by enabling health and care services to draw on knowledge, skills and expertise internationally. Just as population health isn't restricted by geographical borders, neither should the sharing of expertise be.

Minimum salary thresholds and the future points-based system

By expanding the Tier 2 visa route to include medium skilled jobs (occupations of RQF3+), the current salary threshold of £30,000 to enter the UK will be lowered to £25,600. Individuals may also be able to enter the UK on a lower salary (no less than £20,480) should their occupation be listed on the Shortage Occupation List (SOL). Whilst we acknowledge that these measures provide an added, and necessary level of flexibility to the current system, these changes do not go far enough. The lower salary threshold will still be unrealistic and unattainable for social care workers, who would likely be ineligible due to the qualification specification in any event.

The current emergency has served to highlight that low wage is in no way synonymous to the skill or value of a professional. The future immigration system must not use arbitrary salary levels as the primary determinant of a person's ability to work in the UK. Nurses are currently exempt from the minimum salary threshold because they are on the Agenda for Change pay scales which are determined by the UK Government, and are also listed on the SOL.

In their recent call for evidence, the Migration Advisory Committee (MAC) confirmed that Registered Nurses will remain listed on the SOL. However, the SOL is temporary and reviewed regularly providing no guarantee that much needed internationally educated nurses will meet the requirements to join the UK workforce in the longer term.

The UK government's recent policy statement on the future immigration system⁴ neglected to mention plans on the minimum income threshold required to apply for indefinite leave to remain. Currently set at £35,000, this is extremely difficult for most international nurses to attain.⁵ If nursing is removed from the SOL, this restriction will apply, creating a significant and unnecessary barrier to long term settlement and knock on impact to nurses' own lives and the continuity of patient care. We need assurance that the exemption for nurses from the salary threshold will continue, and that nurses will remain on the SOL or an equivalent priority list.

A visa route for 'low-skilled' staff

The UK Government's decision to not introduce a system for professionals deemed 'low skilled' to enter and work in the UK will significantly impact the recruitment and retention of nursing staff in the social care sector. Whilst we had considerable doubts about the suitability of the temporary

³NHS Digital, NHS Workforce Statistics, November 2019. Available at: <https://digital.nhs.uk/data-and-information/publications/statistical/nhs-workforce-statistics>

⁴ Government policy statement on the UK's future points-based immigration system, 2020. Available at: <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement/the-uks-points-based-immigration-system-policy-statement>

⁵ Royal College of Nursing, 'Royal College of Nursing response to Migration Advisory Committee call for evidence: Partial review of the shortage occupation lists for the UK and Scotland', 2014. Available at: https://www2.rcn.org.uk/_data/assets/pdf_file/0011/603101/96.14_Call_for_Evidence_Partial_review_of_the_Shortage_Occupation_Lists_for_the_UK_and_for_Scotland..pdf.

visa route proposed in government's previous Immigration White Paper⁶ and the potential impact that the 12-month time limitation could have on continuity of care, even more concerning is government's decision to make no provision whatsoever for groups of workers that are unable to meet Tier 2 visa requirements.

International workers account for approximately one sixth of care workers in England yet despite this it is estimated that there are currently 122,000 vacancies.⁷ 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 £20,840 to be eligible to work in the UK. Many would also fail to meet the qualification level threshold in any event. 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.

We expect the Home Office to reconsider the current proposals for the future immigration system, which provide no migratory route for social care assistants and health care assistants, who are vital to the UK population's health and economy.

The Immigration Health Surcharge (IHS)

Whilst outside of the remit of this Bill, we know that the IHS represents an unfair and unjust additional financial burden and may also act to deter future nursing staff from coming to work in the UK. We are disappointed by the UK government's decision to increase IHS to £624 for adults and £470 for children respectively for each year of the sponsor's visa; a fee expected to be paid in full upfront. This is despite our repeated calls – alongside other unions and professional bodies – for the fee to be waived completely for international health and care staff.

Health and care professionals already make a significant contribution towards our health and care system by virtue of their work, and already pay taxes and national insurance. The increase in the charge is unreasonable and lacking in evidence. When the IHS was doubled to the current rate in 2018, the Department of Health and Social Care estimated that the average annual cost to use the NHS by those paying the IHS was £470 but did not make public their methodology. At present we have seen no evidence or cost modelling that supports the revised figure of £624. Furthermore, how the IHS is reinvested into the system is opaque and unclear. We are also aware of instances where the IHS is being paid by Trusts on behalf of individuals therefore undermining any rationale that the charge is necessary as a means to fund health and care services.

The services that our international workforce provide, brought into sharper focus during the current emergency, have always been essential. We expect the UK government to exempt health and care workers from this immoral charge immediately and on a permanent basis.

Consequential Amendments within the Bill

We are concerned that Clause 4 will grant 'Henry VIII' powers to Ministers which enable them to amend legislation without sufficient scrutiny or oversight. We are clear that any future scrutiny of delegated legislation on immigration should be conducted via affirmative procedure to ensure sufficient checks and balances by Parliament.

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⁶ Government Whitepaper on the UK's future skills-based immigration system, 2018. Available at: <https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

⁷ 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>