

BRIEFING: House of Commons Committee Stage on the European Union (EU) Withdrawal Bill – beginning on 21 February 2018

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.

This Committee Stage debate of the Whole House presents 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.

This briefing focuses on securing the rights of EU nationals who are working tirelessly in health and care settings across the UK, and on 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 and are within the scope of this Bill to protect. The UK's withdrawal from the EU must not be allowed to negatively impact on patient outcomes, or the health and care system's ability to staff services safely.

The amendments this briefing gives support to are those which will protect the nursing profession, and the patient populations they serve. We also support all amendments which do not grant sweeping powers to Ministers to be able to amend future legislation using delegated powers without sufficient and thorough parliamentary scrutiny.

1. Safe and effective staffing: 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. We welcome the UK Government's aspiration to guarantee the right of EU nationals working in the UK to remain by granting settled status. This is vital for the sustainability of the nursing workforce and patient care.

Amendments 133, 160 and NC202 will crucially secure the rights of EU and EEA working in health and care across the UK. Retaining EU health and care workers already here is especially vital because the domestic nursing workforce is in crisis, with not enough staff being trained, recruited or retained in hospitals and care settings across the UK.

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 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

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, December 2017*. Available [here](#).

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

From our own calculations using the health and social care workforce census data, 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

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 EU 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 EU nationals joining the NMC register was less than 6% (71 individuals) of what it was in July 2016 (1,304 individuals).⁸

The contribution of EU nursing staff cannot be taken for granted as workforce shortages continue to cause an overreliance on nursing staff from the EU. In 2017, **86% of nurse leaders said that recruiting nurses from the EU was currently 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.**⁹ EU nursing staff make a vital and comprehensive contribution to delivering patient care. Without them here to provide the skills mix we need, our health services will be unsafe.

We recognise the Government's announcement to offer settled status to EU citizens, but this policy and its implementation remains 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 society and economy.¹⁰ The Government must be louder and clearer in reassuring the tens of thousands of EU nurses and carers working across the UK – not just on their right to stay but how desperately the NHS and social care system needs them.

Granting health care workers the right to remain 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.

Shortage Occupation List

Non-EU 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 and the failure of Government and the sector to adequately retain existing staff through pay and other incentives. We supported the Migration Advisory Committee's (MAC's) assessment that for too long international recruitment had been used as a "get out of jail free" card to offset investment in domestic growth and proper retention. In light of this we are clear that any future immigration system must ensure that health and social care services across the UK have access to international recruits, but that international recruitment must complement a much stronger focus to training and keeping more home-grown nurses.¹¹

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

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

¹¹ Home Office, *Immigration Rules: Appendix K: shortage occupation list*, February 2016. Available [here](#).

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 while simultaneously shifting their focus to greater recruitment and retention of home-grown nurses. This will require an immediate lifting of the pay cap and commitment to safe and effective staffing measures.

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.

Workers' rights

Amendments 40 and 234 in Schedule 7 will specifically ring-fence rights and protections in the workplace, and prevent future or successive governments from diluting these regulations.

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 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 directive.¹² 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.¹³ **It is essential that the WTR remain currently drafted and among other Royal Colleges, we wrote to the Prime Minister asking for clarity on this matter in December 2017.**¹⁴ In response, the Prime Minister did not reassure our members that the WTR was a negotiating objective and priority for 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.¹⁵ WTR and EU legislation directly impacts on hours worked, and work life balance could be negatively affected should these regulations be removed in the future.

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 WTR are maintained, irrespective of the UK's withdrawal from the EU.

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

¹² 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](#)

¹³ Patient Safety Network, *Nursing and Patient Safety*, July 2016. Available [here](#).

¹⁴ The Guardian, *Changes to EU working rules will 'put patients' lives at risk, say medics*, December 2017. Available [here](#).

¹⁵ Deloitte, *Time to care: Securing the future for the hospital workforce in the UK*, February 2018. Available [here](#).

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 injury and ill - health, therefore impacting patient outcomes.

Legal protections in the workplace must mirror the regulatory 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 TUPE and the WTR 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