

NATIONAL CITIZEN PREFERENCE IN AN ERA OF EU FREE MOVEMENT

Submission to the Government's 'Review of the Balance of Competencies'¹

David Goodhart

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With Government looking to review the balance of competencies – between the UK and the EU – now is an opportune moment to revisit the question of freedom of movement and national citizen preference. Many EU citizens value the fact that it is easy to be more than just a visitor in another EU country – that it is possible to study, work, live and retire there, even if relatively few (currently about 3 per cent) actually take advantage of this possibility. But it is also my contention that the idea of non-discrimination between national citizens of the EU—that underpins freedom of movement—has gone too far for most EU citizens. Non-discrimination has become too indiscriminate. EU law and the decisions of the European Court of Justice have gradually dissolved almost all special rights, rules and privileges for national citizens, in particular in labour market and welfare systems (also in the way university students are treated). This was not noticed until recently because the scale of movement was slight. But with the arrival of a bloc of relatively poor countries into the EU from central and eastern Europe it has become all too evident to citizens, and it is not popular.

This is especially true in the UK (which opened its labour market doors early to the new arrivals in 2004) but since 2011 it has been true for poorer citizens in other richer EU states like the Netherlands too. The price that the EU pays in terms of unpopularity and mistrust is too high for the relatively modest economic gains associated with unqualified free movement. Abolishing free movement is neither possible nor desirable but it should be possible to enter various qualifications and exemptions to make it work better, respecting the continuing attachment to the idea of 'fellow citizen favouritism' and reducing the disruption to national social contracts. Few EU citizens consider themselves Europeans first, and they regard the inability of their national governments to retain ultimate control

¹ For more information see: <https://www.gov.uk/review-of-the-balance-of-competences>

over who lives and works in the country and who qualifies for various forms of social support as rather a bewildering development. The cost-benefit calculation is not working, at least for the less well off in some of the richer EU countries. Indeed, the free movement system overall is not working as intended. It was designed with the movement of a few thousand professional people in mind between countries at the same level of economic development. But it has in recent years become a mass system encompassing mainly low skilled occupations – a kind of intra-EU ‘gastarbeiter’ system.

The background

The 1957 Treaty of Rome enshrines the principle of free movement, meaning the right to reside and work in another EU country. Initially free movement legislation focused on non-discrimination for those who were economically active, meaning employees and the self-employed (though the latter were covered by free movement of services rather than persons). But the right to work was not unqualified: for several decades there were various limits and controls including the requirement that you had to have a job offer from an employer, you could not just turn up and look for work for an unlimited period. Equal rights were gradually extended beyond workers to others such as students and retirees. And in 1992 the Maastricht Treaty introduced the concept of EU citizenship. The non-national EU citizen now lives in another EU country not as a worker with equal rights but as a full citizen with equal rights. The rulings of the European Court of Justice have, over time, deepened and extended those rights (which are now gathered together in the 2004 free movement directive). More or less the only thing that a non-national EU citizen cannot do that a national citizen can do, having established “habitual residence,” is vote in national elections. However, the idea that freedom of movement is non-negotiable does not stand examination; the principle may be non-negotiable but no one is challenging that, the practice and shape of it has been repeatedly negotiated since 1957 and should continue to be.

To repeat, none of this had much significance until a few years ago. As recently as the year 2000 only 0.1 per cent of EU citizens moved to live in another EU country, it was a largely symbolic right used mainly by multinational companies, spouses, senior professionals (especially academics) and a small but growing number of retirees. The reason for little use of free movement was that living standards remained very similar across the EU and the incentive to move was thus rather low.

That all ended in 2004 with the arrival of the central and eastern European countries. Three countries - the UK, Ireland and Sweden - decided to give the new entrants instant access to their labour markets rather than apply the usual seven year transitional period that all other member states enforced (ending in 2011).

Defying expectations of a flow of at most a few tens of thousands of central and eastern Europeans a year almost 1.5m actually arrived in the UK in the 7 years after 2004 (about 1m remain resident in the UK). It was the biggest peacetime movement in European history.

What was the reason for the large movement to the UK (Ireland also experienced a relatively large inflow, Sweden rather less)? It was partly a function of the weakness of the central and eastern European economies as they gradually became integrated into the western capitalist system. Numbers may also have been pushed up by the fact that only a little more than a decade earlier there were severe travel restrictions on the citizens of those countries, the opportunity to live and work in another country for a few years was especially attractive to younger people who had not had the opportunity to travel much.

But by far the biggest reason for the larger than expected flow was the large disparity in incomes between the relatively poor joining countries - with a total population of around 80m - and the rich countries of the EU. The average per capita income of the joining countries was about one quarter that of the rich countries.

In retrospect it is clear that it was a mistake not only for Britain not to use the transitional seven years that most other EU countries did use but, for the whole EU, not to consider applying some sort of income threshold - of say 75 per cent of the average per capita income of all EU countries - before new countries were given full labour market access.

The impact

What has been the impact of this latest wave of EU free movement, which since 2011 has applied to all EU member states? This is disputed by economists: but various reports on the effect in the UK, most notably, by the NIESR (May 2011) have found remarkably little economic effect on the British born population, either positive or negative, from the great east European migration. NIESR described it as “negligible”.

Many of those who arrived have done jobs that were complementary to already resident workers and others helped to create jobs that would not otherwise have existed at all. This has contributed to an increase in GDP but probably not to higher growth per capita. And a glance at some of the figures suggests that there must have been some job displacement and downward pressure on wages for existing workers, especially at the bottom end of the labour market. According to the ONS around 20 per cent of all low skill jobs in the UK are taken by people born outside the country; and given that there are many areas with few immigrants it means that in many urban areas and sectors (such as hospitality and food processing) it will be even higher. In 2012 about 25 per cent of all EU workers were in elementary occupations and another 11 per cent worked as plant and machine operatives (16 per cent were in professional occupations).

The economic consensus, as mentioned, is that the great east European migration has had surprisingly little effect on per capita growth and incomes or on employment, with some benefits for employers and better off citizens and some disbenefits for workers at the bottom end. I think this may underestimate the negative effects at the bottom, and among the self-employed builders and tradesmen. The Migration Advisory Committee is in the process of taking a closer look at this issue.

In terms of welfare and public service drain and fiscal benefit the picture also points to surprisingly little benefit or cost to the existing population, except again at the bottom. There is no evidence of significant abuse of the welfare system by central and eastern Europeans. There is only anecdotal evidence of extra pressure on public services but given how unexpected the mass arrival was there was very little ability to expand the supply of schools, hospital beds, transport infrastructure and so on, so an extra 1m-plus people are using more or less the same supply of public services.

On fiscal benefit, Christian Dustmann has estimated that EU citizens contributed a net £2bn a year between 2001 and 2011 (out of a national economy of £1.5 trillion). But that includes the higher paid mainly professional employees from the EU15; if one considers only the poorer east Europeans who have arrived since 2004 mainly doing poorly paid work (and often drawing on tax credits) it is possible that the fiscal contribution would be close to zero or even negative. Though if workers arrive here having been educated and trained elsewhere and leave before they need elderly care they are likely to have some positive fiscal impact (especially if they do not have children).

The UK has felt the force of free movement in recent years more than any other EU country partly because of the early opening of its labour market in 2004 but also because it has an attractively open labour market with a long tail of low skill jobs and a common pool welfare system which places few restrictions on access (plus the English language). Ease of access to work, housing and healthcare have added to the magnet effect of the UK.

Many other EU countries have more or less hidden protections for their domestic workers whether through “insider” labour market regulation or more insurance based welfare systems. Nevertheless other EU countries are now starting to worry about the effect of their 2011 labour market opening. (Germany has a Polish population almost as large as the UK but unemployment remains quite low by recent standards so it has not yet become a national issue.)

What about the social and cultural effects of the great east European inflow? The roughly 100,000 people from France who live in London, or the similar number from Germany, are mainly in professional jobs and generally blend in well. Some Europeans have become "commuter immigrants" - working in the UK for a few weeks or months and then

returning home for a similar period. The social story for the several hundred thousand east Europeans who are establishing roots in this country is mixed. In many places the newcomers have fitted in well, speak good English and (especially in the case of Poles) often help to revive Catholic church congregations and schools. But in other places the eastern Europeans live quite separately in their own enclaves and have little contact with the British population.

Britain experiences an overall "human trade deficit" on free movement with (in 2011) around 2.7m EU citizens living and working here and 1.4m British citizens living and working in the EU. The two biggest inflow populations are Polish (690,000) and Irish (350,000) and the two biggest destination countries for British citizens are Spain (411,000) and Ireland (397,000).

Supporters of the free movement status quo stress not just the importance of the principle for the idea of creating an EU civil society but the establishment of the outlines of a European labour market and the benefits of allowing poorly performing EU economies to export their temporary unemployment to better performing nearby economies, helping to smooth over temporary frictions.

But labour markets remain overwhelmingly national and exporting unemployment has to be managed so it is not at the cost of national citizens (and exporting unemployment from poorer countries also means exporting their ambitious young graduates who could be helping to build their still fragile economies). And the slender gains from such new developments must be set against the much greater danger that it will alienate too many people from the whole EU project. European civil society is fostered by many things including cheap air fares, the Champions League and the organized interaction between EU universities. The ease of interaction in professional labour markets may be a factor too. Yet a European labour market in, say, academics would still be possible under a more restrictive version of freedom of movement.

Increasing competition for jobs and public services at the lower end of the income spectrum makes the EU less not more attractive to the majority of citizens in richer EU states. And one of the problems with free movement on its recent large scale is that in a country like the UK there is an asymmetry in terms of the distribution of costs and benefits. Better-off retirees and young professionals who are not disadvantaged by EU inflows tend to also be the British citizens who are most likely to want to live and work in another EU country, while those with few skills who experience the inflow most negatively inside Britain are also the least likely to benefit from working abroad in the EU.

Nonetheless it is clear that free movement is a deeply ingrained principle of the EU and will not, and should not, be scrapped. It is part of the

"religion" of the EU. But is applied too inflexibly and without sufficient regard to national sentiment.

Solutions

The UK now has an opportunity to lead a movement across the EU to bring free movement back in to line with what most EU citizens would regard as fair - especially in labour markets and welfare. The EU is a club of democracies and its rules should not be regarded as set in stone if they are not working well. The suggestions below could be regarded as part of a British "opt out" - partly on the grounds that Britain has been (and remains) more impacted than most other EU countries - but the ideas would be more persuasive if presented as a more general "stock take" on the post-2004 experience of free movement and therefore available to all EU countries. None of these suggestions below should apply retrospectively and all EU citizens should continue to have the right to visa-free entry into any other EU country and the right of settlement if they are able to support themselves. I am not an expert on EU law but I believe some of these suggestions could be implemented without any changes to law, most could be implemented through changes to directives (secondary EU law) which usually only requires majority voting, while other ideas such as the "safeguard clause" might require a treaty change with agreement from all EU states (and is therefore much less likely to be achievable).

1. PER CAPITA INCOME THRESHOLDS: Looking ahead to further EU enlargement—the Ukraine or Turkey, or even Serbia—we should avoid repeating the experience of the recent large movement from central and east European countries. The simplest way to ensure this is to make sure that automatic labour market access does not apply until a country has reached 75 per cent of income per head of the average of all other EU countries.

2. QUALIFICATIONS ON FREEDOM OF MOVEMENT: EU transnational labour market regulation should in future build in more national caveats and discretions. Some of these qualifications might be triggered if the EU inflow breaches a cap of, say a net inflow of 75,000 in a single year in the UK (or whatever the appropriate number might be in smaller countries). This might trigger certain emergency measures for a time limited period such as allowing national governments to insist that higher skilled EU nationals have a job offer before they come (as used to be the case) and lower skilled EU nationals would only have access to jobs that are on an approved shortage occupation list. Similarly, countries could have the simple right to enact a "safeguard clause", as Switzerland currently does, to restrict EU inflows from certain countries. Britain might have enacted such a safeguard clause, or the 75k cap, after 2005 when the net EU inflow exceeded 100k for three years in succession. In this way the small number of professionals from, for example, France, Germany and the Netherlands could continue to have full access while restrictions would be

placed on countries, such as Poland or Lithuania, where most of the inflow is into elementary occupations.

3. LABOUR MARKET: Own citizen preference in labour market support should not fall foul of the anti-discrimination rules, as it currently does. There are many ways this special help could be arranged. It could be managed geographically or by category of person or some combination of the two: in areas of particularly high long-term or youth unemployment special government employment incentives (such as waiving national insurance for the hard to employ) could be provided **ONLY** to national citizens. The Labour Party, for example, is currently offering a "jobs guarantee" for people under 25 who have been unemployed for more than a year. It should be possible to reserve this only for national citizens, similarly with any special help in training or apprenticeships. Similarly the practice of employment agencies recruiting only from other EU countries and bringing in groups of workers without any opportunity for local people to apply for the jobs should be banned. (A beefed up labour inspectorate is needed to police such activities and root out abuse of minimum wage legislation.) Finally, it is still possible to reserve certain jobs, such as those in the higher civil service or the armed forces, for national citizens. Different countries interpret the rules in different ways, but countries should legitimately be able to draw the net relatively wide to include jobs where reading the cultural codes of a country or speaking the language like a native are relevant job criteria.

4. WELFARE: Currently EU citizens have access to most aspects of the welfare state simply by virtue of being habitually resident in the UK (indeed they are currently allowed to draw on welfare for the three months prior to qualification for habitual residence, though the UK government is trying to prevent this). They usually have to pay into the system here for two years before acquiring rights to contributory benefits if in work (in the same manner as UK citizens). But they qualify almost at once for non-contributory benefits, and for social housing, so long as they are habitually resident and working or seeking work. This is considered unfair by most people. Attempts are now being made to make the habitual residence test tougher in a way that would probably exclude some "commuter immigrants." (The practice of paying child benefit to children in another country should be stopped at once.) But a simpler and more decisive rule would be for non-citizens from the EU to have a qualifying period of two years before acquiring access to child benefit, tax credits, job seekers allowance, housing benefit and disability benefits. And for social housing there should be a five year rule. As most supporters of the status quo argue that EU nationals do not draw significantly on benefits it should have little material impact on them. European nationals would continue to get instant access to public services and would be treated more favourably than non-EU immigrants who normally have to wait five years before having full access to welfare and public services. The same rules would obviously apply to British citizens living in other EU countries.

5. STUDENTS: The issue of having to treat EU students in the same way as UK students from the point of view of fees and grants also needs to be reviewed. It seems to have had the perverse effect of keeping the number of European students in the UK lower than it might otherwise have been as universities have a much bigger incentive to attract foreign students from outside the EU who pay higher fees. A fee structure somewhere between the UK level and the outside EU level should be considered.

Conclusion

Some of the proposed labour market changes above would be largely symbolic. A highly motivated Latvian graduate with relatively low wage expectations is still likely to be more attractive to employ than many young British citizens at the bottom end of the labour market, even with a state employment incentive that excludes the Latvian. And special training and other help already goes overwhelmingly to national citizens. Nonetheless, the symbolism is important. And if large scale free movement becomes more entrenched more non-citizens are likely to qualify for special help. Similarly, citizens do not object to people from other European countries drawing on Britain's welfare and social security inheritance once they have contributed for a short period. The instant access demanded by non-discrimination rules is considered indiscriminate.

Populist parties like UKIP which combine anti-EU sentiment with hostility to large scale immigration feed off the feeling that a common sense national interest is being thwarted by EU rules. This can have large political effects. Geoff Evans at Nuffield College in Oxford has evidence that Labour lost the 2010 election on the issue of immigration more than any other, its blue collar core vote either did not vote or switched away from Labour.

Such people with poor qualifications and few prospects have often lost out twice over recent decades with their former manufacturing jobs being exported overseas to lower wage countries like China and then poorer Europeans being imported to this country to directly compete with them in the new private sector service jobs that they may now be employed in.

The British are not the only people to feel disquiet about this. Spain opened its labour market to Romanians and then closed it again. Some of the central and east European countries regret losing some of their best educated young people to work in low paid service sector jobs in London. But the main group of countries that are open to the idea of restoring some citizen preference while retaining the basics of free movement are northern European countries with strong national social contracts like the Netherlands, Denmark, Sweden and Germany. Though even in those countries the issue is controversial and building a coalition for reform will require care and political imagination.

The EU has had many great geopolitical achievements to its name and continues to be a force for good on the fringes of Europe in places like the Ukraine and Serbia. The single market has been a boost to economic growth. But the rules of the club have to be made compatible with the strong continuing attachment to nation states otherwise it is hard to see it surviving in anything like its current form.

And how can it be against the European spirit to provide special support to some of the most vulnerable in your own society? What is required is not an end to freedom of movement but sufficient flexibility to allow a restoration of limited favoritism and protection, within the labour market and welfare system, for those national citizens who need it most.