EXTRACT OF BRIEFING – "SCOTLAND'S PLACE IN EUROPE" – IMPACT OF BREXIT ON HEALTH AND SOCIAL CARE WORKFORCE – 11 MAY 2017

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Health and Social Care Workforce

- **Just over 1,159 non-UK EEA-qualified doctors in Scotland (as at 27 October 2016), from a total of 20,028 – 5.8%.**

- **Around 4% of nurses and midwives and 2% of dentists in training are from the EU.**

April 2017

HEALTH WORKFORCE: KEY STATS ON NON-UK EU CITIZEN WORKERS

Background

The Scottish Government is considering options to establish systems which allow us to extract data in future to measure information on the country of origin of the NHS workforce in Scotland.

In 2015 approximately 4.5% (115,000) of the total 2,577,000 in employment in Scotland were EU Nationals (NOTE: this refers to total employment in Scotland as a whole – not just NHSScotland). (Source: Annual Population Survey, January to December 2015)

Despite record levels of staffing NHSScotland, we acknowledge that we need to plan carefully to prepare for the challenges we face. That is why we have committed to producing a National Health and Social Care Workforce Plan that will strengthen workforce planning and help to deliver a sustainable Health and Social Care system. The future role of our EU citizens will be considered within this context.

On 1 February 2017 the Cabinet Secretary for Health and Sport launched the National Health and Social Care Workforce Planning Discussion Document. The consultation period closed on 28 March 2017 and we are currently considering stakeholder responses.

The Discussion Document will inform the National Health and Social Care Workforce Plan, which will be published in Spring 2017.

ATTRACTION, RECRUITMENT AND RETENTION

Background

NHSScotland Boards are required to have the correct staff in place to meet the needs of the service and ensure high quality patient care. The Scottish Government works closely with Boards to support their efforts in staff recruitment.

In common with all health care systems in the developed World, NHSScotland faces a challenge with regard to sustaining a suitably trained workforce over the next 5-10 years. Boards also face immediate service pressures in relation to their medical workforce, which may be exacerbated by difficulties in recruiting some specialties. These concerns were also raised at the Health Committee meeting on 1 November.

Recruiting from Scotland and elsewhere in the UK, and also European Economic Area, is the most common route for taking on new staff. Generally via advertisement either online or through specialist medical journals. Where no suitably qualified staff from the UK or EEA apply, Boards may seek to fill vacancies from outwith these areas.

Immigration is an issue which is fully reserved to the UK Government and dealt with by the Home Office, and it is the UK Home Office who receive and process UK visa applications. However, we consider immigration as a positive lever in contributing to the services provided by NHSScotland as well as the Scottish economy, society and population.

The impact of Brexit on the NHSScotland workforce will depend on the precise form of withdrawal from the EU. The free movement of people from the EU/EEA allows skilled and experienced health professionals to work in our NHS. Without this, our ability to continue to provide high-quality health and social care services for the people of Scotland will suffer. The free movement of workers, and the absence of immigration controls, has made the EU an important and attractive recruitment market, and has helped to make Scotland, and NHSScotland, an attractive place to work. Given the ongoing recruitment challenges which health and social care will face, it is important to retain access to the this market. There is concern that continued uncertainty over the long term position of EU nationals working within NHSScotland will have an impact on our ability to continue to attract people from these countries to work and live in Scotland. Continuing access to the free market is likely to be important to ensure the NHS remains able to provide the services we expect.

The free movement of people within the EU has also enabled Scotland's medical schools to attract students to study medicine and dentistry. At present, EU students enjoy free tuition fees, which has made Scottish medical and dental schools more attractive to EU students. The introduction of tuition fees for EU students could deter students from applying to study medicine and dentistry in Scotland. Given the length of courses, we also need reassurance for existing students that there will be no change to their fee arrangements for the remainder of their studies.

Migration is key to supporting sustainable population growth and any move to limit migration, whether from within or beyond the EU, has the potential to seriously harm our economy. Growth in the working age population plays a key role in underpinning sustainable economic growth and most of Scotland's population growth comes from inward migration.

SOCIAL AND EMPLOYMENT PROTECTIONS

Background

The EU has done much to protect and improve workers' employment rights and contribute to our vision of NHSScotland as an exemplar employer. Examples include:

• Minimum paid annual leave (now 28 days a year including bank holidays)
• Additional rights for agency and temporary workers and for part-time workers
• Current pregnancy and maternity leave rights
• Parental leave
• Working time (which includes a maximum of a 48-hour week unless you agree otherwise, and minimum rest breaks each day)
• Equal pay
• Anti-discrimination rules on race, sex, disability, age and sexual orientation
• Data protection rights

These have all been embedded in our NHSScotland Partnership Information Policies to the benefit of staff working in NHSScotland.

Examples of EU Directives that have helped improve Social and Employment Protections

- The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 took effect on 1 July 2000. The Regulations are based on Council Directive (97/81/EC) on the framework agreement on part-time work (EU9712175N). The EU framework agreement/Directive on part-time work (EU9706131F) has two objectives: the removal of discrimination against part-time workers; and the development of part-time work on a voluntary basis. The UK Regulations address the first objective by giving part-time workers the right in principle not to be treated less favourably than full-time workers of the same employer who work under the same type of employment contract. This includes maternity leave, parental leave and career breaks.

- **The EU Council Directive 2000/78/EC of 27 November 2000 established a general framework for equal treatment in employment and occupation which resulted in** the following legislation Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Religion or Belief) Regulations 2003, Employment Equality (Age) Regulations 2006. These were superseded by the Equality Act 2010. The policies implementing these requirements are covered in the NHSScotland Supporting the Work Life Balance PIN Policy.

- The Parental Leave Directive 2010/18/EU is a European Union Directive, which concerns the basic rights of all parents to leave in the European Union. This resulted in The Parental Leave (EU Directive) Regulations 2013. These Regulations implement Council Directive 2010/18/EU on the revised framework agreement on parental leave. They amend provisions relating to parental leave in the Employment Rights Act 1996 ("the 1996 Act") and the Maternity and Parental Leave etc. Regulations 1999 ("1999 Regulations"). Regulation 3 makes amendments to the 1999 Regulations. It amends regulation 14 of the 1999 Regulations to increase a qualifying employee's entitlement to parental leave in respect of an individual child from 13 weeks to 18 weeks.

- There is European Union (EU) legislation covering: the health and safety of pregnant women and women who've recently given birth Under the EU's legislation in this area: Pregnant workers have the right to attend ante-natal appointments during working hours on full pay. Women are entitled to take at least 14 weeks maternity leave before and/or after childbirth - and must take at least two weeks leave before and/or after childbirth. Employers must not dismiss a woman who is pregnant and/or on maternity leave except in exceptional circumstances not connected with pregnancy/maternity.

REGULATION AND CROSS BORDER MOBILITY OF HEALTH AND SOCIAL CARE PROFESSIONALS

Background

The exact nature of the EU exit, including access to the single market, will influence the changes that will have to be made to professional healthcare regulatory legislation.

The key issue for professional regulation is the free movement of workers. Directive 2005/36/EC on the Recognition of Professional Qualifications (RPQ) is particularly relevant in the field of health and social care. The RPQ Directive harmonises minimum criteria for the professional training programmes of certain professions, facilitating automatic recognition of qualifications gained in one EEA country in any of the others. These professions, which are known as "sectoral professions" are: doctors; nurses responsible for general care; dental practitioners; midwives and pharmacists. It also includes veterinary surgeons and architects.

The European Commission proposed in December 2011 that the existing legislation be revised as part of the twelve priority measures of the Single Market Act for promoting growth and job creation, the primary aim being quicker, more efficient recognition facilitating easier mobility of skilled workers across the EU.

Directive 2013/55/EU adopted revisions including *inter alia* a common competence training framework for general care nurses, clarity on the rights of host states to check language skills of applicants, and the concept of a European Professional Card (EPC), which is an electronic portfolio of the data required to apply for registration in another state.

Because this Directive is under the auspices of the Commissioner for Internal Market and Services, the Department for Business Innovation and Skills led on this portfolio for the UK Government as the lead Member State department, supported by Department for Health (DH) for the "sectoral professions", which includes all regulated health and social care professions to which the Directive currently applies.

The statutory regulators are the UK's *Competent Authorities* with member state powers and responsibilities under the Directive, with DH's primary role being to transpose the provisions for the sectoral healthcare professions into national statute.

Workforce colleagues have raised elsewhere concerns about potential constraints on NHS Scotland's continued ability to recruit members of the sectoral professions from EU member states. All indications thus far are that these concerns are common to the health services of all four countries.

Withdrawal from the EU will in theory return to the statutory regulators the power to determine application criteria for professionals from EEA states. For example the same requirements for language and clinical skills tests that are already applied to "overseas" applicants.

If the wholly reserved regulators were to choose this route, the stricter criteria would also apply to applicants wishing to work in Scotland. However, it is important to note that as these provisions have already been transposed, in some if not all cases, the regulator's rules would first need to be amended by subordinate legislation, which could take a year or longer to pass through parliamentary processes following such a decision.

ACCESS TO HEALTHCARE FOR SCOTTISH CITIZENS IN EU AND NON-UK EU CITIZENS IN SCOTLAND

Background

1. The European Health Insurance Card (EHIC), which is free to European Economic Area (EEA) and Swiss citizens, can be used throughout the EEA (and Switzerland) to obtain necessary state medical treatment without charge, or at a reduced cost, if this becomes necessary due to illness or accident during a short-term visit, for instance on holiday or for business purposes.

2. There are two further European healthcare schemes: the S2 scheme allows EEA citizens to travel for planned state treatment; and the S1 scheme allows EEA state pensioners to access state healthcare when they live in other EEA countries other than the country that pays their state pension. The UK Government has responsibility for the three schemes, which are administered by the Department for Work and Pensions.

3. **It is important to note that European healthcare comes at a cost and payments flow between EEA states.** The UK Government pays for the healthcare of UK residents when they receive it in other parts of the EEA under the EHIC, S2 and S1 schemes - an estimated total cost of around £750 million each year. The

bulk of this cost is for UK state pensioners living overseas in other EEA countries. We estimate that Scots account for around £50 million of that total.