Joan McAlpine

Convener

Culture, Tourism Europe and External Relations Committee

By email only

Health and Sport Committee

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Dear Joan,

EU Engagement and Scrutiny of the Committees of the Scottish Parliament

I write in response to your letter dated 21 December 2017 in which you invited the Health and Sport Committee to report back on any EU scrutiny it has carried out, particularly in relation to common frameworks and Brexit as well as the European Commission's work programme.

As noted previously, we agreed to include consideration of EU withdrawal issues into our forthcoming work as appropriate. We are still committed to this and since last year this has included work on the Draft Budget 2018-19, Technology and Innovation, Sport for Everyone and NHS Governance. The Committee also agreed to appoint two European reporters and these are currently Emma Harper MSP and Brian Whittle MSP.

As part of its continuing work into Brexit we agreed to commission research on Brexit and Health and Social Care covering the key areas that may be impacted on by Brexit, including: workforce; reciprocal healthcare; new medicines, devices and clinical trials, research; recognition of professional qualifications; public health and EURATOM. This research was published as SPICe briefing SB 18-07 Leaving the EU- implications for Health and Social Care in Scotland, on 30 January 2018.

Following publication of the research SPICe held a breakfast seminar on Brexit and Health and Social Care on Wednesday 7 February 2018. Professor Alison Britton, convener of the Law Society of Scotland Health and Medical Law Committee and Professor Jean V. McHale, Principal Investigator on a project on Health Law Outside

the EU: Immediate and Long-Term Implications have agreed to speak. This seminar was co-convened by our European reporters.

On 28 November 2017 we agreed to hold an inquiry into the impact of leaving the EU on health and social care in Scotland. The inquiry will consider what the NHS and social care in Scotland could look like post-Brexit with a focus on how potential risks could be mitigated and potential opportunities could be realised. Looking to the letter from the Minister for UK negotiations on Scotland's Place in Europe, to the Finance and Constitution Committee, the following areas were highlighted as having a potential impact on health and social care in Scotland:

- Data Protection
- Blood Safety
- Food Compositional standards/labelling
- Reciprocal Healthcare
- Funding
- Good Laboratory Standards
- Mutual recognition of Professional Qualifications
- New Medicines and Clinical Trials
- Organs
- Procurement
- Public health
- Research and Life Sciences
- Tissue
- Tobacco
- Workforce

All of these areas could fall within the ambit of the Common Frameworks which are currently being discussed between the UK and the devolved nations.

We issued a call for views seeking answers to the following questions:

1. How could the potential risks of Brexit for health and social care in Scotland be mitigated?
2. How could the potential benefits of Brexit for health and social care in Scotland be realised?
3. In what ways could future trade agreements impact on health and social care in Scotland?
4. The Joint Ministerial Committee (EU Negotiations) has agreed a definition and principles to shape discussions within the UK on common frameworks including enabling the functioning of the UK internal market. What implications might this have for health and social care in Scotland and what are your views on how these common frameworks are agreed and governed?

We received 39 submissions to our call for views including a response from the Cabinet Secretary for Health and Sport. In her response the Cabinet Secretary highlights areas of concern such as recruitment and retention of staff, ability of

academic institutes to attract medical students, employment contracts and medicines and medical devices. Concerns are also raised around possible implications of accessing EU funding for clinical research, digital health, polypharmacy, dementia, alcohol and regenerative medicine.

It is our intention to hold oral evidence sessions in March focussing on potential risks and opportunities, the areas where Scotland can exercise influence, the role of sectoral interests and the Parliament and what steps should and are being taken to prepare for Brexit.

Annexe A details the information we have gathered in our inquiries into the implications of leaving the EU for Scotland since our last letter. We will of course continue to ask questions of witnesses going forward and provide updates to your Committee where appropriate.

You note in your letter the intention to convene a meeting of all the EU reporters. I can confirm this is something our EU reporters would be interested in attending and we look forward to receiving further details in due course.

Kind regards,

Lewis Macdonald MSP

Convener

Annexe B

Health and Sport Committee Official Report extracts – EU Questions

Meeting date: 17 January 2017 – Scottish Public Services Ombudsman

http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10736&mode=pdf

Richard Lyle MSP: You made an interesting comment about the European Union and Brexit in your submission. I am sorry to bore people with that word again. You say that Brexit "is something of which we are currently mindful but we are not yet clear what the impact may mean for the direct delivery of services. We will be monitoring this carefully." Do you believe that when Britain—hopefully, it will not be Scotland—comes out of the EU, laws will be changed that will affect your service in some way? You may want to expand on that.

Jim Martin, Scottish Public Services Ombudsman: As far as my office is concerned, the issues are what the public service in Scotland will look like post-Brexit and whether that is likely to bring complaints to us. Until we find out what happens, we will simply not know, but I am sure that my successor will keep an eye on this place and on what committees such as the Health and Sport Committee think about Brexit and the impact that it will have.

Meeting date: 24 January 2017 – sportscotland

http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10755&mode=pdf

Clare Haughey MSP: I will move on to Brexit. What will its impact be on sport in Scotland? How significant is that issue for sport here and what sports will be most impacted?

Stewart Harris, sportscotland: We have given formal feedback on the issue. Sport is largely devolved, so the bulk of what we do—95 per cent—is in our hands. The effect will depend on how the economy works and on Government policy in the future, but I will put that to one side.
From a high-performance perspective—I am careful not to use the word "elite", because we are talking about performance—the free movement of specialist coaches and staff who can help to teach and to bring us to the next level might well be impacted. As we sit here today, goodness knows what is going to happen down the track, but that is the one area where we could see an impact. The rest depends on our own decisions, the economy and how things progress.
Clare Haughey MSP: There is a recognition that the impact is more likely to be on the more professional sports, if we look at it in that way.

Stewart Harris, sportscotland: It relates to the movement of specialists.

Clare Haughey MSP: Absolutely—it relates to the movement of players, particularly in sports such as football and rugby, as well as the movement of coaching staff, as you said. Have you had any discussions with governing bodies, clubs or major organisations about how that might work and the impact that Brexit might have on them?

Mel Young, sportscotland: Not really. Part of the challenge is that we do not know what will happen, which is difficult. There have been preliminary discussions, but so much is up in the air. We must have on-going discussions as the situation develops with the UK Government.
Clare Haughey MSP: Have you looked at how a potential loss of EU funding might impact on sport in Scotland?

Mel Young, sportscotland: We do not get much EU funding, but our partners' programmes include Erasmus, which will be affected. Although the UK Government says that money will replace that funding, there is no guarantee that that will happen. As I have said, so much of this is up in the air, so it is difficult to say.
I do not think that there will be a huge impact on sportscotland from a change in EU funding, but that might be a possibility for particular sports. We will need to focus on Brexit but, as you know, the situation changes week after week, so it is difficult to give a definitive answer.

Meeting date: 9 May 2017: NHS National Waiting Times Centre

http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10933&mode=pdf

Clare Haughey MSP: I want to pick up briefly on something that Mike Higgins said in reply to Colin Smyth about current staffing and having staff from the European Union. How does he see Brexit impacting on the recruitment and retention of staff at the Golden Jubilee?

Mike Higgins, NHS National Waiting Times Centre: I think that we have a small number of EU staff. Like everyone else, we are waiting to see what will happen about the EU, so the simple answer is that we do not know, although at the moment we do not expect any major difficulties that we will be unable to cope with.

Jill Young, NHS National Waiting Times Centre: When the Brexit decision was taken, we did as detailed a review of the situation as possible given the information that was available, and we took it to our board as a risk paper. We examined all the dimensions that were involved including export—which we do not really do—workforce and procurement. On that last point, it is important to note that a lot of the highly complex equipment that we have for magnetic resonance imaging is built and bought from abroad, and the value of the pound could have an impact on us in that regard.
We took that paper to our board for it to decide whether the risks should go on to our risk register and what mitigating actions we could take with regard particularly to recruitment, but also to expansion if we go ahead with the purchase of two new

pieces of MRI theatre equipment. We are lucky that we have national procurement in Scotland so the procurement is done once for Scotland, resulting in the best deal that we can get. However, the outcome of Brexit will determine much of what we are talking about.

Clare Haughey, NHS National Waiting Times Centre: Was Brexit put on to your risk register?

Jill Young, NHS National Waiting Times Centre: It was not, because it was determined to be a low risk at that point. We use a matrix to determine risk, which involves the impact of the event and its likelihood. After full discussion at the board level, it was determined to be a low risk, so it did not go on to the board register. However, we still monitor it.

Meeting date: 30 May 2017 – NHS Governance

http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10988&mode=pdf

Clare Haughey MSP: Section h on page 2 of Claire Pullar's submission says:

"There is widespread belief that NHS will crumble without the ongoing contribution of its international staff. As one member told us: 'The anti-immigrant culture in the UK at the moment is hugely embarrassing and personally hurtful.'"

I ask the panel to comment on the pressures that the current situation in the United Kingdom around Brexit is causing for our NHS staff.

Claire Pullar, Managers in Partnership: I imagine that all the panellists will have something to say on that. The situation is unpleasant, and there is a spike in people seeking support. They feel that decisions are being made against them because they are not seen as part of the future team or workforce. Naturally, it is assumed that they will not be here. They are asked, "Why are you still here?" and told, "You should see the writing on the wall—you are not wanted," although they are also told, "We want you to work here," and, "If you were British, it would be fine." Those attitudes are permeating, and newer casework is presenting for me.

Kenryck Lloyd-Jones, Allied Health Professions Federation Scotland: In physiotherapy, we have international students who have studied in the Scottish system, have qualified as physiotherapists and now work in the NHS, where they can work for two years following graduation. After that, they have to work above a certain threshold or they can no longer work in the NHS. At the moment, that threshold is set at about £35,000, which means that a band 6 physiotherapist does not qualify. We have a few situations in which consideration is being given to ways in which such staff members can be kept on, but they simply cannot be kept on, because the rules say that it is not possible. That is at a time when we are having trouble filling vacancies in many areas, and the biggest impact is often in the rural areas and the small teams. We have concerns, which we have voiced, about the

current arrangements for non-European Union people—for example, I know of a case involving a Canadian-born person. There is a large question mark over where we will be with EU workers in the future. If that approach were to be applied to EU workers in the NHS, the impact would be significant.

Donald Harley, British Medical Association: You may already know this, but a not insignificant proportion of doctors are EU graduates. Scotland already struggles to recruit and retain enough doctors overall to meet the operational commitments that we set. In the worst-case scenario, if we were to lose EU graduates, we would have another significant hole in the medical cover that we provide in Scotland. Obviously, we all hope that that is not going to happen, but there is no certainty of that. We hear many anecdotes about people making arrangements to look for employment elsewhere in the EU rather than take a chance that there will be an appropriate settlement here, because something adverse may happen.

Ros Shaw, Royal College of Nursing Scotland: I agree. We cannot afford to lose EU nursing staff, either. We have a significant number of vacancies at the moment. At the end of December, we had 1,800 hospital vacancies and more than 600 community nursing vacancies just in the NHS. I appreciate that the discussion is about the NHS, but the situation is even worse in the independent sector, which relies heavily on EU nationals.

Matt McLaughlin, Unison: Constant constitutional confusion does not help anyone, particularly people who need a bit of confidence that, if they come here to work, they can stay here and invest in their futures. The issue goes beyond professional grades. In many areas, support staff are heavily made up of EU colleagues and colleagues from further afield. It would be really helpful if we could get beyond the constitutional spin and into the delivery of service. Stuff like workforce planning will help.

Meeting date: 19 September 2017 – NHS Governance

http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11090&mode=pdf

Maree Todd MSP: My final question is aimed mainly at Elaine Mead and Jennifer Porteous. As well as purse-string strains, there are real challenges with recruitment in the Highlands and Islands. One of the ways in which we have tackled that is by using targeted campaigns in Europe to recruit European health professionals. Given that we have you here today and that recruitment challenges are definitely a huge underlying cause of staff stress, I would like to hear your thoughts on how we are going to manage the situation post-Brexit.

Jennifer Porteous, NHS Western Isles: In NHS Western Isles, we were pleased a couple of years ago to lead on a northern periphery project on recruitment and retention, which included the Arctic countries. We were the only health board in Scotland that was involved, and we worked in close liaison with Greenland, Iceland and Norway. We think that we are remote, but experiencing the healthcare structures

in those countries makes us rethink that. We got some very good learning from that experience. The main outcome was identifying that there are twin key challenges in remote and rural areas: social isolation and professional isolation. We cannot address one without addressing the other. If we focus only on one, we do so at a cost for the other, and the change is not sustainable. For example, a campaign for particular career opportunities or learning and development opportunities comes at a cost for social isolation. Likewise, a focus on social issues such as housing or schools will not be a professionally sustainable solution. We have been looking at taking a twin-track approach. With the medical director and the nursing director, we have been looking at opportunities with my colleagues in the north, particularly in NHS Grampian and NHS Highland, for staff to be professionally supported by the bigger boards for periods of time. We are working with Shirley Rogers and her team in the Scottish Government to look at ways to implement such best practice across Scotland. It is no easy solution. I have worked in various health boards during campaigns in eastern European countries for professions such as dentistry. Such campaigns might work initially, but unless the infrastructure is in place to give long-term support, they are not effective.

Meeting date: 31 October 2017 – Technology and Innovation in Health and Social Care

http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11166&mode=pdf

Tom Arthur MSP: There has been much discussion about the relatively better performance in e-health of many of our European partners. I was intrigued to learn that the European Commission has been consulting on how we can promote and further integrate e-health around Europe and, in particular, that there is potential for cross-border communication. That is very interesting, particularly in relation to the European health insurance card. However, we are in a very uncertain situation with Brexit, so I am keen to hear comments on the opportunities for further integration that could be missed as a consequence of Brexit and, more generally, on the potential risks that Brexit poses to the further development of e-health in Scotland. Who would like to go first?

Professor McKinstry, University of Edinburgh: One example on the research side is the call for the “scale-up blood pressure” project by 2022, which is absolutely up our street. We could really do it, because Scotland already leads Europe in that. The big concern that a lot of people have now is that, despite the fact that we are allowed to apply for such things, European partners are wary about taking on UK partners because they think that that might reduce their chances of being funded.

Tom Arthur MSP: Have you experienced that already?

Professor McKinstry, University of Edinburgh: We do not know, but we would like to think that that is why we are not getting funded, rather than because our applications are not very good.

Maureen Falconer, Information Commissioner's Office: I want to clarify that Brexit will not make any difference in terms of data protection, in case anyone thinks that it will go out of the window once we leave the EU. The General Data Protection Regulation will be transposed into UK legislation. For as long as we continue to trade with Europe, if trade involves sharing of personal information, we will have to have a data-sharing regime that is on a par with the one in Europe. Data protection will continue, if anybody thought that it was going away.

Chaloner Chute, The Digital Health and Care Institute: There is also a potential problem in terms of trade. With the new data-sharing norms that are starting to pop up around Europe, our companies will not be able to take advantage of those markets if we do not do similar things. Estonia gets a lot of press because it has created a cottage industry: it gives away its X-Road system for free. It is open source; you can literally go on to a website, download everything that you need and build your own system without paying anything. It has done that because hundreds of small and medium-sized enterprises in Estonia then offer services, saying that they know exactly how to optimise clinical systems on the back of those sorts of bridges, for example. That is Estonia's tactic. In the post-Brexit situation, if we let ourselves diverge technically from the rest of the market, the stuff that we are selling will not be that interesting to it. That is a risk.

Tom Arthur MSP: I would like clarification. If the European Union of 27 moves to having greater interoperability between various systems, will it be the case that, for EU nationals of one country travelling in another who require medical treatment, that treatment could be provided with greater efficacy than would treatment for people from countries outwith that integrated system?

Aileen Bryson, Royal Pharmaceutical Society Scotland: The only example that I have is a story of an American lady who did not have her medication and asked a pharmacist whether they could help. The names of medicines and the doses are all completely different here, but she asked whether the pharmacist had access to the internet. Not all our pharmacies have internet access, but this one did. Using the woman's password, the pharmacist accessed her medical information, including her hospital records and consultants' notes. The pharmacist could get absolutely everything that was necessary to know what medication she was on and to provide continuity of care. It sounds simplistic when you say it like that, but that is not the case in the European Union. We did not address the European consultation because we have so many issues with trying to get interoperability between our systems at home, as has been commented on. It was too big a question for us as an organisation. However, obviously, it can be done.

Meeting date: 12 December 2017 – Care Home Sustainability

http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11269&mode=pdf

Emma Harper MSP: Donald Macaskill touched on the issue of staffing, in which I am interested. The Scottish Care submission states:

"Nurses are critical to ensuring safe and effective delivery".

My first job, before I started my training as a nurse, was in a care home. If we look at the statistics on nurses who are giving up their registration, or the stats on recruitment this year in comparison with last year, we see that there are major challenges. Are there recruitment challenges in rural as well as urban care homes? What will be the impact of our exit from the European Union in terms of the care home staff who are providing care right now?

Dr Macaskill, Scottish Care: Brexit is already having an impact—and it will be quite profound. We estimate that 8 per cent of individuals who work in social care nursing, and 6 per cent of general social care staff who work in care homes or provide care-at-home services for older people in particular, come from the European Economic Area. We have profound concerns. There is a nursing vacancy level of 31 per cent in social care, and we are actively seeking solutions and working with the chief nursing officer to address those issues. A fundamental issue is highlighted in the survey results that were published this morning by the Royal College of Nursing Scotland, which reveal the degree of distress and emotional fatigue that the job of nursing is leading to. I suggest that the impact in the care sector is even greater. Last month, we produced a harrowing and disturbing report called "Fragile foundations: Exploring the mental health of the social care workforce and the people they support". We need to start caring for the carers, or our current recruitment difficulties will appear small in comparison with the potential future situation.

Meeting date: 9 January 2018 – Draft Budget 2018-19

http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11292&mode=pdf

Brian Whittle MSP: I appreciate that we are short on time, convener. How is the cabinet secretary inputting into discussions on Brexit, with regard to its implications for health and social care in Scotland? Have her officials been, or will they be, involved in the negotiations? What methodology will she employ to hear the views of affected sectors? How does she propose to keep the committee updated?

Shona Robison, Cabinet Secretary for Health and Sport: As I have said to the committee previously, Brexit is a major concern not just for the NHS but for the care sector. We are inputting into Scottish Government discussions, and Mike Russell and I meet regularly to discuss intelligence from the NHS and care services.
I also meet stakeholders regularly, in order to get feedback from them directly. For example, the British Medical Association has done a lot of work with its stakeholders to give us such information. I recently met Scottish Care and discussed with Dr Donald Macaskill some of the current pressures. He was able to tell me that, for example, recruitment agencies that operate across Europe and provide nurses for nursing homes here have essentially closed their doors in Europe, because nobody was coming through them, and that nursing homes are now feeling the impact of that. Therefore things are happening in the here and now; Brexit is not just about looking to the future. We are looking at trialling a programme in Dumfries and

Galloway in which NHS nurses will provide a locality-based response to the needs of nursing homes. There will have to be a contractual element to that, but that is an example of how we are working with Scottish Care to provide a practical and tangible solution to the fact that nursing homes are not going to be able to recruit nurses, for all the reasons that we have set out. Therefore we are very much involved in the discussions and in providing intelligence, but also—and importantly—in mitigating what will be a very difficult impact on the NHS and our care services.

Brian Whittle MSP: How do you propose to keep the committee updated?

Shona Robison, Cabinet Secretary for Health and Sport: I am very happy to write to the committee regularly, as information emerges. As the committee knows, the situation is very fluid, as are the negotiations. If there should be times when we have something substantial to tell the committee, I will be happy to write to it with that information.