IPPR

BRIEFING

Marley Morris

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UNLOCKING THE EU FREE MOVEMENT DEBATE

Institute for Public Policy Research

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IPPR
4th Floor
14 Buckingham Street
London WC2N 6DF
T: +44 (0)20 7470 6100
E: info@ippr.org
www.ippr.org
Registered charity no. 800065

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ABOUT THE AUTHOR

Marley Morris is a research fellow at IPPR.

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The views expressed in this report are those of the author alone.

SUMMARY

This briefing sets out five areas where freedom of movement can be reformed as part of the UK's renegotiated relationship with the EU. Our proposals are credible, fair, and responsive to public concerns about free movement and EU migration.[1]

The reforms include:

- **Public services:** We propose creating a new EU fund that local authorities and services can apply to in order to alleviate pressures on schools, hospitals and housing due to migration.
- **Crime and security:** We propose changing EU law to allow greater scope for member states to expel EU migrants who pose a threat to public security. In particular, we propose removing the provision stating that EU citizens who are permanent residents cannot be expelled unless on 'serious grounds' of public policy or security and that EU citizens cannot be expelled unless on 'imperative grounds' of public security once they have lived in the host country for 10 years.
- **Undercutting and exploitation:** We propose that EU member states improve cooperation in order to tackle cross-border exploitation of free movement by unscrupulous employers.
- **Integration:** We propose changing EU law to allow the UK to require EU migrants to have an English language qualification and pass the 'Life in the UK' citizenship test in order to get permanent residence.
- **Welfare:** As IPPR has argued previously, the government should focus its efforts on changing the benefits rules on unemployed rather than in-work EU migrants. EU rules should be changed to place additional restrictions on UK benefits for unemployed EU migrants until they have worked in the UK for three years.

1 In this paper, we refer to EU migrants for clarity's sake, although we recognise that EU free movement rules apply to citizens from the European Economic Area (EEA).

1. INTRODUCTION

The government is currently pursuing a mistaken strategy on reforming free movement as part of its attempt to renegotiate the terms of the UK's membership of the EU. Its principal proposal – to limit in-work benefits for EU migrants until they have lived in and contributed to the UK for four years – has little support among other EU leaders and would require a major revision of the EU treaties. At the same time, there are plausible and practical ways for EU countries to reform free movement to address public concerns about the impacts of migration within the EU. In this briefing, we put forward a series of alternative reform proposals.

The policy proposals outlined in this briefing focus on how the government can negotiate with other EU member states to change policy at the EU level, rather than how it can address concerns about free movement unilaterally through domestic policy alone. Crucially, these reforms are not so deep as to transform the principle of freedom of movement – instead they would adapt the legislation and implementation of free movement in order to address the public's most tangible and immediate concerns. In the long term, it is clear that there are wider challenges to freedom of movement that will require more extensive negotiations and policy development – from addressing the inequalities between EU countries that have resulted in uneven migration flows within Europe and 'brain drain' from poorer member states, to managing the Schengen agreement in an era of high migration from outside Europe. Future IPPR papers will explore these broader aspects of free movement in more depth. Here, we aim to outline the immediate policy options available to the government for reforming free movement as part of its EU renegotiation.

2.
REFORMING FREE MOVEMENT

The government is currently renegotiating the UK's relationship with the EU, ahead of a referendum on the UK's membership to be held by the end of 2017. In November, the prime minister set out his reform priorities in a letter to European Council president Donald Tusk (Traynor 2015).

The government's proposals on free movement have been the most challenging of all its reform priorities, and EU migration is likely to be one of the central political issues of the referendum campaign. Public concern about immigration is at an historic high, and the government has previously committed to bringing down net migration to the UK to the tens of thousands. Currently, however, net migration to the UK is more than 300,000 a year, and immigration from EU countries makes up a substantial percentage of current inflows to the UK: over 40 per cent in the year ending June 2015, according to the November immigration statistics (ONS 2015). But as a member of the EU, the UK must respect the principle of freedom of movement, which entails more or less unrestricted migration from other EU member states. Reforming free movement has therefore become a central part of the government's renegotiation strategy, but also the most complex.

The options for reforming free movement are limited. Some have proposed placing quotas on the number of people that come to the UK from other EU member states. This would enable the government to bring down EU migration, but it would also mean directly curtailing free movement rights. Such a change would not be countenanced by other EU member states, many of whom perceive the free movement of people as the centrepiece of the EU's achievements.[2] But without quotas or similar restrictions, any reform will struggle to bring down EU migration to the degree necessary to meet the government's net migration target.

Recognising this challenge, the prime minister has proposed an alternative change to free movement: banning in-work benefits and social housing for EU migrants until they have lived and worked in the UK for four years. This is meant to address a 'pull factor' that attracts EU migrants to the UK. A benefit ban of this kind will, according to the government, bring down EU migration without the need for actual restrictions on migration flows.

Unfortunately this proposal faces two key problems. First, it is not clear that benefit tourism within the EU is a significant problem for the UK (ICF GHK 2013). The prime minister has argued that EU migrants are attracted to Britain by its benefits system, but the evidence indicates that the UK is no more financially attractive than other member states in western Europe. Analysis of net incomes after taxes, benefits and housing costs of low wage EU migrants shows that, even after factoring in tax credits, EU migrants with two children are no better off in the UK than in other western European countries, while single EU migrants without children are worse off (Gaffney 2014).

2 The Eurobarometer survey, for example, finds that: '"The free movement of people, goods and services within the EU" (57%, +2 percentage points) and "peace among the Member States of the EU" (55%, -1) remain by far the most positive results of the EU in the eyes of Europeans' (Eurobarometer 2015: 31).

Nevertheless, the thinktank Open Europe has argued that cutting tax credits would make the UK less financially attractive for EU migrants, particularly those with children (Booth et al 2014). But there is little evidence that benefits are a major pull factor for EU migrants, so it is far from clear that cutting tax credits would have a corresponding large impact on migration levels (Portes 2015). Only relatively small numbers of people would be affected, as migrants are more likely to claim tax credits the longer they stay in the UK (ibid). Therefore this proposal is unlikely to achieve its objective of significantly bringing down levels of EU immigration (although there may be reasons to reform the welfare rules for EU migrants apart from bringing down net migration, as set out in our recent paper on freedom of movement and welfare – see Morris 2015a).

Second, the government is currently struggling to find sufficient support for the four-year benefit ban among other EU leaders, because it discriminates directly against working EU migrants (Peers 2014b). Tusk has stated that 'there is presently no consensus' on the prime minister's proposal (EC 2015). Proposed efforts to circumvent this issue while maintaining the commitment to the four-year ban through a residency or contribution requirement – for instance, by ensuring that the four-year ban also applies to UK nationals aged between 18 and 22 – may be deemed indirectly discriminatory and face legal challenge (Springford 2015). This kind of change may also create a public backlash, given that it would lead to restrictions on access to benefits for UK nationals as well as EU migrants. In any case, to the extent that the proposals are not considered discriminatory, such changes would fall under the remit of domestic legislation and so implementing these reforms would not require negotiations with EU partners (Morris 2015a).

3.
A WAY FORWARD

IPPR has previously argued that freedom of movement brings major benefits to Britain and other EU countries (Glennie and Pennington 2014). But reform is necessary for two key reasons.

First, reforming freedom of movement would address a number of concerns that have been voiced by the UK public about free movement and EU migration, particularly with respect to EU migrants' access to social security and pressures on public services. Rejecting or ignoring these concerns – or not giving them sufficient weight – risks undermining freedom of movement in the long term, since if these concerns are not addressed then negative public attitudes towards free movement are likely to become further entrenched. Moreover, if the UK government fails to secure any significant reforms to free movement through its renegotiation, then this would indicate that the EU lacks the flexibility to properly address major concerns raised by one if its member states. It would also reinforce the common impression of the EU as a detached and unresponsive institution.

Second, many of the concerns raised by the public are grounded in reality. EU (and non-EU) migration has placed pressures on schools and hospitals in parts of the UK (see for example Warrell 2014). There is evidence of undercutting of workers and exploitation of EU migrants in certain industries (such as food processing and construction – see MAC 2014). And there is a considerable imbalance of migration flows between richer countries (such as the UK and Germany) and southern and eastern European member states, with the UK experiencing higher inward EU migration flows than most other EU countries (Eurostat 2015).

It is true that, in many cases, public perceptions of EU migration do not reflect the available evidence (Duffy and Frere-Smith 2014). This is particularly the case with respect to perceptions of EU migration and welfare. The evidence suggests that EU migrants make a net contribution to the UK public purse, and are less likely to use DWP-administered working-age benefits than UK nationals (Dustmann and Frattini 2014, McInnes 2015). In 2013 around 70,000 EU migrants claimed jobseeker's allowance (JSA) in the UK (DWP 2015), but two-thirds of the public believed the figure was more than 100,000 (YouGov 2013).

Nevertheless, while public perceptions may be misaligned, the underlying principle that migrants should contribute before claiming benefits is a reasonable one. Moreover, there are particular rules – such as on child benefit payments for children not resident in the UK – that do seem unfair, and there are particular benefits – such as housing benefit – that are subject to high numbers of EU migrant claimants (Portes 2015).

The renegotiations therefore provide an opportunity for the rules on free movement to be reformed to address these public concerns. In the following chapters, we first outline three key tests to measure the efficacy and plausibility of the reforms we propose, and then highlight areas related to free movement where there is potential for reform, including EU migrants' access to welfare, pressures on public services, undercutting and exploitation, crime and integration.

4.
THREE TESTS

We propose three tests of efficacy and plausibility by which the government's free movement reform proposals should be judged: their legal feasibility, their alignment with public concerns, and their fairness.

Legal feasibility

The free movement of people is governed by a number of pieces of EU legislation. The broad principle of free movement – including the principle of non-discrimination by EU nationality, particularly with respect to workers – is enshrined in the Treaty on the Functioning of the European Union (TFEU).[3] Anything that affects the basic principle of free movement would therefore require treaty change.

There are other pieces of secondary legislation that spell out in more detail how free movement should be implemented in the EU.[4] Together with judgments by the Court of Justice of the European Union (CJEU), these laws regulate freedom of movement in the EU.

For the government to achieve plausible reforms that will receive backing from other EU leaders, it needs to put forward proposals that are legally feasible. In the context of free movement, legal feasibility effectively means avoiding treaty change, because such a fundamental change would most likely not be countenanced by other member states. So the principle of free movement must be preserved, even if the specific expression of these principles is modified.

Public consent

The government has pledged to hold a referendum on the UK's membership of the EU after the renegotiation is completed and before the end of 2017. The referendum has been called to let the public have a say on this fundamental constitutional issue. It is therefore only right that public attitudes towards free movement – which polling indicates is one of the key areas of concern with respect to the EU – are taken on board through the renegotiation process. While it is clear that many people recognise the many benefits of free movement – not least the flexibility it gives for UK nationals to live and work in other EU countries – they also have considerable concerns (Ipsos MORI 2015). Without addressing public concerns on free movement, its long-term viability is put at risk, and so any reform package should be designed to address these concerns head-on.

This briefing draws on two deliberative workshops with the public in Glasgow and Upminster (Essex), comprising a total of five three-hour sessions involving 34 people in all. Each session explored participants' attitudes to free movement and EU migration. Six main concerns about freedom of movement emerged from these sessions:

3 See http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

4 In particular, the Citizens' Directive (Directive 2004/38/EC) and the regulation on the coordination of social security systems (Regulation (EC) No 883/2004). See respectively http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:158:0077:0123:en:PDF and http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02004R0883-20130108

EU migrants' access to benefits

'Generally speaking we don't have any problems with people who contribute to the country. It's the people who are not contributing, it's people who are a drain on the country.'

Glasgow

Criminals' rights to freedom of movement

'It just seems all too easy – I think there should be restrictions … especially if people have a criminal record, there should be some restrictions.'

Glasgow

Pressures on public services from EU migration

'I just think that … we've got our own issues: economic, health service, infrastructures, benefit system and … you kind of look and just think "how do we pay for this?" … And I just find that: we're an island. We've got [only] so much space and I think we're over capacity. Sorry.'

Upminster

Undercutting and exploitation in the workplace

'We need those [highly skilled] people. We do not need all the other people who are working in the black market, not paying taxes, undercutting British workers – I think it's wrong.'

Upminster

Integration of EU migrants, particularly language

'A particular problem for us is when people come over here to work and they put their children in school – and they are lovely children. But they don't have any English.'

Glasgow

Lack of reciprocity

'I haven't got a problem with the concept at all of freedom of movement … [but] I think it's not necessarily equal at the moment. And it's understanding and getting a balance so that it's equal. So that if we want to go work in Poland we are going to get the benefits we get here in England.'

Upminster

In the next chapter, we discuss reform proposals with respect to each of the first five concerns. The final concern cuts across different policy areas and underpinned much of the discussion in our sessions with the public. Therefore each of the reform suggestions we make aims to address the perception that the UK is not getting a fair deal out of freedom of movement and that the benefits of freedom of movement are too heavily skewed towards other EU countries.

Fairness

The government's proposals on free movement should seek to reform the current system in a way that is fair and reasonable to both nationals and EU migrants.

Aside from the obvious moral case for a fair and reasonable reform package, there is a pragmatic case for the government. Other EU member states are more likely to agree with the UK's position if they perceive that their own citizens are being treated fairly and reasonably. The current antagonism to the prime minister's proposed restrictions on in-work benefits exists in part because other member states – particularly those in central and eastern Europe – are reluctant to agree to a proposal that, in their eyes, would result in their citizens facing discrimination. The government's current proposals suffer from a lack of appreciation for the

needs and concerns of other member states, particularly at a time of considerable political uncertainty. A package of reforms that acknowledges other member states' concerns and treats their citizens fairly would therefore be far more likely to win vital support from EU leaders.

5.
AREAS FOR REFORM

In this chapter, we set out five areas where we believe reforming free movement is necessary. We measure each proposal against the three tests identified in the last chapter.

Welfare

As we highlighted in the previous chapter, EU migrants' access to welfare is one of the main issues driving public dissatisfaction with free movement. However, the government's current proposals to restrict in-work benefits do not appear feasible. In IPPR's previous briefing on freedom of movement and welfare, we propose a new alternative to the government's current plans that could win public support (Morris 2015a).

The key recommendations from this briefing include changing EU law in order to:

- Allow non-contributory unemployment benefits to be available only to those who have already worked in the member state in question. This would allow the UK to stop granting income-based JSA to first-time EU jobseekers.
- Extend the qualifying period for retaining worker status after becoming involuntarily unemployed from one year to three years. Anyone who becomes involuntarily unemployed before working in the host member state for three years would lose their worker status immediately (rather than after six months). The UK would then no longer be required to grant income-based JSA, universal credit or housing benefit to EU migrants for six months or more if they become involuntarily unemployed, provided they have worked in the UK for less than three years. Instead there would be a three-month limit.
- Extend the exportability of unemployment benefits for EU migrants from a minimum of three months to a minimum of six months (for the UK this would only apply to contribution-based JSA, not income-based JSA).

We have also previously recommended reforming the rules around access to child benefit. Currently, some EU migrants who are covered by the UK social security system are claiming child benefit for their children at the UK rate, even if their children do not themselves live in the UK. This issue has been highlighted as a problem across the political spectrum. We have in the past recommended changing the rules so that EU migrants in the UK who have children living in another member state only receive an amount of child benefit equivalent to what they would expect to receive in that member state (Glennie and Pennington 2014). This would correct a clear point of unfairness in the current system.

Public services

Pressures on public services rank alongside welfare as one of the public's top concerns related to free movement (Ipsos MORI 2015), and this was one of the concerns raised during our deliberative workshops. However, blanket restrictions on EU migrants' access to public services and housing would be legally problematic, difficult to implement, and unfair to migrants who are paying into the system.

As we and others have argued previously, these concerns should primarily be addressed through a central fund that local authorities and providers can apply for in order to alleviate pressures on services and infrastructure, including

schools, hospitals and housing. On a national level, this would operate in a similar manner to the Migration Impacts Fund,[5] which was designed to manage the impacts of migration on local communities. While the government has pledged to establish a new fund designed along similar lines (the Controlling Migration Fund), some of these challenges are created by free movement, and so the EU has a responsibility to help address them. The prime minister should therefore also make the case through the renegotiations for a fund at the EU level to address pressures on services from migration, from both within and outside of the EU.

To some degree there is already scope for addressing pressures caused by migration within the European Social Fund (ESF), but there is currently no EU fund directed specifically at these objectives (Andor 2015). This new fund should therefore be a compartmentalised element of the ESF, with funding to be distributed in proportion to each EU member state's net migration level.[6] This should be based on absolute numbers rather than per capita rates, in order to prevent unjustified skewing towards smaller member states such as Luxembourg.

According to Eurostat figures from 2013 (the latest available) the member states that would benefit the most from this fund – that is, those with the highest net migration levels – would be the UK, Germany and Italy (Eurostat 2015).

Three tests of our welfare reforms

Legal feasibility: This proposal does not conflict with free movement law. The current rules for the ESF state that it cannot be used to fund or replace statutory services. However, an exception to this rule should be made when a service is under pressure from high levels of migration.

Public consent: The fund addresses a key public concern: strain on services caused by immigration. Some participants in our workshops worried that creating a new EU-level fund would not benefit the UK because the UK is a significant contributor to the EU budget. However, the UK contributes approximately 11 per cent to the EU budget (and receives approximately 6 per cent of ESF funding) and by our calculations (based on Eurostat 2015) would be allocated approximately 19 per cent of the new EU-level fund – so the UK would receive a net gain from the proposal.

Fairness: Rather than penalising contributing migrants, this proposal would provide more resources to those areas that require additional support to manage pressures caused by migration.

Undercutting and exploitation

In some sectors of the UK economy – particularly construction, hospitality, and agriculture and food processing – unscrupulous employers have taken advantage of free movement rules to undercut wages and exploit (predominantly eastern European) temporary agency workers (Warrell 2015, McCollum and Findlay 2012).

The Gangmasters' Licensing Authority (GLA)[7] regulates employment agencies, gangmasters and labour providers in the agriculture, forestry, horticulture, shellfish gathering, and food processing and packaging industries, in order to prevent exploitation of workers, including EU migrants. The GLA operates a licensing scheme for gangmasters and employment agencies in these sectors and checks that they comply with its licensing standards (including paying the minimum wage and meeting health and safety regulations).

5 In operation from 2009 to 2010.

6 If a member state has negative net migration then their net migration level should be assumed to be zero for the purposes of calculating their funding allocation.

7 A non-departmental body set up in 2005.

An independent study into the impact of the GLA – based on interviews with a range of stakeholders – found that it had improved standards within the relevant sectors and raised living conditions, but that its remit and resources had limited its potential impact (Wilkinson 2009). The government has now launched a consultation on tackling exploitation in the labour market, in which it has proposed expanding the remit of the GLA to cover other areas of the economy and to have further powers (BIS/Home Office 2015).

However, the exploitation of migrant workers is a cross-border issue and arises in part from the differing economies and labour market conditions in EU member states. Some of the worst abuses originate in unregulated agencies based in eastern Europe that send workers to the UK having misled them about the nature of the job they will take up when they get here (McCollum and Findlay 2012). Therefore it is appropriate that action is taken at the European level. Recognising that the 'the early stages of exploitation, facilitation and trafficking take place before the victims arrive here', the GLA has already created a network of 18 European countries to share best practice and information in an attempt to prevent migrant worker exploitation at the early stages in the source country (GLA 2015).

The government should make the case through its renegotiation for new measures to address the abuse of free movement by unscrupulous employers. A new EU institution, along the lines of Europol, would not be appropriate: the emphasis should be on individual member states, through their own law enforcement, enforcing broadly similar standards in line with the peculiarities of their own domestic markets and coordinating effectively with each other to tackle cross-border exploitation. In particular, the EU should direct member states to reinforce their cross-border coordination in order to tackle those employers using free movement to exploit workers. Member states should be directed to establish national contact points within their labour inspectorates. These contact points would then liaise with each other to share information on international companies moving workers across EU borders en masse, in order to ensure that they are properly inspected.

Three tests of our reforms on undercutting and exploitation

Legal feasibility: There is scope within the treaties to act to protect the rights of EU migrant workers (see Barnard 2014).

Public consent: Exploitation and undercutting are not the highest priority for the public with respect to free movement (see Ipsos MORI 2015). But concerns about these issues emerged in our focus groups in Glasgow and Upminster (see previous chapter).

Fairness: This proposal aims to protect EU migrants from exploitation while also reducing the potential for wages to be undercut, and so these reforms would be likely to be perceived as fair and reasonable across EU member states

Crime and security

The EU currently provides scope for member states to restrict free movement on the grounds of public policy, public health or public security. But there are considerable concerns about the exploitation of free movement by convicted criminals, including individuals who have relied on free movement rules to avoid expulsion (see O'Neill 2011).

There are two ways in which the government can aim to renegotiate to limit the exploitation of free movement by criminals: through legislative changes and through improvements in enforcement.

On the legislative side, the government should make the case for amending the 2004 Citizens' Directive to relax the rules that govern restrictions on free movement on the grounds of public security. These rules were introduced to

safeguard individuals from having member states unjustly restrict their right to move freely. While it is important to ensure that member states do not have the power to arbitrarily remove EU citizens, the current rules do not strike the right balance between protecting free movement rights and ensuring these rights are not exploited by criminals to the detriment of public security.

We therefore recommend a number of new changes to the existing rules. First, the provision that requires member states to take account of the citizen's personal circumstances before expulsion should be changed so that they are required only to take into account the individual's health and age – and not, as the law currently states, their period of residence, family and economic situation, or social and economic integration. (Individuals will still be protected by the Human Rights Act – see note 11.)

Second, the provision stating that EU citizens who are permanent residents cannot be expelled except on 'serious grounds of public policy or security' should also be removed, as should the provision stating that expulsion decisions may not be taken against EU citizens who have lived in a member state for more than 10 years unless a decision is based on 'imperative grounds' of public security. That is, there should not be a significantly higher bar for removing EU migrants on grounds of public security on the basis of how long they have lived in the UK.

Third, member states should be permitted to prevent expelled EU nationals from reapplying for entry for five years, rather than the current maximum of three years.[8]

These changes would allow member states greater flexibility to remove EU migrants who have committed serious crimes and pose a threat to public security, regardless of their period of residence, and to prevent them from re-entering.[9]

However, these reforms will be meaningless if they are not backed up by proper enforcement. In particular, as others have noted, there is scope for operational changes in how criminal data is share between member states, particularly with respect to serious crimes (see Peers 2014a). As a recent EU research programme on 'mobile criminals' has indicated, this could be done through the greater, faster and more targeted use of Interpol green notices to provide warnings and information to other Interpol members about individuals who have committed offences and pose a risk in other countries (Hilder and Kemshall 2014).

Major security issues have also been raised in recent months regarding the Schengen agreement. This is an arrangement between 26 European countries (most of whom are EU member states) to remove internal border checks and facilitate passport-free travel. Some have argued that the current security concerns arising from the refugee crisis and the terrorist attacks in Paris have put the Schengen agreement at risk.

While the UK is not a party to the Schengen agreement and so is, for the most part, not exposed to any failures of Schengen, it is near a number of Schengen states. It is therefore in the UK's interests for Schengen to work effectively and securely.

The government should therefore use the renegotiation to ensure there is greater cooperation aimed at addressing the current pressures on Schengen. The recent agreements to tighten security at the external borders of the Schengen zone and improve sharing of information are welcome, but the UK can push for further changes. In particular, it should make the case for a further revision of the Schengen borders code to allow for the greater use of temporary introductions of internal borders, to reflect the current challenges facing Schengen members. Currently, member states may reintroduce border controls in response to a

8 Life bans should not be permitted, in line with CJEU case law – see CJEU 1999.

9 Migrants who become citizens of their host country would of course be exempted.

serious public policy or internal security threat for no longer than six months. They may extend this for a maximum of two years under 'exceptional circumstances' where a member state shows 'serious deficiencies' in applying rules on external borders, but invoking this rule is legally and politically controversial (for further details see Peers 2015).[10] The UK could suggest that Schengen states loosen these rules in order to extend the maximum period in which temporary borders may be reintroduced beyond six months without needing to invoke the 'serious deficiencies' requirement.

In response to the increasing security threat, the UK should also use the renegotiations to secure direct access to the Visa Information System, a central database of Schengen visa applications, issues, refusals and extensions. The UK has previously argued that it should have access, to help identify fraudulent applications, but has been denied access because it sits outside the Schengen zone (Williams 2010).

Three tests of our crime and security reforms

Legal feasibility: The changes we propose are to secondary legislation (the 2004 Citizens' Directive). They may be seen to go against the treaty rights on free movement by the CJEU. However, given that restrictions on the grounds of public security concerns are already allowed – and as long as the measures are seen as proportionate[11] – then this should be feasible without treaty change. CJEU case law has shown that there is scope for member states to expel individuals involved in organised crime and sexual abuse of minors (see CJEU 2010, 2012).[12]

Public consent: As detailed in the previous chapter, concerns about criminals exploiting free movement emerged as a major theme in our participatory workshops. This was in part down to concerns about a lack of control over borders: some participants felt that it was essential to exert at least some control over free movement by preventing dangerous criminals from entering the country.

Fairness: It is fair for EU migrants who have committed serious crimes to forfeit their right to free movement when they pose a risk to public safety. The government already implements various measures with respect to non-EU migrants, such as criminal record checks for non-EU migrants seeking certain UK visas (Barrett 2015); while different rules apply in the case of EU migration, it is nevertheless reasonable for governments to take similar precautions with respect to EU migrants.

Integration

The predominant focus of EU policy on free movement is to promote free movement rights and facilitate the labour market integration of EU migrants. Indeed, evidence suggests that EU migrants tend to be relatively well integrated into the labour market in the UK, where EU migrants from both the 'old' and 'new' member states have higher employment rates than non-migrants (although they face relatively high rates of underemployment) (Stirling 2015).

However, the free movement of people is not the same as the free movement of capital, goods or services. There is a human dimension to the free movement of people that necessitates the promotion of social and political integration alongside labour market integration. Evidence on the social and political integration of EU migrants is limited, but there has been little policy focus on it at the EU level (Collett 2013).

10 Regulation (EU) No 1051/2013 – see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:295:0001:0010:EN:PDF

11 For instance, member states would not be able to operate blanket bans on EU citizens who have criminal records, including those who have committed only minor offences.

12 There may of course be other legal grounds on which to challenge removal decisions – such as article 8 of the Human Rights Act – but this change would address specific advantages in EU law granted to EU citizens, which have previously been pivotal to legal decisions (O'Neill 2011).

One element of UK policy designed to promote integration is the citizenship process. In the UK, EU migrants can apply for citizenship after six years of legal residence. To become a citizen through naturalisation (the most common route), migrants must typically pay a fee of £1,005, demonstrate they are of 'good character', meet a residency requirement, pass the 'Life in the UK' citizenship test, and (if they come from a non-English-speaking country) have an approved English language qualification. However, take-up of UK citizenship by EU migrants is very low (Home Office 2015). This is most likely because EU migrants are entitled to permanent residence after five years of continuous legal residence in the UK (Morris 2015b). Permanent residence brings much the same advantages as citizenship, other than voting in a general election – such as full access to welfare benefits and greater protections against removal – but it is much easier to acquire than citizenship. So, according to the current rules, EU migrants have no need to go through the normal citizenship application process to effectively receive many of the benefits of UK citizenship.

IPPR has argued previously for EU and non-EU migrants to be automatically enrolled on a 'pathway to citizenship' after five years of residence (IPPR 2014). However, it is also important to have a means to promote integration among those EU migrants who opt out of citizenship and get only permanent residence instead. A new approach would therefore be to negotiate to change the 2004 Citizens' Directive to allow member states to set their own additional integration tests for those EU citizens eligible for permanent residence after living in the host member state for five years (as long as these tests are reasonable and proportionate). This would then allow the UK to require EU migrants aged 18–65 to pass the 'Life in the UK' citizenship test and obtain an English language qualification in order to be granted permanent residence after five years in the UK, just as they currently would if applying for citizenship.[13]

Three tests of our integration reforms

Legal feasibility: While there may be legal challenges to placing additional restrictions on EU citizens' right to permanent residence in their host country, this should be considered to be a matter for secondary legislation rather than treaty change, given that the concept of permanent residence was introduced in the Citizens' Directive and not in the EU treaties.

Public consent: The integration of EU migrants is a lower priority for the public than some of the other issues discussed in this chapter. For instance, in a recent Ipsos MORI survey on free movement, only 21 per cent of people mentioned a lack of integration as a reason for wanting to restrict free movement (Ipsos MORI 2015). Nonetheless, IPPR's previous research suggests that the issue of integration plays an important part in mobilising public opinion towards welcoming migrants who contribute and settle into Britain (IPPR 2014).

Fairness: This proposal is motivated by a concern that there is a dearth of measures in place to facilitate the social and political integration of EU migrants. It is fair and reasonable to address this issue by encouraging EU migrants to learn the language and gain a good understanding of the UK in order to get permanent residence and the benefits of that status, just as non-EU migrants have to do in order to apply for indefinite leave to remain.

13 No individual would be required to take the test twice – so, for instance, if an EU national lost their permanent residence by leaving the UK for more than two years and then sought permanent residence again at a later date, they would not be asked to take the test again. These reforms should be combined with IPPR's broader proposals to make the citizenship test more localised and less procedural – see Sachrajda and Griffith 2014.

This briefing set out five key areas of public concern on free movement and identified proposals for reform in each of these areas as part of the UK-EU renegotiation. Taken together, these proposals constitute a pragmatic, fair rebalancing of free movement in response to public concerns about the present system, and they are likely to prove considerably more realistic to negotiate than the government's current plans.

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