

Cynulliad Cenedlaethol Cymru / National Assembly for Wales  
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol a'r Pwyllgor Materion Allanol a  
Deddfwriaeth Ychwanegol / The Constitutional and Legislative Affairs Committee and  
the External Affairs and Additional Legislation Committee  
Ymgynghoriad ar Fil yr Undeb Ewropeaidd (Ymadael) a'i oblygiadau i Gymru / The  
European Union (Withdrawal) Bill and its implications for Wales  
EUWB 21  
Ymateb gan BMA Cymru Wales / Evidence from BMA Cymru Wales

**Dear Sir/Madam,**

On behalf of BMA Cymru Wales, I would wish to thank you for the opportunity to submit evidence to the joint consultation by the *Constitutional and Legislative Affairs Committee* and the *External Affairs and Additional Legislation Committee*.

By way of our submission, please accept the two attached documents:

- The BMA Cymru Wales response to the inquiry by the External Affairs and Additional Legislation Committee into the implications of Britain exiting the European Union for Wales, November 2016
- BMA UK's second reading briefing for the European Union (Withdrawal) Bill in the House of Commons on 7 and 11 September 2017.

Yours sincerely,

**Dr Rodney Berman**  
Senior Policy Executive

**Cyfarwyddwr Cenedlaethol (Cymru)/National director (Wales):**

Rachel Podolak

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## Response from BMA Cymru Wales to the inquiry into the implications of Britain exiting the European Union for Wales

### External Affairs and Additional Legislation Committee

28<sup>th</sup> November 2016

The British Medical Association (BMA) is an independent professional association and trade union representing doctors and medical students from all branches of medicine all over the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 160,000, which continues to grow every year. BMA Cymru Wales represents over 7,500 members in Wales from every branch of the medical profession.

### Introduction

Ahead of the referendum vote, the BMA produced a document, *BMA in Europe*, for our members which objectively analysed the impact of existing EU policy and legislation for the medical profession and the nation's public health<sup>1</sup>. We, therefore, welcome this inquiry and appreciate the likelihood for wide-ranging legal, constitutional, social and economic implications for Wales of the UK exiting the European Union<sup>2</sup>.

BMA Cymru Wales would want to see any legislation to transfer EU law into domestic legislation at the point of the UK's exit from the European Union (the so-called Great Repeal Bill) where it related to devolved areas of responsibility to be appropriately considered by the National Assembly for Wales (under the Sewel convention). Implications for higher education sector in Wales will be a particularly important area to consider. We acknowledge that there is the potential for further policy and legislative divergence across the UK as the four administrations, in areas of their respective legislative competence, will no longer be required to adhere to EU Directives. Although, in our view, some devolved areas may best be dealt with by a four-nation approach and through joint agreement.

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<sup>1</sup> BMA (2016) EU referendum guide <https://www.bma.org.uk/collective-voice/influence/europe/eu-referendum>

<sup>2</sup> Mick Antoniw AM, Counsel General, Written Statement <http://gov.wales/about/cabinet/cabinetstatements/2016-new/highcourtcase/?lang=en>

#### Prif weithredwr/Chief executive:

Keith Ward

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We are re-assured somewhat that the Welsh Government and the National Assembly for Wales have proactively taken steps to engage stakeholders when considering the implications of the referendum result on Wales.

We firmly believe that our National Health Service is enriched by the contribution of doctors from every country of the world. The outcome of the referendum has created great uncertainty for EU nationals currently living and working in Wales regarding their future status. Reassurance and clarity is vital, particularly in key public services such as the NHS, to aid workforce planning. While we acknowledge that the exact terms of the process by which the UK will depart the EU are unclear and may remain so for some time, it is vital that these individuals, across the UK, are offered the clarity and reassurance they deserve regarding their future status.

The BMA is a member of the Cavendish Coalition, a coalition of 29 health and social care organisations, which is seeking certainty for the current health and social care workforce originating from the European Economic Area (EEA) to remain in the UK.

We have identified a number of priorities for health which should be considered in the negotiations on withdrawal from the EU. These include the retention and recruitment of staff; training and the mutual recognition of professional qualifications; higher education and student funding; science and research; health and safety legislation, and public health protection.

#### Executive summary

- The UK's decision to leave the EU may result in a domestic economic downturn, or in the very least, economic uncertainty. This in turn, is likely to reduce public spending in general and, specifically, the level of funding which is available to provide health and social care in Wales.
- A significant number of EU nationals work in health and social care organisations across the country. The EU's policy of freedom of movement and mutual recognition of professional qualifications facilitates this, helping NHS organisations ensure gaps in the medical workforce are filled quickly by qualified workers with the appropriate level of training and education.
- In 2014, more than 10,000 doctors working in the NHS (6.6% of the UK medical workforce) received their primary medical qualification in another European Economic Area (EEA) country<sup>3</sup> with additional staff working in public health and academic medicine- these individuals are vital to our NHS and the health and success of the country.
- The ongoing political uncertainty surrounding the future of EU nationals living and working in the UK will inevitably lead to some of these doctors choosing to leave. While we welcome comments from the UK Secretary of State for Health that the government wants these doctors 'to be able to stay post-Brexit'<sup>4</sup>, Governments must offer these highly skilled professionals the confirmation and reassurance they need regarding their rights to live and work in the UK. Specifically, we believe these highly skilled professionals should be granted permanent residence in the UK – appreciating that this is ultimately a matter for the UK

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<sup>3</sup> BMA, 2014 Medical Workforce Briefing, 2015, pg. 11.

<sup>4</sup> Secretary of State for Health, Jeremy Hunt [speech to Conservative Party conference 2016](#)

Government. This would provide stability both to these individuals and to NHS workforce numbers.

- The UK's decision to leave the EU will have wide ranging consequences for current EU students studying at a UK medical schools and their family members. These include funding arrangements, transferability and recognition of medical degrees, and postgraduate medical training.
- Following the UK's departure from the EU, it is essential that the immigration system remains flexible enough to recruit doctors from overseas, especially where the resident workforce is unable to produce enough suitable applicants to fill vacant roles. This needs a four nation approach in terms of accounting for national differences between shortage specialities<sup>5</sup>.
- The BMA is deeply concerned about the impact of the UK's decision to leave the EU on science and medical research. Safeguards must be put in place to maintain access to research funding, the right regulatory environment, and the mobility of research staff<sup>6</sup>.
- There may be wide ranging ramifications for the regulation and education of health professionals, including language testing, clinical skills and knowledge testing, and the transferability and recognition of qualifications for doctors.
- The BMA is satisfied with the EWTD and the measures it has introduced, including a reduction in the maximum hours worked to an average of 48 per week, as transposed into the UK Working Time Regulations. We urge the government not to repeal these Regulations for new workers.
- Governments must maintain the public health regulations, originating from EU Directives, which have been transposed into UK law.
- The NHS is enriched by the contribution of international doctors and so we unreservedly condemn any xenophobic attacks by individuals who have taken the referendum result as a green light to attack the NHS staff who care for them.

### **NHS Funding and finances**

A central point to the 'Leave' campaign was a promise of £350m a week to be redirected to the NHS as we cease our funding to the EU. Given the economic predictions and the potential impact on NHS funding, we are calling on the UK government to make good on the promise made to the British public and give the NHS this funding which it requires so that doctors can provide the service for patients which they deserve.

Following the result of the EU referendum, the UK Treasury has provided guarantees for EU funded projects signed before the UK leaves the EU. The UK's, and consequently Wales', access

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<sup>5</sup> The BMA has lobbied the Medical Advisory Committee to create a separate shortage occupation lists for Wales, as Scotland has.

<sup>6</sup> The Academy of Medical Sciences: [Academies publish joint statement on research & innovation after the EU referendum](#), 19 July 2016

to EU funding programmes will be subject to negotiations during the EU withdrawal process. It is possible that Wales may still receive funding from certain EU programmes even after the UK has left the EU. Indeed, some programmes already include countries that are not EU member states. However, the programmes that are particularly significant for Wales are generally for EU member states only.<sup>7</sup> Currently, per head, Wales receives more funding from the EU than the UK does as a whole.

There will be a need to consider future arrangements for needs-based funding programmes across the UK, given that Wales currently benefits from regional EU funding at this level and the potential for existing inequalities to deepen following an exit from the EU.

A central concern of the impact of the vote to leave the EU is the ongoing ability of the economy to fund the NHS, coupled with the effects of any negative economic impact on the wider determinants of health. The Institute for Fiscal Studies concluded that the revised outlook in the Chancellors autumn budget statement showed 'a downgrade in the economic forecasts, and consequent downgrade in forecast living standards. The OBR think national income in 2020-21 will be £30 billion lower than they projected back in March – that's equivalent to £1,000 per household.'<sup>8</sup>

#### **Retention and recruitment of EU staff in the NHS**

Much of the rhetoric about immigration during the EU referendum campaign focused on the pressures increased immigration has placed on public services including the health service, housing and schools. Studies looking at migrants arriving in the UK since 2000 show they have made a positive contribution to public finances, paying more in taxes than the value of public services they have used.<sup>9</sup> It is important to acknowledge the contribution made by European migrants, including doctors, in delivering and sustaining public services, such as the NHS, care services, and our universities.

The EU's principle of freedom of movement of people and the mutual recognition of professional qualifications within the EU has enabled many health and social care professionals from countries within the EEA to work here<sup>10</sup>. Doctors from the EU have become essential members of Wales' medical workforce and the NHS is dependent on them to provide a high quality, reliable and safe service to patients. These highly skilled professionals have enhanced the UK health systems over the years, improving the diversity of the profession to reflect a changing population, bringing great skill and expertise to the NHS and filling shortages in specialties which may otherwise have been unable to cope.

Statements made by the Secretary of State for Health that the government wants EU doctors to remain in the UK post-Brexit, and that there is no intention to deport EU nationals currently in the UK, do not go far enough. We believe EU doctors and medical academic staff should be granted permanent residence in the UK and that the Welsh Government should be making urgent representations for this to the UK Government; this would provide stability to these individuals and to NHS workforce numbers in the longer term.

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<sup>7</sup> House of Commons library debate pack Number CDP 2016/0186, 21 October 2016

<sup>8</sup> [https://www.ifs.org.uk/uploads/budgets/as2016/as2016\\_pj.pdf](https://www.ifs.org.uk/uploads/budgets/as2016/as2016_pj.pdf)

<sup>9</sup> Dustmann, C & Frattini, T (2011) 'The fiscal effects of immigration to the UK' *The Economic Journal* <http://www.cream-migration.org/files/FiscalEJ.pdf>

<sup>10</sup> King's Fund, 'Five Big Issues for Health and Social Care after the Brexit Vote', 30 June 2016

Any initiatives to increase the supply of domestically trained doctors by increasing medical school training places (such as the Secretary of State for Health in England's announcement for the government to fund the training of up to an additional 1,500 students through medical schools in 2018<sup>11</sup>), and thereby reducing the NHS's reliance on doctors from overseas, must also be complimented by an increase in foundation places for these students to fill as they progress through their medical training. Additional resourcing to provide capacity for clinical academics, supervisors, and the training administration to support the expansion while maintaining the quality of existing training would also be vital.

The UK immigration system must remain flexible enough to recruit doctors from outside the UK where necessary in to the NHS and research workforce. Furthermore, if the UK government were to introduce a cap on EU workers following the UK's decision to leave the EU, it would be crucial to ensure that sufficient provision was made for healthcare workers through flexibility in the UK immigration rules. We note that the introduction of much stricter restrictions for non-EU workers entering the UK since 2010 had a detrimental impact on NHS recruitment and workforce numbers. Shortages in the nursing workforce became so acute in some areas that nurses were added to the shortage occupation list to allow hospitals to recruit from outside the EU with no cap on numbers.

#### **EU policy of mutual recognition of professional qualifications**

The EU's policy of mutual recognition of professional qualifications, alongside its policy of freedom of movement within the EU, has enabled many health and social care professionals from countries within the EEA to work in Wales – and across the UK. It also allows UK doctors to work in other European countries, thereby sharing expertise and knowledge.

Such reciprocal arrangements should remain, involving mutual recognition of qualifications along with measures – such as the alert mechanism, or early warning system, which advises all European regulators when a doctor is banned or their ability to practice restricted - to ensure patient safety, once the UK leaves the EU. Current regulations have helped create an environment which has facilitated and encouraged movement of workers and students, sharing of data and ideas as well as ensuring EU nationals are quickly able to fill gaps within specialties in medical workforce and the wider health service. Further, we believe that healthcare reciprocal arrangements should continue and that treatment by clinical need should remain a doctor's primary priority.

The decision to leave the EU has the potential to have wide ranging ramifications for the regulation and education of health professionals, which will need to be urgently addressed. These issues include language testing, the potential introduction of clinical skills and knowledge testing, the transferability and recognition of qualifications for doctors, the structure of undergraduate and postgraduate training, and access to the specialty register (Certificate of Eligibility for Specialist Registration / Certificate of Eligibility for GP Registration and Certificates of Completion of Training).

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<sup>11</sup> Secretary of State for Health, Jeremy Hunt [speech to Conservative Party conference 2016](#)

## Higher Education and Student Funding

We welcome confirmation from the Welsh Government that EU students applying for a place at a Welsh university in the 2017 - 2018 academic year will be eligible for student loans and grants for the duration of their course.<sup>12</sup>

There is currently uncertainty about exactly when the Article 50 process will be triggered but the process for leaving is likely to create indecision into 2019. We are calling on the Welsh Government to grant home fees to EU students applying for courses in medicine for the 2018 to 2019 academic year, in the same way as has already been agreed for those starting their studies in 2017 to 2018. This will give some stability and incentive to EU students thinking of applying to come to Wales between 2017 and 2019.

During the negotiating process for the UK to leave the EU, it will be essential that clarity is given to the application and funding process for EU students who wish to study at a UK medical school once the UK leaves the EU. This is particularly important regarding the categorisation of EU students as home or overseas students as this will have implications for the level of tuition fees students pay to universities. There is a risk that shifting EU student fees from home fees to overseas students' fees may have an impact on the number of students from the rest of the EU applying for UK degrees, especially in medicine, which is a longer course and therefore more expensive, than most undergraduate degrees.

The UK's decision to leave the EU is already having an impact on the makeup of the future medical profession. Figures from UCAS for 2017 undergraduate entry show a significant fall of 9% in the number of EU students applying to study medicine degrees at UK medical schools.

## Science and research

We have serious concerns regarding Wales' ongoing access to EU research programmes and research funding following the vote to leave the EU - and in particular, the implications this will have for the future of science and research.

EU research programmes have made a significant contribution to UK research: the UK received €8.8billion in 2007-2013 having contributed €5.4 billion during the same timeframe<sup>13</sup>; the UK currently has 15% of all awarded grants in Horizon 2020, the greatest share amongst those countries participating<sup>14</sup>. While participation in programmes such as Horizon 2020 is not conditional on membership of the EU (Israel and Switzerland are amongst the highest net recipients), we are calling for prompt action to ensure ongoing participation in such programmes for the long-term and to limit any potential damage to our country's medical research base.

As with EU nationals working in the NHS and adult social care, we are seeking reassurances from the UK government that UK-based researchers and staff from other EU nations will be given the right to continue to live and work in the UK. This is vital given that 15% of all academic staff contributing to the UK university workforce originate from other EU nations<sup>15</sup>. Equally, it is

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<sup>12</sup> Welsh Government, [press release](#): EU student funding guarantee for Welsh universities extended

<sup>13</sup> Academy of Medical Royal Colleges: [Leaving the EU – What needs to happen to maintain the standards of healthcare in the UK](#), 28 July 2016

<sup>14</sup> European Commission (2015) *Horizon 2020: First Results*

<sup>15</sup> The Academy of Medical Sciences: [Academies publish joint statement on research & innovation after the EU referendum](#), 19 July 2016

essential that opportunities are secured for UK researchers to gain experience in other EU nations: nearly 72% of UK-based researchers spent time at non-UK institutions between 1996 and 2012<sup>16</sup>.

Much of the regulation of medicines in the UK (including those under development, approved products, medical devices and in vitro diagnostic testing) derives from EC Regulations and Directives via the European Medicines Agency (EMA). Whilst not an implication for Wales alone there is a clear need for a four nation approach to the impact of leaving the EU on the regulation of medicines. Following Brexit, there are concerns that the loss of these regulations could require the UK to rewrite significant amounts of our own legislation to cover the gaps arising from our departure, and that the UK will not be able to participate in a range of measures relating to the regulation of medicines. This includes the European-wide approval system for new medicines; the EU Clinical Trials Database; revisions to already approved products; the Orphan Drug Designation or the Small to Medium Sized Enterprise schemes; the centralised approval process for paediatric drugs; and the process that supports new medicine development for children.

### **Health and safety legislation**

The BMA is satisfied with the EWTD and the measures it has transposed into the UK Working Time Regulations, namely the limit of a 48 hour working week, rest breaks and statutory paid leave. These regulations protect doctors from the dangers of overwork and protect patients from overtired doctors. It is perfectly possible to design adequate training without needing to break the 48 hour average weekly limit, provided rotas are planned properly.

### **Public health protection**

The EU has a significant role in ensuring a cross-border approach to important public health issues, such as preventing pandemics and reciprocal access to healthcare through the European Health Insurance Card (EHIC). It is important, whether or not the UK remains part of the EEA, that an agreement to facilitate such cross-border cooperation remains.

It is also essential that that governments maintains public health regulations originating from EU Directives which have been transposed into UK law – such as the Tobacco Products Directive, and legislation to limit industrial trans fatty acid content (artificial fats which increase the risks of obesity and cardiovascular disease) and restrict the promotion of unhealthy food and drink products to children and young people is currently being developed by the EU. As is current work the EU undertaking to considering how existing labelling rules on nutrition and ingredients could be widened to include alcoholic drinks. We would oppose any move by to repeal existing, or any other, vital public health measures.

### **Xenophobic attacks on NHS staff**

The BMA's first priority is the safety and wellbeing of our members so that they can continue to deliver high-quality patient care. The NHS is enriched by the contribution of international doctors and so we unreservedly condemn any xenophobic attacks by individuals who have taken the referendum result as a green light to attack the NHS staff who care for them.

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<sup>16</sup> Elsevier (2013) *International comparative performance of the UK research base, 2013*

This behaviour may deter both EU and non-EU students and health professionals from seeking to study or work in the UK at all. In addition, the perception these attacks give to potential students and staff, not just from EU member states, but from across the world is that the UK no longer welcomes them.<sup>17</sup>

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<sup>17</sup> Hindustan Times: [The message from Britain is clear: Indians are not welcome anymore](#)

## European Union (Withdrawal) Bill

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### Second Reading Briefing, House of Commons Thursday 7<sup>th</sup> & Monday 11th September 2017

The British Medical Association (BMA) is a professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care. The BMA is committed to safeguarding the future of the medical profession following the UK's vote to leave the European Union.

Health services across the UK face a range of challenges as a result of Brexit and so it is vital that the government puts measures in place that provide stability to essential health services, patients, and the NHS workforce when the UK leaves the EU in March 2019. While the conversion of EU law into domestic law through the European Union (Withdrawal) Bill will provide some continuity, it is essential that the Bill does not become a 'vehicle' or opportunity to make policy changes through the back door; this risks causing unnecessary disruption to health services at an already uncertain time.

The Bill will give ministers powers to implement both a transitional and withdrawal agreement which will govern the UK's future relationship with the EU. In order to provide stability across UK health services, we are urging the government to put in place a range of robust transitional arrangements for a set period of time, governing immigration and access to medicines and treatments, which are vital to maintaining NHS workforce numbers and patient safety.

#### Key points

- A 'smooth and orderly withdrawal' from the EU is essential for health services across the UK, which face a range of challenges as a result of Brexit.
- Any changes to the rights currently exercised by EU nationals in the UK must receive full debate and scrutiny in Parliament. A change of such magnitude and importance to the lives of millions of people should not pass through Parliament through the negative resolution procedure, and without any debate, as currently outlined in Clause 7 and 9 of the Bill.
- The Bill should not be used to make major changes to policy or to establish new legal frameworks beyond what is absolutely necessary to ensure the law functions properly after Brexit.
- We welcome the firm commitment from the government that the Bill will ensure workers' rights, such as the European Working Time Directive, will continue to be available in UK law after we have left the EU.
- The UK government has promised to seek agreement through a constructive and collaborative approach with the devolved legislatures but whether this will extend to requiring their explicit consent through a legislative consent motion is not clear. Clarity must be provided.

## Ensuring a ‘smooth and orderly withdrawal’ from the EU – implications for health services

### **Clauses of interest to the BMA:**

**Clause 2: Saving for EU-derived domestic legislation**

**Clause 3: Incorporation of direct EU legislation**

The government has explicitly stated that one of the key aims of the European Union (Withdrawal) Bill is to ensure that the same rules and laws will apply on the day after exit as on the day before, thus ensuring a ‘smooth and orderly withdrawal’<sup>1</sup> as the UK withdraws from the EU.

The BMA believes a ‘smooth and orderly withdrawal’ is essential for health services across the UK, which face a range of challenges as a result of the UK’s decision to leave the EU. Health services across the UK are subject to unprecedented demand, an ageing population coupled with increasingly complex patient illnesses, and drastic funding shortfalls. The threat to the workforce is particularly acute, with the NHS struggling to attract and retain doctors and other vital NHS staff: those that are currently working within the service are increasingly being asked to work longer in an overstretched, under-resourced system. Ensuring that the same rules and laws will apply on the day after exit as on the day before, such as the Working Time Regulations, should, in theory, help health services make the transition during a period of great upheaval and uncertainty.

### **Changes to EU citizens’ rights**

#### **Clauses of interest to the BMA:**

**Clause 4: Saving for rights etc under section 2 (1) of the ECA**

**Clause 7: Dealing with deficiencies arising from withdrawal**

**Clause 9: Clause 9: Implementing the withdrawal agreement**

Clause 4 of the Bill will ensure certain EU rights and obligations, including citizenship rights, rights of residence, and the free movement of workers are recognised and available in UK law after Brexit. Clause 7 of the Bill will then enable ministers to correct laws which will no longer function once we leave the EU. The government could use this clause (depending on the course of the negotiations) to ‘modify, limit or remove’ the reciprocal arrangements that apply to EU citizens, including doctors, in the UK. Clause 9 subsequently gives ministers extensive powers to implement the withdrawal agreement and make the necessary changes for Brexit, including potentially, new arrangements governing the status of EU citizens in the UK.

The BMA is deeply concerned that under the provisions of the Bill, ministers could lawfully rescind existing arrangements for EU citizens, such as their immigration status, rights to work in the UK, or the rights of family members, and introduce secondary legislation regarding the future arrangements for UK and EU citizens without any parliamentary debate or scrutiny. We note that the arrangements for EU citizens do not fulfil the criteria required for an affirmative procedure SI (e.g. the creation of a new public authority, transfer powers to such an authority, create a new offence, charge a fee or create or amend a power to legislate) and so under the provisions of the Bill, will not be granted parliamentary debate.

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<sup>1</sup> [Department for Exiting the European Union: ‘Exiting the EU with certainty’ 13th July 2017](#)

These individuals must not be used as bargaining chips during the negotiations. They staff our hospitals and GP surgeries, look after vulnerable patients in the community, and conduct vital medical research to help save lives. A BMA survey<sup>2</sup> found that more than four out of ten (42 per cent) EEA doctors are considering leaving the UK following the referendum vote, with a further quarter (23 per cent) unsure about their future here. A change of such magnitude and importance to the lives of millions of people, including the 10,000 doctors who work in the NHS – 6.6% of the UK medical workforce – who qualified in the EEA with many more working in public health and academic medicine, must be discussed openly and transparently.

With regards to the powers in Clause 9 to implement the withdrawal agreement, it is also vital that the government works with health organisations to ensure that robust transitional arrangements are put in place for a set period, and that the immigration system is flexible enough to recruit doctors and other NHS staff from overseas, especially where the resident workforce is unable to produce enough suitable applicants to fill vacant roles. This clarity is essential for EEA doctors, medical academics, students and their families and key to protect the safe staffing of the NHS.

### **The Bill should not become a ‘vehicle’ for policy changes**

The Bill should not be used to make major changes to policy or establish new legal frameworks in the UK beyond those which are necessary to ensure the law continues to function properly from day one after Brexit. In the interests of openness and transparency, any proposals to amend, repeal, or improve EU law by either the UK or devolved legislatures should be subject to full parliamentary debate and scrutiny.

### **Workers’ rights**

We welcome the government’s explicit commitment that the Bill will ensure that ‘workers’ rights that are enjoyed under EU law will continue to be available in UK law after we have left the EU. This includes rights derived from EU law, such as the Working Time Directive and the Agency Workers’ Directive. This will give certainty and continuity to employees and employers alike, creating stability in which the UK can grow and thrive<sup>3</sup>.’

The BMA is satisfied with the European Working Time Directive and the measures it has transposed into the UK Working Time Regulations, namely the limit of a 48 hour working week, rest breaks and statutory paid leave. These regulations are essential health and safety legislation, which alongside European Court of Justice judgements (the SiMAP and Jaeger rulings which enshrined the principle of time spent on-call at the workplace being regarded as work) has reduced fatigue amongst doctors and improved the safety of both patients and doctors in the UK.

The UK should not diverge from the Working Time Regulations (WTRs) following the UK’s withdrawal from the UK because of the critical role they play in protecting doctors from the dangers of overwork and patients from the impact of overtired doctors. Although the government has stated that the aim

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<sup>2</sup> [BMA \(February 2017\) Future of UK health care at risk as more than four in ten European doctors considering leaving UK following Brexit vote](#)

<sup>3</sup> [Department for Exiting the EU: Factsheet on workers’ rights](#)

of Bill is not to create a vehicle for policy changes<sup>4</sup>, we will closely monitor the progress of the Bill and robustly challenge any proposals to introduce changes to the WTRs, or other employment legislation, as the Bill moves through Parliament.

Furthermore, while we note that the Bill will end the general supremacy of EU law ending the jurisdiction of the European Court of Justice in the UK, we welcome the government's statement that British courts "may have regard" to "anything done" by the ECJ or by another EU entity after Brexit if the British court considers it appropriate to do so. This will be vital with regards to key ECJ judgements on workers' rights.

### **Devolved Administrations**

#### **Clauses of interest to the BMA**

***Clause 10: Corresponding powers involving devolved authorities***

***Schedule 2: Corresponding powers involving devolved authorities***

***Schedule 3: Further amendments of devolution legislation***

We note that the government has begun discussions with each of the nations to identify where UK-wide approaches (common frameworks) need to be retained in the future and where these frameworks are no longer necessary (where powers may be given at a devolved level after Brexit). The Bill will also give devolved ministers the power to amend devolved legislation to correct law that will no longer operate appropriately once the UK has left the EU. In its factsheet on devolved nations<sup>5</sup>, the government also expects one of the outcomes of Brexit to be a major increase in the decision making powers of each devolved administration.

However, the expectation that policy areas that are devolved, but which have been subject to EU law, such as environmental and regional policy, will result in new powers for the devolved nations appears to be an issue of contention. Initial indications from both the Scottish Parliament and the Welsh Assembly are that they would withhold consent for the bill unless changes are made which would protect the interests of all the nations within the UK.

Legally, although the absence of a legislative consent motion would not prevent the passage of the Bill through the UK Parliament, the lack of such consent could create significant political difficulties. The UK government has promised to seek agreement through a constructive and collaborative approach with the devolved legislatures but whether this will extend to requiring their explicit consent through a legislative consent motion is not clear. As an organisation that represents doctors across the UK, we urge the government to clarify its approach as soon as possible.

**What does Brexit mean for the medical profession? Visit the [BMA website](#) to find out more**

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<sup>4</sup> [Department for Exiting the EU: Legislating for the United Kingdom's Withdrawal from the European Union](#)

<sup>5</sup> [Department for Exiting the EU: Factsheet on Devolution](#)