

Some Restriction on free movement of people is possible within the EEA agreement

Remaining in the single market as an interim option after leaving the EU does allow a country to place restrictions on immigration. The so-called "Norway Option" is being widely debated at the moment, but it has received a good deal of criticism from those whose prime reason for supporting withdrawal from the EU is their desire to see immigration reduced. Nevertheless, although this arrangement may not satisfy everyone seeking an "out" vote, not only it is the best way of ensuring we win a sufficient number of votes to leave the EU, but it does at least allow some restrictions on immigration, as Robert Oulds from the Bruges Group explains:-

It is possible to impose restrictions on immigration whilst remaining in the European Economic Area. 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 citizen's access to benefits and to deny residency to those

who are deemed to not 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 of Article 6 of the EU's Treaty on European Union which states; 2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties 3. Fundamental rights, as guaranteed by 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 and opt-out of areas of EEA rules. Iceland even unilaterally imposed capital controls after its financial crash in 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 radical steps that run contrary, even to the four freedoms of the EEA, can be implemented.

The EEA relevant rule relating to freedom of movement, Directive 2004/38, has qualifications, conditions and limitation. (10) 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 residence for Union citizens and their family members for periods in excess of three months should be subject to conditions. (12) For periods of residence of longer than three months, Member States should have the possibility to require Union citizens to register with the competent authorities in the place of residence, attested by a registration certificate issued to that effect. (22)

The Treaty allows restrictions to be placed on the right of free movement and residence on grounds of public policy, public security or public health. Article 7, 1 b) (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. What is more, EEA rules only apply to EFTA 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, 20th April 1995, pages L 86/58 and 86/80

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

[3] DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004