

Freedom of Movement between EEA (European Economic Area) states and the EU

A helpful summary by Robert Oulds of the restrictions on free movement of people which EEA states outside the EU can apply

Membership of the European Economic Area Agreement outside the EU includes the principle of free movement of labour but does allow EEA states in practice to place restrictions on immigration from EU states.

It is possible to impose restrictions on immigration (from EU and other EEA countries) whilst remaining in the EEA. Liechtenstein, an EEA member with less potential influence than Britain, continues to use clauses in the EEA agreement to restrict the movement of persons. Article 112(1) of the EEA Agreement reads "If serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising, a Contracting Party may unilaterally take appropriate measures under the conditions and procedures laid down in Article 113" The restrictions used by Liechtenstein are further reinforced by Protocol 15 (Article 5-7) of the EEA Agreement. This allows Liechtenstein to keep specific restrictions on the free movement of people. These have been kept in place by what is known as the EEA Council (1) .

There will also be greater latitude to restrict non-British EU citizens' access to benefits and to deny residency to those who are deemed not to have sufficient resources to support themselves. The current debate in Britain on immigration largely ignores the role of the European Court of Human Rights and the European Convention. Article 3 of the Convention (inhuman or degrading treatment or punishment) and Article 8

(private and family life, his home and his correspondence) would also be relevant to the issue of immigration. These two articles are often taken together , especially in cases of repatriation.

EEA/EFTA states are outside the provisions of Article 6 of the EU's Treaty on European Union which states: 2. The Union shall accede to to to the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law..

There is already a great deal of flexibility in the EEA agreement. This goes beyond the ability to restrict immigration an opt-out of areas of EEA rules. Iceland even unilaterally imposed capital controls after its financial crash of 2008. This is permitted within the EEA safeguards. Article 112.(2). There is also no enforcement mechanism to prevent this from happening even if such flexibility was not contained within the EEA. Whilst this paper does not advocate such a policy it shows that some restriction on the free movement of people can be implemented.

The EEA rule relating to freedom of movement, Directive 2004/38 has qualifications, conditions and limitation. Persons exercising their right of residence should not however become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence. Therefore the right of EU citizens and their family members for periods of residence no longer than three months should be the subject of conditions. For periods of residence longer than three months. Member states should have the possibility to require EU citizens to register with the competent authorities in the place of residence, attested by a registration certificate issued to that effect.

The treaty allows restrictions to be placed on the right of free movement and residence on the grounds of public policy,

public security or public health. Article 7. 1b(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host member state during their period of residence and have comprehensive sickness insurance cover in the host member state. (3) No right is absolute and neither is freedom of movement within the EEA nations after they have assessed the relevant legislation and applied it according to their own interpretation of what freedom of movement means.

Footnotes

(1) EEA Council Decision No 1/95 . Official Journal of the European Communities, 20 April 1995, pages L 86/58 and 86/80 .

(2) Official Journal of the European Communities , 3 January 1994, pages L/28, 176-8 and 562

(3) Directive 2004/38/EC of the European Parliament and Council of 29 April 2004.