



BRIEFING PAPER

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Policies affecting migrant NHS workers

By Elizabeth Parkin

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Contributing Authors:

Rachael Harker, Statistics, Section 1.2

Summary

This briefing paper looks at recent policy changes that may affect migrant workers in the NHS. It has been produced by researchers in the House of Commons Library.

£35,000 minimum pay threshold

In 2012, the Government announced that from 6 April 2016 Tier 2 (skilled worker) migrants from outside the European Economic Area who apply for settlement in the UK will be required to meet a minimum annual salary requirement of £35,000 after 6 years. The Coalition Government wanted to introduce more selective criteria for determining which non-EEA nationals can stay permanently in the UK. It wanted to break the link between coming to the UK with a temporary visa and staying permanently, as part of wider efforts to reduce net migration levels.

Concerns have been raised about the impact of the minimum pay threshold on migrant workers in the NHS. The Royal College of Nurses has said it is “highly unlikely” that a nurse will earn at least £35,000 within six years of employment in the UK.

On 15 October 2015, it was announced that nurses will be added to the Government’s shortage occupation list on an interim basis. This means that nurses from outside the EEA that apply to work in the UK will temporarily be exempt from the minimum pay threshold for settlement applications and will have their applications for nursing posts prioritised. The independent Migration Advisory Committee will review the change and present further evidence to the Government by February 2016.

Immigration health surcharge

An immigration health surcharge came into effect on 6 April 2015. The health surcharge is paid by non-EEA nationals who apply to come to the UK to work, study or join family for a temporary period of more than 6 months. It is also paid by non-EEA nationals who are already in the UK and apply to extend their stay. Once they have paid the charge, temporary migrants are entitled to free NHS treatment on the same basis as permanent residents, for the duration of their visa.

The British Medical Association and the Royal College of Nursing both raised concerns about the impact of the health surcharge on migrant workers in the NHS. The BMA – which represents doctors – expressed concerns that the health surcharge could make the UK a less attractive destination for skilled workers from outside the EEA, including doctors and other healthcare professionals.

Language testing for migrant healthcare professionals

Recent changes have also been made to language testing for migrant healthcare professionals. Non-EEA doctors, nurses and other healthcare professionals who wish to register to practise in the UK must demonstrate that they have the necessary English language competence before they can be registered.

The Government recently introduced regulations to also enable language controls for EEA healthcare professionals. In April 2014, the Government introduced regulations to give the General Medical Council powers to refuse a licence to practise in circumstances where there are concerns about their English language competency. The regulations also created a new “fitness to practise” impairment relating to not having the necessary knowledge of English. Similar regulations were brought in for other EEA healthcare professionals, including nurses, midwives, dentists, and pharmacists, in March 2015.

1. £35,000 minimum pay threshold

In 2012 the Government announced that from 6 April 2016 Tier 2 (skilled worker) migrants from outside the European Economic Area who apply for settlement in the UK will be required to meet a minimum annual salary requirement of £35,000 after 6 years.¹

The pay threshold will apply to non-EEA nationals who have come to the UK since April 2011 with either a Tier 2 (General) or Tier 2 (Sportsperson) visa.

Under the proposed [Immigration Rules on pay for Tier 2 settlement](#), it is intended that the minimum annual salary requirement will rise each April, to £36,200 if applying on or after 6 April 2020.²

The Home Office said the change would ensure that “only the brightest and best workers who strengthen the UK economy will be able to apply to stay in the UK permanently”.³

The Home Office published full impact assessments on these changes when the rules were laid before Parliament.⁴

The £35,000 salary requirement will not apply to anyone in an occupation on the Shortage Occupation List⁵, but in February 2015 the independent Migration Advisory Committee recommended against including nurses on the [Shortage Occupation List](#).⁶

However on 15 October 2015, it was announced that nurses will be added to the Government’s Shortage Occupation List on an interim basis. This means that nurses from outside the EEA that apply to work in the UK will be exempt from the minimum pay requirement for settlement applications and will have their applications for nursing posts prioritised.⁷ The Home Office agreed to place nurses on the Shortage Occupation List on a temporary basis pending a full review by the Migration Advisory Committee, who will present further evidence to the Government by 15 February 2016.⁸

¹ Gov.uk, [Automatic settlement for unskilled workers to end](#), 29 February 2012

² Gov.uk, [Immigration Rules Appendix I: pay rules for Tier 2 settlement](#), updated 12 October 2014

³ Gov.uk, [Automatic settlement for unskilled workers to end](#), 29 February 2012

⁴ Annual limit: <https://www.gov.uk/government/publications/migration-permanent-limit-tier-1-and-tier-2-impact-assessment>
Settlement: <https://www.gov.uk/government/publications/changes-affecting-employment-related-settlement-tier-5-and-overseas-domestic-workers>

⁵ Home Office, Statement of Intent: [CHANGES TO TIER 1, TIER 2 AND TIER 5 OF THE POINTS BASED SYSTEM; OVERSEAS DOMESTIC WORKERS; AND VISITORS](#), February 2012, page 4

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/117953/tiers125-pbs-overseas-soi.pdf

⁶ Migration Advisory Committee, [Partial review of the Shortage Occupation Lists for the UK and for Scotland](#), February 2015, page 63

⁷ Department of Health, [Restrictions on nurse recruitment from overseas changed](#), 15 October 2015

⁸ [Letter from the Home Office on nurse shortages](#), 15 October 2015

The Health Secretary, Jeremy Hunt, said that adding nurses to the Shortage Occupation List will help maintain safe staffing levels:

Safe staffing across all our hospitals and care homes is a crucial priority. The temporary changes announced today will ensure the NHS has the nurses it needs to deliver the highest standards of care without having to rely on rip-off staffing agencies that cost the taxpayer billions of pounds a year.

We are also recruiting more home-grown nurses than ever to deliver a truly seven day NHS. There are already more than 8,000 additional nurses on our wards since 2010 and we are investing in our future workforce with a record 50,000 nurses currently in training.⁹

1.1 How would nurses be affected?

Prior to the announcement that nurses will be added to the shortage occupation list – and therefore exempt from the £35,000 minimum pay requirement – there were various attempts to determine how many nurses might be affected by the minimum pay threshold.

How much do nurses earn?

The Royal College of Nursing (RCN) and NHS England provided an overview of nurses pay. This showed that nurses must reach the “Senior nurse” role in order to earn £35,000.

Nurse pay and roles		
Band	Pay range	Typical role
5	£21,692 - £28,180	Entry level nurse or midwife
6	£26,041 - £34,876	Staff nurse, such as theatre nurse
7	£31,072 - £40,694	Senior nurse, such as ward sister / team leader
8	£39,632 - £81,618	Nurse consultant or matron

Source: Royal College of Nursing and NHS England¹⁰

The RCN said it is “highly unlikely” that a nurse would earn at least £35,000 within six years employment in the UK:

Any nurse with a Tier 2 (general) visa who came to the UK after 6 April 2011 will need to be at least an upper band 7 nurse to earn this amount. It is highly unlikely that nurses coming to the UK will be in a position to earn this higher level salary within five or six years.¹¹

Data on staff earnings from the NHS Health and Social Care Information Centre (HSCIC) indicates that the average annual earnings of qualified

⁹ Department of Health, [Restrictions on nurse recruitment from overseas changed](#), 15 October 2015

¹⁰ [Migrant salary rules may cost NHS nurse jobs, union warns](#), BBC, 22 June 2015

¹¹ [Royal College of Nursing response to Migration Advisory Committee call for evidence: Partial review of the shortage occupation lists for the UK and Scotland](#), December 2014, page 10

nursing, midwifery and health visiting staff were £31,087 as at June 2015.¹²

How many nurses would be affected?

In response to a PQ in September 2015, Health Minister Ben Gummer said that the Government estimated that 713 nurses with visas issued in 2011/12 could currently be affected by the minimum pay threshold. He also outlined efforts to increase the number of “home-grown” nurses within the NHS:

The Home Office estimate that there were 713 visas issued to nurses in 2011/12 to whom the pay threshold and six year cap would apply if they are still resident in the United Kingdom.

Health Education England is implementing a number of steps to increase nurses numbers within the National Health Service. These plans include:

- increases in the number of training commissions, which will deliver over 23,000 more nurses by 2019;
- a Return to Practice programme, aimed at encouraging previously qualified nurses that have left the NHS, to update their skills and qualifications and return to practice within the NHS, and
- the provision of flexible routes into nursing for pre-existing support staff, such as part-time nursing degrees in partnership with the Open University for care assistants who have been sponsored by their employer.

Additionally, the Chief Nursing Officer has established a programme board to oversee activities aimed at increasing nursing numbers.¹³

The RCN however gave much higher estimates about the number of nurses that might be affected. The RCN published research into the proposal in June 2015 and found that up to 3,365 nurses currently working in the UK would potentially be affected and estimates that it will have cost the NHS £20.19 million to recruit them. If international recruitment stays the same as it is now, the RCN estimated that by 2020 the number of nurses who would be affected by the pay threshold would be 6,620, employed at a cost to the NHS of £39.7million.¹⁴

Concerns were raised during a House of Commons debate in July 2015 about the minimum pay threshold for settlement applications. Ben Gummer said that the Government did not recognise the RCN’s higher estimates for the number of nurses affected:

Our estimate is that no more than 700 nurses will be affected by the time the new rules are in place, which is a different number from that given by the Royal College of Nursing, whose number we do not recognise. It is small challenge given the scale of the workforce and one that we will surmount at the time, but we must see it within the broader policy of reducing immigration to this country from the hundreds of thousands to the tens of thousands—a policy that has broad support across the House and

¹² [NHS Health and Social Care Information Centre: NHS Staff Earnings Estimates to June 2015](#)

¹³ [PQ 8517 \[on Nurses: Migrant Workers\], 14 September 2015](#)

¹⁴ [Royal College of Nursing, RCN report shows immigration rules ‘will cause chaos’ and cost the NHS millions, 22 June 2015](#)

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certainly in the country at large. It would be wrong for the largest employer in the country—one of the largest employers in the world—to exempt itself from that overall ambition.¹⁵

However, on closer inspection, it appears that the Government and the RCN estimates are roughly similar. The Government's estimate of around 700 nurses affected are based on numbers in a single year. The RCN figure of up to 3,365 nurses affected is based on the number of non EEA nurses registering with the NMC over a four year period (from April 2011 to March 2015). This total equates to around 840 non EEA nurses registering per year.

The independent Migration Advisory Committee (MAC) published a report in November 2011 to the Government on how to determine which skilled migrant workers can settle in the UK. The MAC was commissioned by the Government to identify the most suitable economic criteria for determining which Tier 2 migrant workers could settle permanently in the UK and what the economic effects of restricting or removing Tier 1 or Tier 2 settlement rights would be.

The MAC estimated the impact of applying a pay threshold on the proportion of Tier 2 resident labour market test and shortage occupation route migrants eligible to apply for leave to remain beyond five years. It found that 87 per cent of nurses would be refused the right to settle permanently under a £31,000 threshold.¹⁶

If we apply this 87 per cent to the NMC annual estimate of 840, the figure of 730 nurses affected is broadly in line with Government estimates of 700 to 713 in a given year.

Following the decision to place nurses on the Shortage Occupation List on a temporary basis, the Migration Advisory Committee will carry out a further review into whether there is a shortage of nurses or specific nursing job titles which it would be sensible to fill through non-EEA migration.

1.2 Comment

NHS Employers wrote to the Home Secretary to raise concerns about the employment of overseas healthcare professionals in the NHS.¹⁷ They said that it is their strong view that nurses should be included on the shortage occupation list, as the supply from within the UK and EEA is unable to meet the volume required by the NHS.

The Royal College of Nursing raised concerns that the new rules would have a "disproportionate impact on the retention and recruitment of nurses from outside Europe".¹⁸

¹⁵ [HC Deb 1 July 2015 c511WH](#)

¹⁶ Migration Advisory Committee, [Analysis of the Points Based System Settlement right of migrants in Tier 1 and Tier 2, November 2011](#), page 86

¹⁷ NHS Employers, [Letter to Rt Hon Theresa May MP re: Employment of overseas healthcare professionals in the NHS](#)

¹⁸ Royal College of Nursing, [International Recruitment 2015](#), page 1

It urged the Government to add nursing to the list of “shortage occupations” that are not covered by the cap and to reconsider the £35,000 threshold.¹⁹

The RCN had said that the rules would “cause chaos” for the NHS and waste money spent on overseas recruitment. Dr Peter Carter, Chief Executive of the RCN said:

Due to cuts to nurse training places, trusts are being forced into relying on overseas recruitment, as well as temporary staff, just to provide safe staffing. A cap on agency spending will make one of these options more difficult, and these immigration rules will limit the other.

The immigration rules for health care workers will cause chaos for the NHS and other care services. At a time when demand is increasing, the UK is perversely making it harder to employ staff from overseas. The NHS has spent millions hiring nurses from overseas in order to provide safe staffing levels. These rules will mean that money has just been thrown down the drain.²⁰

The RCN had also urged the Government to increase UK training places for nurses:

The only way for the UK to regain control over its own health service workforce is by training more nurses. 37,000 potential nursing students were turned away last year so there are people out there who want to embark on a nursing career. There are clear signs of a global nursing shortage, meaning an ongoing reliance on overseas recruitment is not just unreliable but unsustainable. Unless we expand training and have enough nurses in this country, we will also be at the mercy of global trends which we can't control.

The UK has always benefited from attracting some of the world's most talented and caring nurses, and overseas nurses will continue to play a vital role in our health services. But an over reliance on their recruitment is not in anyone's best long term interests.²¹

In response to the announcement that nurses would temporarily be added to the Shortage Occupation List, the RCN said the change would help alleviate staffing shortages:

This reversal is a real victory for nurses, the health service and most of all patients.

“Since the RCN first raised this issue and lobbied for a change to the immigration rules, a consensus has formed across the health service that cutting the supply of overseas nurses risked patient care.

The Government must now extend this common sense approach to the issue of training and retaining more nurses in the long-term and significantly increasing student nurse training places so that

¹⁹ Royal College of Nursing, [RCN report shows immigration rules ‘will cause chaos’ and cost the NHS millions](#), 22 June 2015

²⁰ Royal College of Nursing, [RCN report shows immigration rules ‘will cause chaos’ and cost the NHS millions](#), 22 June 2015

²¹ Royal College of Nursing, [RCN report shows immigration rules ‘will cause chaos’ and cost the NHS millions](#), 22 June 2015

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patients in the UK are no longer at the mercy of global workforce trends.²²

Further information is provided in the Library's briefing on [The £35,000 salary requirement to settle in the UK](#)

²² Royal College of Nursing, [RCN responds to news that nursing will be placed on Shortage Occupation List](#), 15 October 2015

2. Immigration health surcharge

The Immigration Health Surcharge was provided for in the *Immigration Act 2014*. [The Immigration \(Health Charge\) Order 2015](#) implements section 38 of the *Immigration Act 2014*, which provides the Secretary of State with a new power, by Order, to require certain migrants to pay an immigration health surcharge. The health surcharge came into effect on 6 April 2015.

The health surcharge is paid by non-EEA nationals who apply to come to the UK to work, study or join family for a temporary period of more than 6 months. It is also paid by non-EEA nationals who are already in the UK and apply to extend their stay.

Once they have paid the charge, the visa holders are entitled to free NHS treatment on the same basis as permanent residents, for the duration of their visa.

The health surcharge is:

- £150 per year for international students and their dependants
- £200 per year for other applicants

The actual amount that applicants must pay will depend on the duration of the visa they (and dependants) are applying for. The charge must be paid for at the point of applying for a visa.

The charge amounts are intended to reflect the range of health services available to migrants in the UK, as well as the need to ensure that the UK remains an attractive destination for the “brightest and best” migrants. The Government has said that charge is lower than the average per capita cost of treating temporary migrants (£800 per year; £700 per year for students), and is lower than the cost of basic private medical insurance, which some other countries require.²³

An FAQ document provided by the Home Office explains why migrant workers have to pay the health surcharge in addition to their taxes:

Migrant workers already contribute to the UK economy through taxation. Why should they have to pay twice?

The intended effect of the surcharge is that a person’s access to healthcare should be in line with their immigration status in the UK. Temporary migrants have not built up the long-term contribution to the UK that a British Citizen will have built up and will build up over the course of their lifetime.²⁴

In a debate on the Immigration Bill in October 2015, the Home Secretary said that more than £100 million has been injected into the NHS as a result of the new immigration health surcharge.²⁵

Further information is provided in the Library’s briefing paper on the [Immigration Health Surcharge](#).

²³ [Explanatory Memorandum to the Immigration \(Health Charge\) Order 2015](#)

²⁴ Home Office, [IMMIGRATION HEALTH SURCHARGE - QUESTIONS AND ANSWERS](#), para 23

²⁵ [HC Deb 13 October 2015 c196](#)

2.1 Comment

Concerns have been raised about the impact of the health surcharge on migrant workers in the NHS.

The British Medical Association, the professional body for doctors, said:

NHS surcharge angers visa doctors

Doctors and medical students on UK visas have expressed disappointment at having to pay an annual health surcharge.

The BMA lobbied hard against the annual fees for NHS services of £200 for doctors and £150 for students imposed on all those applying or renewing a Tier 2 visa. However, this week the rule that comes under the Immigration Bill will be introduced.

BMA international committee chair Terry John said: 'We value the contributions made by our members who have come from overseas to work and train in the UK.

'Now that the surcharge has been implemented seeking any changes to this will be a hard fight but we will take up the challenge and continue to show ministers the impact of these rules.'

Hull clinical fellow in cardiology Hasnain Syed will have to pay the surcharge in addition to the £800 to extend by a year his Tier 2 visa for him and three dependents this August.

Dr Syed said: 'This year the visa application fee has been increased and now with this additional burden of paying the surcharge — even after paying national insurance and tax — will hit me hard.

'I am already struggling to keep my finances in order and this new regulation will only hurt the country in the long run as it will definitely turn away people from coming to work in the NHS.'²⁶

The BMA also said that the introduction of a health surcharge could make the UK a less attractive destination for skilled workers from outside the EEA, including doctors and other healthcare professionals.²⁷

In a statement on international recruitment, the Royal College of Nursing (RCN) said that the health surcharge was "patently unjust" for overseas nursing staff working in the UK:

The RCN recognises the impact that non-UK nursing staff make to the UK's health services and has expressed serious concerns about the introduction of a health surcharge for all non-EEA migrants coming to live in the UK. Overseas nursing staff working here are already contributing to our health system as part of the nursing workforce and by paying tax and national insurance. Therefore, this surcharge is patently unjust. Moreover, it adds a further and unnecessary cost to their recruitment. The RCN raised these concerns during the passage of the Immigration Act 2014, and calls on the Government to reverse these rules.²⁸

Matthew Offord also raised concerns about the impact of the health surcharge of NHS migrant workers during a Westminster Hall debate in

²⁶ British Medical Association, [NHS surcharge angers visa doctors](#), 1 April 2015

²⁷ British Medical Association, [Immigration Act](#) [last accessed 15 October 2015]

²⁸ Royal College of Nursing, [RCN position statement on international recruitment](#), June 2015

July 2015. He said it was perverse that healthcare professionals working in the NHS are penalised by having to pay an additional amount:

The NHS is an employer of those considered to have skills that are needed in this country, and a tier 2 visa allows “skilled workers” from outside the European economic area with a job offer to enter the UK. However, it has been established that the immigration health surcharge is levied against non-EU citizens. This requires every applicant and their dependents to pay not only their visa fees but a further £200 each year for up to three years. It strikes me as perverse that the very people needed to work in the NHS are being penalised by paying an additional amount that should perhaps be part of their terms and conditions of employment. Can the Minister explain in his summing up how the figure of £200 was reached and whether he feels that levying this tithe against NHS employees is counterproductive?²⁹

In response, Health Minister Ben Gummer said that it would be wrong for the NHS, as an employer, to exclude itself from the broader policy of reducing immigration from the hundreds of thousands to the tens of thousands. He also said the a sustainable workforce in this country will only be achieved if “we do all we can to ensure that those who are British and have grown up here and want to work in the NHS have the opportunity to do so”.³⁰

²⁹ [HC Deb 1 July 2015 c495W](#)

³⁰ [HC Deb 1 July 2015 c511WH](#)

3. Language testing for overseas healthcare professionals

In May 2010, the Coalition Agreement set out that the Government would “seek to stop foreign healthcare professionals working in the NHS unless they have passed robust language and competence tests” in order to assure patient safety and quality of care in the UK.³¹

Robert Francis QC, in his report of the Mid Staffordshire NHS Foundation Trust Public Inquiry included a recommendation, that “Government should consider urgently the introduction of a common requirement of proficiency in communication in the English language with patients and other persons providing healthcare to the standard required for a registered medical practitioner to assume professional responsibility for medical treatment of an English-speaking patient”.³²

3.1 Non-EEA healthcare professionals

The healthcare regulatory bodies apply language controls to non-EEA healthcare professionals as a condition of their registration. Non-EEA doctors, nurses and other healthcare professionals who wish to register to practise in the UK must demonstrate that they have the necessary English language competence before they can be registered. The General Medical Council – which regulates doctors – and the Nursing and Midwifery Council – which regulates nurses and midwives - use the International English Language Test System (IELTS) to undertake language competency tests.

3.2 EEA healthcare professionals

EU legislation does not allow the healthcare regulatory bodies to require evidence of a European applicant’s knowledge of English prior to registration, even when the regulatory body has cause for concern. The application of the *Mutual Recognition of Professional Qualifications Directive* entitles EEA applicants to recognition of their qualifications in the UK, without testing whether an applicant has the necessary language skills to work in the UK. The regulatory bodies may however impose language controls to professionals from outside the EEA.

In 2013, the Government consulted on changes to strengthen the General Medical Council’s powers to apply language controls to EEA doctors. The *Medical Act 1983 (Amendment) (Knowledge of English) Order 2014* was made on 29 April 2014. The order made amendments to the *Medical Act 1983* to:

- Give the General Medical Council (GMC) the power to refuse a licence to practise in circumstances where the medical practitioner is unable to demonstrate the necessary knowledge of English- this

³¹ HM Government, [The Coalition: our programme for government](#), May 2010, page 25

³² [The Mid Staffordshire NHS Foundation Trust Public Inquiry](#), Chaired by Robert Francis QC, Volume 2, February 2013, Recommendation 172, page 1263

enables the GMC to apply language controls (where there are concerns) on applicants following registration, but before issuing of the licence; *and*

- Create a new fitness to practise impairment, relating to having the necessary knowledge of English.

In November 2014, the Government consulted on proposals to enable the regulatory bodies to apply language controls for EEA nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians. [*The Health Care and Associated Professions \(Knowledge of English\) Order 2015, SI 2015/806*](#) was published in March 2015. In order to be compliant with EU law, the Order introduced a two stage process, consisting of firstly the recognition of qualifications and secondly the granting of registration. This allows the relevant regulatory bodies to request evidence of the EEA applicant's English language capability after they have recognised their qualification, but before admission onto the register.

The Order also amends the regulators' fitness to practice powers, to introduce a new "impairment of fitness to practice" for not having the necessary knowledge of English. The proposals also gave powers to the regulators to require an individual to undergo an English language test as part of fitness to practice proceedings.

Further information is provided in the Library briefing paper on [Language testing for healthcare professionals](#).

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